

CRIMINAL LAW

THE ROMANIAN CRIMINAL LAW FROM THE GREAT UNION TO THE PRESENT DAY

*Professor Ion RUSU, PhD - DANUBIUS
University of GALAȚI, Lawyer at Vrancea Bar*

*Senior Lecturer Ana-Alina IONESCU-DUMITRACHE, PhD –
Dean of the Law Faculty at DANUBIUS University of GALAȚI*

Abstract

In the present study, we have investigated the provisions of the first three Romanian Criminal Codes that were released in the modern Romanian era.

At the onset of this scientific approach, we have made an overview of the Criminal Code of 1864, with direct reference to the doctrine and jurisprudence of the time.

We have examined briefly the Criminal Code of Carol II, to which we also referred to the doctrine of the time, extremely valuable and useful to the subsequent evolution of Romanian criminal law.

We have also considered a brief analysis of the Criminal Code of 1969 and the importance of this normative act in the further development of criminal law.

Within the paper we have highlighted the normative value of the three codes and the value of the published scientific works, both of which have a decisive contribution to the development of the Romanian criminal law from the Great Union to the present day.

We consider that the present study may be useful to researchers in this field as well as to the academic environment.

Keywords: *Criminal Code; doctrine; jurisprudence; historical evolution*

I. Introductory Considerations

Following the achievement of the Great Union on 1st December 1918, one of the most important and pressing issues requiring an urgent solution was that of legislative unification.

The legislative unification had to encompass the entire legislative package that regulated the state activity in all spheres of economic and social life on the territory of Romania.

In this context, on March 26, 1936, Law no. 577 "Regarding the title of the Unification Codes of legislation", according to which the unique article stated: "The Criminal Code and the Criminal Procedure Code, promulgated on March 17, 1936, will be called the Criminal Code of Carol II and the Code of the Criminal Procedure Carol II.

At the same time, the Codes of Unification in Civil, Commercial matters and Civil Procedure will be called Codes of Carol II."¹

According to the statements in the Official Monitor, "This law was voted by the Assembly of Deputies at the meeting of March 17, 1936 and it was adopted unanimously by two hundred and sixty-four votes."

Regarding the way the law was passed by the Senate, it is stated that: "This law was voted by the Senate at the March 18th session of 1936 and it was adopted by unanimous acclamations."

Therefore, all the Codes by which the legislative unification of the Great Romania was achieved were entitled Carol II.

As for the Criminal Codes (Criminal Code and Criminal Procedure Code), "From the time of the union, four laws applied throughout the whole country: Codes of the Old Kingdom, Hungarian Legislation in Transylvania, Austrian in Bukovina and the Russian one in Bessarabia."²

As for the "Old Kingdom Codes," they were "a loose-fitting coat. They were borrowed from Latin nations with an identical mentality or at least very close to ours. These Codes have fallen into the life of small Romania through the great contribution of Romanian jurisprudence and science. But it is true that they were largely obsolete and inappropriate to the new conditions of national life. The evolution had overcome them."³

As for the Codes in the Romanian Provinces, the quoted author appreciated that "The legislation of the liberated provinces were created and rooted without any active contribution from us. They have been tailored by foreign dominions. We must admit, however, that many of the institutions of these laws were modern and appropriate to the spirit and requirements of the time, and others (e.g. public registrar books) through their practice succeeded in popularizing and entering into the legal consciousness of the Romanians in the respective provinces."⁴

¹ Published in the Official Monitor, part I, no. 73 of March 27, 1936.

² Valeriu Pop, former minister of justice at the time of voting and promulgation of Codes, in the preface of *Codul penal Carol al II-lea, adnotat/The Criminal Code Carol II, annotated* of Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, vol. I, General part, art. 1-183, Ed. SOCEC & Co., S.A., Bucharest, 1937, p. VII.

³ *Ibidem*, p. VII.

⁴ *Ibidem*, p. VII.

Under these conditions, *“The diversity of laws constituted an appalling obstacle to the normal development of national life within wider boundaries. The life of the country cannot be fragmented in the provinces, it demands living in a single rhythm from Nistru to Tisa and the Danube, without the customs barriers of special or even desperate legal systems. In particular, the national economy cannot bear such a state of affairs without a serious disarrangement of the increasing ascendant development that the natural riches of the country and the soul qualities of the nation, once uncovered, justified it. But the diversity of laws is also a significant inconvenience for perfecting unity and national consciousness. Positive laws are an embodiment of the nation's rightful conscience, and a united and well-formed nation can have only one conscience. Regionalism embracing a distinct legal structure can only be a stage that sometimes leads to unity, and once to the breaking of unity. How this stage for us could only lead to the completion of unity, the process had to be rushed in the superior interest of a more rapid consolidation of the country.”*⁵

The same author also felt that legislative unification would have been possible immediately after the Union by extending the Codes of the Old Kingdom to the “released provinces”.

In the continuation of his examination, the mentioned author showed that “What at the moment of union or immediately after the union would have been possible and useful, later it was only possible and partly inconvenient. The expansion of the Romanian Codes in Bessarabia was possible due to the legislative chaos we inherited in that province, a chaos that everyone was happy to escape from. Extending a part of the criminal proceedings in Transylvania gave rise to uncertainties and controversies that even the daily practice did not fully remove and solve. Life had resumed its natural course - for a moment interrupted by the great historical transformations - and had dressed again in the old coat, which could not be dismissed with an authoritative gesture. *This explains the strong resistance he opposed to the late C. Hamangiu - a great patriot and eminent jurist - who in 1931 tried to achieve the unification of the Romanian laws in the new provinces.*”⁶

Therefore, amid the great transformations and disarrangements that emerged in the Romanian society, it was not possible to achieve a legislative unification immediately after the Great Union.

In this context, particularly complex, in the Romanian provinces for 18 years, the criminal laws in force at the time of the Great Union were applied, and in the Old Kingdom the criminal law in force at that historical moment, namely the Criminal Code of 1864.

The legislative differences existing at that time have caused numerous dysfunctions in the administration of justice and even in the state administration,

⁵ *Ibidem*, pp. VII & VIII.

⁶ *Ibidem*, pp. VIII & IX.

dysfunctions which continued to persist until the entry into force of Law no. 569⁷ and the promulgation of Codes.

In the present study we will try to analyze the evolution of Romanian criminal law from the Great Union to present day, without excluding the evolution of Romanian criminal law since the adoption of the Criminal Code from 1864 to December 1, 1918.

II. Criminal Code of 1864 - First Criminal Codification of Modern Romania

In the Romanian doctrine it was argued by all the authors the fact that the first Codification of the Criminal Law was implemented in modern Romania with the adoption of the Criminal Code from 1864.

Being promulgated on October 30, 1864, the Criminal Code of 1864⁸ is structured on three main parts named by the legislator "Book I, Book II and Book III", after some introductory provisions. In turn, each of these parts is structured on chapter headings and sections.

After the promulgation, until 1911, the Criminal Code has undergone numerous modifications as follows:

- By the law of February 20, 1874, "with which occasion there have been modified 109 articles that can be seen in the corpus of the Code"⁹;
- by law of 21 February 1882¹⁰;
- by the law of 28 May 1893¹¹;
- by the law of February 15, 1894¹² and
- by the law of 4 May 1895¹³.

As far as the introductory part is concerned, with the marginal title "**Preliminary Provisions**", it contains 6 articles.

The first article states: "The offense is punishable by law:

- Hard work;
- Reclusion;
- Detention, and
- Civic degradation, is called murder (c.p. 7).

The offense is punishable by law by:

Correction prisons,

⁷ Published in the Official Monitor, part I, no. 73 of March 27, 1936.

⁸ Promulgated and published on 30 October 1864 in the Official Monitor No. 242 entered into force on 1 May 1865.

⁹ Published in the Official Monitor No. 38 and 41 of 17 and 20 February 1874.

¹⁰ Published in the Official Monitor No. 20/1882.

¹¹ Published in the Official Monitor No. 44/1893.

¹² Published in the Official Monitor No. 256/1894.

¹³ Published in the Official Monitor No. 26/1895.

The prohibition of some of the political, civil or family rights, and the fine from 26 lei¹⁴) upwards is called a crime (c. p. 8, 399; pr. p. 176).

The offense which the law punishes with:

Police jail and a fine is called a contravention (c. p. 9, 381; pr. p. 139; p. fr. 1; pr. § 1).¹⁵

Regarding the individualization of punishments, the establishment of their nature, according to the jurisprudence of the time, states that "In the grading of punishments according to the theory of our criminal law, the penalty of fine whatever its amount is lower than that of the prison. However, by admitting attenuating circumstances, replacing the imprisonment penalty with those of the fine, the maximum of this fine is left to the judge's decision."¹⁶

We also specify that the following articles (2-6) contain some principles regarding the application of Romanian criminal law in time and space.

As for the application of the principle of personality, it is stated in jurisprudence that: "Basically, the law punishes the crimes committed on the land of Romania without distinction if their authors are nationals or foreigners (article 3 p.); by way of exception to this general rule, art. 4 Criminal Code also punishes the crimes committed by the Romanians in the foreign country after the return of their authors to Romania, if they were not prosecuted and judged in the country where they committed the crime; by *a contrario* the crimes committed by the Romanians in a foreign country are not punished in Romania, no matter if their authors were or not prosecuted and judged there. And the law makes no distinction whether the offense is committed by an individual or by a public official in the exercise of his or her duties; nor is the judge allowed to introduce in criminal law distinctions which are not authorized by him. Thus, rightly, the correctional courts are depriving them of the jurisdiction to judge a crime committed in a foreign country by a Romanian plenipotentiary minister."¹⁷

Regarding the principle of territoriality, in the doctrine of the interwar period, which took into account the provisions of the 1864 Criminal Code, reputed Professor Ioan I. Tanoviceanu, referring to the principle of territoriality of the Romanian criminal law, appreciated: "A crime can be committed in the country by a foreigner. Which law will be applied? The law of the country or the foreigner's law? Three systems can be conceived regarding the application of the criminal law towards foreigners:

¹⁴ According to art. 399, par. II Criminal Code the fine provided here is from 26 lei upwards.

¹⁵ George St. Badulescu, George T. Ionescu, *Codul penal adnotat /The Annotated Criminal Code*, Romanian and French jurisprudence and doctrine, with a preface by I. Tanoviceanu, professor of law at the University of Bucharest, Ed. Tip Ziarului CURIERUL JUDICIAR 5, Rahovei, 5, 1911, pp. 1 & 2.

¹⁶ *Ibidem*, p. 2; Cas II, 449 89, B. p. 697.

¹⁷ *Ibidem*, pp. 12 & 13; Cas. secț. - unite 12 of 3 May 90, B. p. 691.

1. The criminal law should be *exclusively territorial*, that is to say, all those who commit crimes within a country, but only them, may be prosecuted.

2. Be *exclusively national or personal*, that is, apply only to nationals, or where the offense is committed either in their own country or in a foreign country. In 1845 the French Court of Cassation, 24 Courts of Appeal and 6 Faculties of Law agreed in the sense of the personality of the criminal law (74).

3. The law must be *mixed*, that is, personal and territorial at the same time.”¹⁸

Continuing the examination, the well-known professor appreciates that: “Of the three systems, the second is not established in any legislation, because it would endanger the sovereignty and public order.

Moreover, it is not admissible also because the alien should not be more privileged than the country's resident who, when committing an offense, is subject to the laws of the country, and therefore prosecuted and punished according to these laws.

The first system is also unreasonable, for a State must be armed against those individuals, whether foreigners or nationals, have committed crimes or offenses against the country or against the country's inhabitants.

Therefore it remains the third system, the only rational and admissible one.”¹⁹

We continue with the structure of the 1864 Criminal Code which includes the three parts referred to above, as follows:

Book I with the marginal name “**About Punishments and Their Effects**” comprises six titles respectively:

Title I with the marginal name “*About the nature of punishments*” includes only 3 articles (Articles 7-9) which provide for the nature of punishments for crimes, offenses and contraventions.

Thus, “the penalties for crimes are:

1. Lifetime work (c.p. 10-14, 31);
2. Forced labour for a specific period, from 5 to 20 years (c.p. 10, 11, 13, 14, 31);
3. Imprisonment in a workplace from 5 years to 10 years (c.p. pp. 15-19, 31);
4. Detention from 3 years to 10 years (c.p. 20, 21);
5. Civic degradation from 3 years to 10 years (c.p. 22, 23, p. fr. 7)”²⁰.

¹⁸ Ioan I. Tanoviceanu, *Tratat de Drept & Procedură Penală/Treaty of Criminal Law and Procedure, 2nd Ed. Cursul de Drept si Procedură Penală, revăzut si completat, doctrina de Vintilă Dongoroz, referințe la legislațiunile din Bucovina & Ardeal*, dr. Corneliu Chiseliță si dr. Ștefan Laday, jurisprudența de Eugen C. Decuseară, cu o prefață de N.C. Schina, vol. I, / *Criminal Law and Criminal Procedure, revised & completed, doctrine of Vintilă Dongoroz, references to the laws of Bucovina & Ardeal*, dr. Corneliu Chiseliță & dr. Ștefan Laday, the jurisprudence of Eugen C. Decuseară, with a preface by N.C. Schina, vol. I, TIP „CURIERUL JUDICIAR”, Societate anon. Pe acțiuni, Bucharest, 1924, str. Artei 5, lângă Palatul Justiției, p. 306.

¹⁹ *Ibidem*, p. 307.

²⁰ George St. Badulescu, George T. Ionescu, *op. cit.*, pp. 16 & 17, art. 7 of the Criminal Code of 1864.

In the case of offenses, “punishments” are:

1. Prison from 15 days to 5 years (c.p. 24-26);
2. Prohibition, from 6 months to 6 years, of some of the political, civil, or family rights (c. p. 27);
3. Fine from 26 lei upwards (c.p. 28, 399; p.fr. 9)²¹.

Finally, “the penalties for contraventions are:

1. Prison from 1 to 15 days (c.p. 25);
2. A fine of 5 to 25 lei (c.p. 30, 35, 381, 382, 383, 399)²².

In Title II, with the marginal name “*On the nature of punishments*” (Articles 10-37), the methods of enforcement and execution of punishments are defined first, namely: forced labor, imprisonment, detention, civic degradation, imprisonment, correctional interdiction, fine, police imprisonment and police fine.

In the following articles (33-37), there are mentioned other provisions concerning: deadlines, publication and disclosure of final conviction decisions, fine, civil sanctions accompanying criminal sanctions and confiscation.

Title III has the marginal name “About attempt” and contains two articles (articles 38 and 39).

We should mention that within the said texts the legislator defines the attempt to commit murder and offense, which presupposes that the attempt to contravention was not punishable.

The jurisprudence of the time reminded that “In order for the robbery to be committed, it was required to have violence and consumed theft, and violence may be exerted either before or in the act of theft, or when surprised red-handed, the offense of stealing, to retain the stolen thing or to escape; but under all circumstances, the existence of robbery requires not only violence to be exerted, but also theft to be committed. If the theft was not committed, or if the author was not surprised red-handed stealing, if only the violence was exerted without the theft with all the criteria of the consumed theft and only the possibility of being willing to commit the offense of theft, in this case there is no robbery consumed, no robbery, but the attempted robbery, which is punished with the correctional prison according to art. 38 of the Criminal Code²³.”

As for the conditions to be met for the existence of the attempt, Professor Tanoviceanu mentions five of them, namely:

“A. There must be a beginning of execution, because, as we have seen, the law punishes only the acts of execution, not those of preparation. Both art. 38 and art. 39 of Criminal Code establish it clearly: “*Any beginning of execution*”; therefore, if the agent only prepared for the commission of the crime, did not commit an attempt, and consequently cannot be punished. From Art. 38 and 39 of the

²¹ *Ibidem*, p. 18, art. 8 of the Criminal Code of 1864.

²² *Ibidem*, p. 19, art. 9 of the Criminal Code of 1864.

²³ *Ibidem*, pp. 39 & 40; Cas. II, 628/98, B. p. 1142.

Criminal Code, there is a difference between the acts of preparation and execution, that the former are not punished, and the latter are punished, for these articles show that any beginning of execution is punished, while for the preparatory acts, no article in the law provides for any punishment (...).

B. There must be an intention to commit the offense. The law does not say it directly, but there is no doubt about this condition. Indeed, art. 38 and 39 of the Criminal Code require for the attempt to be punished, that the beginning of execution has ended in circumstances beyond the author's will, therefore the law requires not only that the will exists, but even persists until the moment when the acts of execution have elapsed through an external circumstance. If the author, even though he started to commit the offense, stops alone, we no longer respect the provisions of art. 38 and 39 of the Criminal Code; he may or may not be punished after the distinctions that we will show later, but undoubtedly his deed will no longer be an attempt, for the attempt presupposes a persistent will until the time of the external stop.

But once the will is persistent and it is safe for it to commit a crime, the attempt exists even though he would not know what crime the offender wanted to commit (...).

C. The third condition for the existence of the attempt in our law is about a crime or a specific offense under the law (13); art. 38 Criminal Code speaks of attempted murder, art. 39 of the attempt of offense, no article refers to the attempted contravention, that is to say the third-class attempt and the smallest of the offenses (...).

D. A fourth condition for the attempt is that the acts of execution committed voluntarily have been terminated by circumstances beyond the will of the offender. Our legislator says this formally in art. 38 and 39 of the Criminal Code.

If the perpetrator stops by himself, spontaneously, his deed is no longer an attempt, because it no longer meets the requirements of the law. Our court of cassation revealed by decision this condition, being stopped by someone else, and consequently said that a separate record should be made, for if he stopped "from the author's own will," says the Court of Cassation, the only beginning (the attempt) is not punished by our criminal law "(14) (...).

The only criterion, therefore, to be followed by the courts is to find out whether the discontinuance is for independent reasons or not by the will of the offender; whenever it is found that the offender has been compelled to discontinue, it will remain punishable, on the contrary whenever this is not found, we will have a spontaneous disruption and therefore an attempt condemned by the law. In case of doubt, the defendant will take advantage of any hesitation (...)

E. The offender would not have reached his goal, for if he has reached his goal and committed the crime, this is no longer an attempt but a complete crime (24) (...)"²⁴.

²⁴ I. Tanoviceanu, *op. cit.*, pp. 434-451.

There is a clear similarity of the incrimination, as well as the author's views quoted by the text of incrimination and the current doctrine.

Title IV with the marginal title "On the Concurrence of Several Crimes and Recurrence" includes Art. 40-46. As the marginal name also indicates, the provisions are in place in the texts in question to regulate the two institutions, namely the offense and recidivism concurrence.

It has been recognized in the case-law that if "the defendant was first sentenced to one year's imprisonment on the basis of art. 125 Criminal Code, for the offense of falsification of public documents and later to 6 months imprisonment on the basis of art. 127 of Criminal Code, for the offense of forgery of private acts, is the place where the six-month penalty has been merged into that one year, because the defendant is convicted of offenses subject to different punishments, you only apply the worst punishment rather than the maximum 5 years provided by art. 125 of Criminal Code, as motivated by the substantive court only by misapplication of the last paragraph of art. 40 of Criminal Code, instead of applying the first paragraph of that article (Case II, No. 924/914 - Jurispr, R. 20/914, p. 317)²⁵

We find a fundamental difference from the current regulation of the crime concurrence and, in particular, the way it is sanctioned. However, there is some resemblance to the criminal sanctioning provisions of the Criminal Code of 1969. This Criminal Code, in the sense of an essential distinction in the matter of the sanction of the crime concurrence, provided for the possibility of the court to grant a penalty increase to the highest penalty.

Regarding the definition of the recurrence, the doctrine stated that "The recurrence, from the point of view of the Romanian law, is the state of an offender, who, after having been convicted and executed the punishment, commits one or more offenses in a determined time."

The *recurrence* word comes from *re* and *fall*, fall again, being understood as in crime. But this word is not Latin. The Romans did not have proper expression with our word: recurrence; old Latin writers used the *reiteratio* expression, which can be equivocal, because today it means repeating the same crimes."²⁶

²⁵ Paul I. Pastion, M.I. Papadopolu, *Codul penal adnotat, cuprinzând: textul român, francez, prusian, jurisprudența română, franceză, prusiană, doctrină comparată în legătură cu Codul penal din Transilvania/ The Annotated Criminal Code, comprising: the Romanian, French, Prussian, Romanian, French, Prussian jurisprudence, comparative doctrine in connection with the Criminal Code of Transylvania*, Editura librăriei Socec & Comp., Sotietate Anonimă, București, 1922, p. 65.

²⁶ Ioan I. Tanoviceanu, *Tratat de Drept si Procedură Penală/Treaty of Criminal Law and Procedure, 2nd Ed. Cursul de Drept si Procedură Penală, revăzut si completat, doctrina de Vintilă Dongoroz, referințe la legislațiunile din Bucovina & Ardeal*, dr. Corneliu Chiseliță si dr. Ștefan Laday, jurisprudența de Eugen C. Decuseară, cu o prefață de N.C. Schina, vol. I, / *Criminal Law and Criminal Procedure, revised & completed, doctrine of Vintilă Dongoroz, references to the laws of Bucovina & Ardeal*, dr. Corneliu Chiseliță & dr. Ștefan Laday, the jurisprudence of Eugen C. Decuseară, with a preface by N.C. Schina, vol. II, TIP „CURIERUL JUDICIAR”, Sotietate anon. Pe acțiuni, Bucharest, 1924, str. Artei 5, lângă Palatul Justiției, p. 352.

“In order for a person” to be in a state of recurrence, 5 conditions are required in our Criminal Code.

1) To have been irrevocably convicted. 2) The sentence was more than 6 months imprisonment. 3) Have fulfilled the punishment to which he was convicted. 4) Upon serving the punishment, he has committed a crime or an offense. 5) This new crime or offense must have been committed within 10 years after the execution of the punishment.”²⁷

In the jurisprudence of the time it was stated that “In order to be applicable to a defendant also art. 41 of the Criminal Code, with regard to the recurrence, it is imperative that the court applying the punishment finds out the facts and acts from which it results that the convict is recidivist, and the failure to state or reject the conditions to be considered a recidivist is not a cause for the annulment of the entire decision, in order to send the case to be tried again in its entirety, but to be annulled only in respect of the application of the penalty, the fact remains as such, so that the referring court has to deal only with the finding of the recidivism and the application of the law”²⁸ or “The recidivist is punished with a higher degree than the punishment that the law decides for this second act, which makes him a recidivist.”²⁹

Title V entitled “About complicity” includes art. 47-56, texts in which the legislator regulates in an extended form in relation to the way in which this institution is regulated in the law in force, the institution of complicity. However, we make it clear that not all of the texts concerned deal with the institution of complicity, some regulating also instigation (provocative agents), or concealment.

Regarding the conditions of complicity, in the doctrine of the time it is argued that these are:

“1. Plurality of people (at least two people). One is the author (the material), the other the participant. In this plurality, however, it must still be a unity of points; it is required that all participants work on a common understanding. There must therefore be a plot, a focus on committing the offense (...).

2. Intention. Only collaboration with intent is participation. When a result has been caused by the culpability of many people, all are liable to punishment, each receiving separate penalty, without considering the penalty suffered by others; as well as whether the result was due to one's fault and the intentional action of the other. Finally, if someone intentionally causes another to commit a crime at fault, there is an author (mediated action). The content of intent; to know about the intentional crime (by the author) and that his intentional action or inaction will contribute to the commission of the offense; to finally know that he is not working alone (...).

²⁷ *Ibidem*, p. 382.

²⁸ Paul I. Pastion, M.I. Papadopolu, *op. cit.*, pp. 74 & 75 (Cas. II, No. 356/99, B. p. 587).

²⁹ *Ibidem*, p. 74 (Cas. II, 625/99, B. p. 908).

3. An offense or attempted crime is required. If there is no author, there is neither an instigator nor an accomplice. This is a wrong principle of the Code. When, for example, Primus incited Secundus to kill Tertius; gives him the money, the means of committing the crime, etc., but Secundus at the last moment withdraws from the commission; on what basis is Primus unpunished? He has proved through acts, external acts, that he is capable of committing an assassination, at least as an instigator; his individual culpability would not be higher even if the murder had been committed; it only escapes for Secundus withdraws from the action. But Primus remains just as dangerous to society, and this peril should be eliminated.

4. Causality. The activity must be one of the causes or conditions of the offense: it gives rise to the offense, either by acts of committing it (the author), or by misconceiving the author (the instigator), or by facilitating the commission (the auxiliary).

An external act is therefore required, which is causal to the outcome. This act may also be a known and intentional commission. The culpable omission cannot be included³⁰.

Title VI, the last of Book I, marginally called "About Causes that Defend from punishment or Reduces Punishment" includes art. 57-65.

In the legislator's view, the causes that defend from punishment or diminishes punishment are:

- "the state of mourning and in any other state of ending the use of reason from causes independency of its will (article 57);
- self-defense (article 58);
- the regime of attenuating circumstances, appreciated as causes for the reduction of punishment (article 60);
- committing the deed by "a younger child under 8 years" (article 61);
- committing a "no skill" deed by a child aged between 8 and 15 years old (Article 62);
- committing a *de facto* deed by a person aged between 15 and 20 is a cause of diminishing punishment (article 63).

We note that in its essence, Book I represents a genuine part of the current Criminal Code, while preserving the fundamental elements of differentiation that are imposed by the evolution of the Romanian criminal law science.

We consider it important to point out that, although the science of criminal law has evolved over time, some of the institutions provided for in the 1864 Criminal Code remain valid even today, being regulated in a similar way. We have here the attempt, the crime concurrence, the recidivism, the complicity, the instigation, the irresponsibility, the self-defense, the minority and the discernment.

³⁰ I. Tanoviceanu, *op. cit.*, vol. II, pp. 534-536.

Book II with the marginal title "About crimes and offenses in particular and about their punishments" comprises four titles, as follows:

- Title I entitled "Crime of High Treason", which includes two chapters: Chapter I "Crime against the State's External Security" and Chapter II "Crime and Offenses against the State's Internal Security."

Without examining these crimes, we make it clear that many of these are also found in the current provisions, with some changes were brought about by the natural evolution of the science of criminal law and of the society as a whole.

- Title II with the marginal name "Crime and Offenses against the Constitution", which includes three chapters: Chapter I "Crime and Offenses against the Exercise of Political Rights," Chapter II "Attacks on Freedom" and Chapter III "For violation of duties by the administrative and judicial authorities."

Some of the offenses provided for in this title are also found in the current law, in a modified form. The offenses under Chapter III are in fact crimes against the achievement of justice.

Title III, marginally entitled "Crime and Offenses against Public Interests", contains five chapters, each of which mentions a specific group of offenses, namely: Chapter I "About falsification or forgery"; Chapter II "Offenses and crimes committed by civil servants in the exercise of their functions"; Chapter III "On the disturbances to public order by church presence"; Chapter IV "Resistance, Disobedience and Misconduct Against Public Authority" and Chapter V "About the association of evil doers and vagabonds."

Title IV, with the marginal title "Crime and Punishment against Individuals", comprises two chapters, namely: Chapter I "Crime and offenses against persons" and Chapter II "Crime and offenses against property".

Most of the crimes covered by this part of the Criminal Code are also found in the provisions of the Criminal Code in force, of course with some modifications made by the legislator in the text of incrimination, adaptations imposed by the overall evolution of society and the evolution of the criminal law in time.

We find that this part of the Criminal Code is actually the special part of current criminal law.

Book III with the marginal title "Police Offenses and Their Penalties" includes Chapter I "For Penalties" and Chapter II "Contraventions and Penalties".

We do not insist upon examining the two sides or on offenses and contraventions, as this is not the subject of our study.

Regarding the emergence and development of the Romanian criminal law science, in the doctrine it was argued that: "After the adoption of the Criminal Codes and Criminal Procedure Code in 1864, it has also developed a specialized literature in the field, which generally contains comments on the legislation in force at that time. Among these we mention: C. Eraclides, *Studii practice asupra dreptului criminal/Practical Studies on Criminal Law* (1865); G. Costa-Foru, *Magazinul*

judecătoresc/Judicial Store, Vol. II (1872); Al. Cretesescu, *Comentarii la Codicele penale/Comments at the Criminal Codices* (1872); G. St. Bădulescu and G. T. Ionescu, *Codul penal adnotat/The Annotated Criminal Code*, Bucharest, 1911; P. Pastion and M. Papadopolu, *Codul penal adnotat/The Annotated Criminal Code*, Bucharest, 1922³¹.

We make it clear that the last two papers were also quoted in this study.

The first work “of synthesis in the field of criminal law emerged in our country is due to Ion Tanoviceanu, a former professor at the Faculty of Law in Bucharest. It is the law and criminal procedure in three volumes, published by Tanoviceanu in 1912, in which the principles of criminal law, the various schools and currents of criminal doctrine were systematically exposed, with comparative law references and a thorough analysis of Romanian criminal law in force at that time”³².

After 1912, the year of publication of Professor Ion Tanoviceanu's work and until the entry into force of the Criminal Code of Carol II, a valuable criminal legal literature has developed in our country.

Thus, between 1924-1927, Professor Tanoviceanu's law course and criminal procedure was republished, under the name of the *Treaty of Law and Criminal Procedure*, in five volumes, with a special scientific contribution by Professor Vintilă Dongoroz. To this work, which, in our opinion, was the most valuable at that time, contributed Corneliu Chiseliță, PhD, (counselor at the High Court of Cassation), Stefan Laday, PhD (a jurist in Cluj), as well as Eugen Decuseara (Doctor in Law, Judicial Statistics Director).

In his work, Professor Vintilă Dongoroz, through his special contribution, “has developed the criminal doctrine of Tanoviceanu, enriching the Romanian criminal legal with advanced ideas and concepts in the field of criminal law and politics.”³³

Another work of special scientific value appreciated as such was the Criminal Law Course in three volumes, which appeared in Cluj (1921-1924) under the signature of Professor Traian Pop of the Faculty of Law in Cluj.

We also mention the book *Delicte îngăduite/ Permissible misdemeanor* appeared in Bucharest at Cartea Românească Publishing House in 1919, under the signature of the famous Vespasian Vesp. Pella.

All these papers, as well as others, have contributed significantly to the development of the Romanian criminal law science, in a period characterized by great unrest and political changes, followed by significant economic developments.

Undoubtedly, the subsequent evolution of the Romanian criminal law science was largely determined by the 1864 Criminal Code adopted during the reign of the first ruler of Romania, Alexandru Ioan Cuza, as well as by the very valuable works in the field of criminal law.

³¹ Costică Bulai, Bogdan N. Bulai, *Manual de drept penal, Partea generală/Criminal Law Handbook, The General Part*, Ed. Universul Juridic, Bucharest, 2007, p. 52.

³² *Ibidem*, p. 52.

³³ *Ibidem*, p. 52.

We appreciate that, out of respect for the personality of our ruler and due to the overwhelming importance of the Criminal Code of 1864, as regards the overall evolution of the Romanian criminal law science in the European contexts of those times, now at 100 years since the Great Union, it could be accepted the adoption of a law providing for the change of title of the Criminal Code of 1864 into the Criminal Code of Alexandru Ioan Cuza.

III. Criminal Code of Carol II - one of the most modern European Codes of the first half of the last century

As mentioned in the introductory part of the study, the Criminal Code of Carol II was promulgated by Royal High Decree No. 471 of March 17, 1936³⁴.

Having an exceptional writing staff (outstanding personalities of the Romanian law) and responsible debates in the two chambers of the Romanian Parliament, as well as the evolution of the European criminal law that materialized in the publication of several Codes (until the publication of the Romanian one) The Criminal Code of Carol II was at that time considered to be one of the most modern in Europe.

The Criminal Code of Carol II "is based on the doctrine of the classical school, but adopts everything that experience and practice could verify and establish from the new ideas of the positivist school. This process, which constitutes a happy union between the two doctrines, makes us sure that we have settled on solid ground. The new Code, therefore, is not a temporary innovation, as experience, but a long-lasting achievement. The new Code is based on the classic principle of the offender's moral responsibility, but it takes into account the need to defend society, based on the danger that the offender would represent for it. The safety measures which do not have the feature of punishment are the best proof of the strong infiltration of new ideas."³⁵

By proceeding to the brief analysis of some novelties brought by the Criminal Code of Carol II, the quoted author states that: "The punishment itself has lost its exclusive expulsion character and has been clearly organized in the service of the reclassification of the convicts. It is becoming more and more obvious that the offenders are being redressed in order to make them more useful to society. Individualization and proportionality of punishment, the progressive system of punishment, probation, and the rehabilitation of convicts are as many instructions as possible from the adoption of new ideas that have made their way, and which, with consciousness and understanding, will do good, facilitating the fines and readapting them to social life"³⁶.

³⁴ Published in the Official Monitor, Part I, No. 65 of March 18, 1936.

³⁵ Valeriu Pop, *op. cit.*, p. X.

³⁶ *Ibidem*, p. X.

Regarding the changes made to the jurisdiction, organization and functioning of the Court of Jurists, it is argued that: "The New Code begins with the correction of many crimes, which could give to the superficial researcher the impression of an overwhelming gentleness. In fact, the new Code is more rigorous than the old laws. Correction has a different layer than undue sweetening. The court with jurors is a correctional institution, which cannot be suppressed. However, as the jury back then and also nowadays is far from functioning in irreproachable and satisfactory conditions, the legislator thought of two correctives: the reformulation of the institution and the sensible reduction of its cases. The reform was achieved through the new Criminal Procedure Code; the new conditions in which the jury will function in the future, fulfill all the hopes. In any event, however, the correction of many crimes has made a massive reduction in criminal cases in court jurisdiction with jurors. Correction led to a 12-year increase in the correctional maximum."³⁷

Regarding the penalties and the need to incriminate facts, it is stated that: "The careful research of the texts will show that the punishments of the new Code are harsher, especially for offenses whose frequency or generalization constitutes a real danger to the normal development of Romanian society. Strong repression and prevention means are made available to justice for the defense of the state and of the fundamental institutions - the church being included - in peacetime and in case of war. This defense is entirely in the assent of the determined public to preserve and prevent any vague attempt that has been made through unmeasured sufferings and sacrifices, but it is also noteworthy the similar measures taken by almost all states that want quietness, order and constructive work within their borders. Strong measures were taken to protect the family, the woman in general, the married woman in particular, the juvenile children. Particular attention has been paid to public morality, good morals, sanctioning any act of corruption. The solution that has been made for adultery and abortion is the plastic view of the legislator.

The project abolished adultery from the crimes, which was reintroduced by the Senate and maintained by the House as a means of defending the family, considered as the basic cell of our Romanian and Christian life.

In the project abortion was regulated with excessive indulgence. Ethical abortion, medical abortion (both for the life and health of women) and eugenic abortion are widely accepted. This regulation was the seal of a quasi-revolutionary innovation, passing over our traditional conceptions or neglecting superior, moral and national interests. The Code adopted by the Legislative Bodies (article 484) only admits medical abortion (in the event of a woman's life) and only one case of eugenic abortion (the mental alienation of one of the parties, conditioning on the

³⁷ *Ibidem*, p. XI

existence of the certainty that the child will carry severe mental health). The condition of certainty greatly restricts the practical application of this hypothesis.”³⁸

By proceeding to a brief examination of the structure of the Criminal Code of Carol II we find that this is the structure on three sides, namely: Book I with the marginal title “General Provisions”, Book II called “Offense and Crime in particular” and Book III “Contraventions”.

In the continuation of this scientific approach, we will present, in general terms, the structures of the three parts of the Criminal Code of Carol II, with an emphasis on some institutions or crimes that we consider to be more significant, about which we will refer to the doctrine and jurisprudence of that time.

Book I with the marginal name (as mentioned above), “General Provisions” comprises twelve titles as follows:

- Title I - The lawfulness of incrimination, punishment and safety measures;
- Title II - Application of the Criminal Law;
- Title III - Penalties;
- Title IV - Safety measures;
- Title V - Refunds and damages;
- Title VI - Offense;
- Title VII - Causes that protect or reduce criminal liability;
- Title VIII - Concurrence of aggravating and attenuating circumstances;
- Title IX - Conditions for incrimination of offenses subject to prior complaint;
- Title X - Extinction of incrimination, execution of punishment and incapacity

resulting from conviction;

- Title XI - General provisions on press crimes;
- Title XII - Explaining some legal terms.

As this part of the Criminal Code is of particular importance both with regard to the extraordinary evolution of the Romanian criminal law science (from the Criminal Code from 1864 to the Criminal Code of Carol II), but especially in the subsequent judicial practice, we will proceed to the brief examination of some of the newly introduced institutions, with a greater impact on judicial practice and the science of Romanian criminal law.

Title I consists of a single article, the text of which promotes one of the fundamental principles of criminal law, which is still current nowadays, namely the principle of the lawfulness of punishment and safety measures.

In his commentary on this text, Professor Vintilă Dongoroz said: “The principle of the lawfulness of crimes, punishments and security measures, established in art. 1 of this Code leads to the following consequences:

- a) Only the law can be a source of substantive (material) criminal law;

³⁸ *Ibidem*, pp. XI & XII.

b) It can be taken into account as crimes only the acts that the law incriminates as such (precondition and determination);

c) There can be applied penalties or safety measures cannot be applied other than those established by law;

d) Penalties and safety measures can only be applied in the cases and conditions stipulated by the law³⁹.

In the Senate debates on this text, rapporteur Tony Iliescu argued that: "Here is the setting of two old principles which existed since there is the notion of repressive law. It is the principle of "*nullum crimen sine lege*", that is, there can be no offense without a specific express provision of the law; and the second principle is still old: "*Nulla poena sine lege*", that is, there can be no lawless punishment."⁴⁰

The further development of criminal law has demonstrated the necessity and usefulness of maintaining and improving this principle, which is currently unanimously recognized and applied in the laws of the European states.

Title II with the marginal title "Application of the Criminal Law" comprises three chapters, of which the first two stipulate provisions governing the application of the criminal law in time and space.

Regarding the application of the criminal law over time, in the doctrine of the time it was pointed out that "a law gains *existence* also in the system of the Romanian legislation at the moment of *sanctioning*; it does not gain *judicial efficiency*, until after it has been published."⁴¹

With regard to the cessation of the effectiveness of the law, the same well-known specialist claims that: "The legal efficiency of a criminal law ceases, and therefore the law is no longer applicable as soon as it is removed from being into force (the terminal limit). Through a natural formal symmetry, the fall to make a law lose its legal efficiency belongs to the same body of public power that created the law and gave it legal efficiency.

The main reason that makes a criminal law out of force (to no longer apply) is repealing, i.e. the legislative act by which the legislative body abolishes the law. Repeal is, therefore, a *contrarius actus*, by which the right created by public power is removed by this power, but by a manifestation of will in the reverse sense."⁴²

In an ample comment on the provisions of the texts governing the institution of the application of criminal law over time (articles 2-5), the same author states that: "1. Articles 2-5 of this Code establish rules on the application of criminal laws in relation to time.

³⁹ Vintilă Dongoroz in Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, *Codul penal Carol al II-lea, adnotat, vol. I, Partea generală, art. 1-183/ Criminal Code of Carol II, annotated, vol. I, General Part, art. 1-183*, Ed. Librăriei SOCEC & Co., S.A., Bucharest, 1937, p. 3.

⁴⁰ Tony Iliescu in Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, *op. cit.*, p. 2.

⁴¹ Vintilă Dongoroz, *Drept penal/Criminal law*, Bucharest, 1939, p. 120.

⁴² *Ibidem*, p. 117.

The rules contained in these texts are general rules applicable to all criminal laws, that is, whenever and whatever a succession of criminal laws is produced.

However, as regards the succession of the present Code with respect to the previous criminal codes (from the old Kingdom, Transylvania and Bukovina), the rules of art. 2-5 shall be supplemented with the provisions of art. 597 par. penultimate and last, art. 598-602 of this Code, provisions which no longer have the feature of general rules, but only transitional rules specifically applicable only to transitory situations caused by the entry into force of this Code. (...)

2. The principle under art. 2-5 of the present Code is that of more favorable (gentler) criminal activity extra-activities, either from the point of view of incrimination or punishment conditions (*mitior lex*), or from the point of view of punishment. (*mitior poena*)

So, if the new law is milder, it will retroactivate, that is, it will also apply to deeds committed before its entry into force; if by contrast the old law will be more gentle it will be *ultraactive*, that is, it will be applicable to the deeds committed under its rule and after it has been abrogated.

From this principle of the milder law extra-activity, the present Code establishes two exceptions in which the more severe law is extra-active, namely in the case of temporary laws (Article 3 paragraph 2), which are always ultra-active in the case of laws providing for safety measures (Article 4) which are always retroactive⁴³.

The application of the criminal law in space is regulated in the art. 6-20, texts regulating the institution of extradition.

Thus, art. 6 “establishes the principle of territoriality of the Romanian criminal law in the sense that this law is always applicable to crimes committed on the territory of Romania.

The text speaks only of punishment, the rule in art. 6 also refers to safety measures.

The Romanian Criminal Law applies to crimes committed on Romanian territory regardless of whether the offender is Romanian or foreign and whether the offense was directed against a national or a foreigner.

2. Article 6, par. 2 complements the notion of territory in relation to the criminal law, stating that the criminal law also applies to the crimes committed within the inner waters (large rivers, rivers, lakes etc.); the territorial sea (that strip of sea water stretching along the seashore at a width fixed according to certain criteria permitted by international law) and the Air Zone (part of the atmosphere that envelops the territory and the territorial sea).

⁴³ Vintilă Dongoroz in Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, *op. cit.*, p. 9.

Also, par. 2 of art. 6 stipulates that Romanian criminal law is applicable to crimes committed on Romanian wrecks and aircrafts."⁴⁴

Article 7 governs the cases of non-application of Romanian criminal law for offenses committed by the King, persons who, under international treaties, enjoy criminal immunity and crews of foreign ships or aircraft.

Article 8 "it brings a first attenuation the principle of territoriality of criminal laws, accepting to a large extent the principle of active personality according to which the national criminal laws are applicable to the national, and in the case of the offenses committed by him were committed in a foreign country.

The notion of national is expressed by the text by the words "Romanian citizen", so the provisions of art. 8 shall apply to all those who have acquired Romanian nationality in any of the ways shown in art. 1 of the "Law on the Acquisition and Loss of Romanian Nationality" of February 24, 1924".⁴⁵

Article 10 "establishes - as an attenuation of the principle of territoriality - the principle of real protection, i.e. the application of Romanian criminal law to those who committed an offense abroad against superior interests of the Romanian State, regardless of whether the offender is a Romanian or foreign citizen, regardless of whether or not he has his domicile in Romania.

Also, art. 10 also establishes the principle of passive personality in the sense that it decides the application of the criminal law to anyone who would commit a qualified crime or offense against a Romanian citizen abroad.

Again it is applicable the Romanian criminal law whatever the offender's role in committing the crime: the author, the instigator or the accomplice, in other words all the participants will fall under the provisions of the Romanian criminal law.

2. The offenses for which the principle of reality is applicable are limited by art. 10, namely:

a) Crime against State security (Articles 184-196, 199, 201 paragraphs 2, 204, 207, 210-214 of this Code);

b) The falsification of the Romanian metal coins or the Romanian bank tickets (Article 385 of this Code);

c) Delusion of falsification of public effects (Article 391 of this Code);

d) Delinquency of counterfeiting the seals of the Romanian State or authorities (Articles 393, 394 and 397 of this Code);

e) Delinquency of counterfeiting of Romanian stamps and markings (article 392 of this Code);

f) Offense against the nation or the Romanian State (Article 215 of this Code);

g) Any crime or offense committed against a Romanian citizen.

⁴⁴ *Ibidem*, pp. 19 & 20.

⁴⁵ *Ibidem*, p. 29.

The text does not distinguish whether these offenses have been consumed or have remained in the form of an attempt.”⁴⁶

Article 11 “also brings about a mitigation of the principle of the territoriality of criminal laws, to some extent establishing the principle of universality, after which in some cases and for certain crimes the national criminal law is applicable since the foreign offender is in the territory of the country, the place where the offense was committed.

It is therefore a subsidiary efficiency of criminal law from the place where the offender was found (*forum deprehensionis*), against the primary effectiveness of criminal law at the crime scene (*forum delicti commissi*).

However, the effectiveness of criminal law from the crime scene becomes the primary whenever the offense has been committed in a territory which is not subject to any sovereignty.

Since this Code admitted in Art. 8 and 9, the principle of personality towards Romanian citizens and foreigners domiciled in Romania, implicitly the field of application of the principle of universality was restricted only to foreigners without domicile in Romania, except for art. 10, would have been excluded from the incidence of the Romanian criminal law, unless the provision in Art. 11”⁴⁷.

According to the doctrine “by art. 12-14 of this Code there are provided for other effects of criminal decisions sentenced abroad and therefore other assumptions in which rulings can be recognized in Romania by the Romanian criminal courts.”⁴⁸

In art. 16-19 there are provided for a number of provisions regarding the extradition institution.

The substantive and formal conditions necessary for granting the extradition are laid down in the international legal instruments to which Romania is a party.⁴⁹

Title III “Penalties” includes art. 21-69.

Art. 21 contains a recommendation for a judge who has to apply the penalty within the limits “fixed by law” and several criteria for the individualization of punishment.

The doctrine states that “In the system of this Code, all punishments are relatively determined in the sense that they have a minimum and a maximum of which judges can work to fix the amount of punishment to decide, and on the other hand the lower limit of punishments being able to overcome by mitigating circumstances, the legislator thought it would be good to indicate which are the

⁴⁶ *Ibidem*, p. 39.

⁴⁷ *Ibidem*, pp. 42-43.

⁴⁸ *Ibidem*, p. 47.

⁴⁹ We refer here to the bilateral extradition conventions concluded by Romania with other European states and the United States of America at the end of the nineteenth century and the first part of the last century.

main element that should serve the judges in the grading of the punishments to be decided”⁵⁰

With regard to the criteria for the individualization of punishment, these are: the reasons that led to the offense, the seriousness of the offense, the perversity of the perpetrator, the offender's previous behavior (including the criminal records), and the offender's conduct after committing the offense.

Art. 22-24 provide for punishments for crimes, offenses and contraventions (with the stipulation that in the case of crimes and offenses, the punishments are stipulated distinctly for common law offenses and political offenses), as follows:

“Art. 22. The punishments for crimes are:

In the field of common law:

1. death, in the cases and under the conditions laid down in the constitution;
2. hard labor for life;
3. high labor for a limited period 5 to 25 years;
4. dungeon from 3 to 20 years.

In Political Matters:

1. heavy life imprisonment;
2. heavy detention for 5 to 25 years;
3. rigorous detention for 3 to 20 years.

Article 23. Penalties for offenses are:

In the field of common law:

1. correctional prison from one month to 12 years;
2. fine from 2,000 to 20,000 lei, unless the law provides for another maximum.

In Political Matters:

1. simple detention from one month to 12 years;
2. fine from 2,000 to 20,000 lei, unless the law provides for another maximum.

Art. 24. Penalties for contraventions are:

1. police prison from one day to one month;
2. fine from 50 to 2,000 lei exclusively”⁵¹.

With regard to complementary punishments, these are:

- “1. Civic degradation from 3 to 10 years for crimes;
2. correctional interdiction from 1 to 6 years for offenses;
3. the deprivation of parental authority, in the cases provided by the law;
4. publishing and displaying convictions, under the conditions laid down by

law;

5. fine, within the maximum and minimum amount of the fine, as the main punishment and only for offenses.

⁵⁰ Vintilă Dongoroz in Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, *op. cit.*, p. 68.

⁵¹ Art. 22-24 of the Criminal Code of Carol II.

The execution of civic degradation and correctional interdiction as a complementary punishment begins to run from the date when the execution of the custodial sentence was passed, and in the case of prescription of punishment, from the date of the prescription.

The court can not apply these penalties if the custodial sentence does not exceed 6 months.

6. Confiscation of state assets for cases of high treason and embezzlement of public money.

The confiscated goods remain entailed by debts incurred prior to the opening of criminal proceedings.

The research and prosecution bodies will be able to take conservation measures prior to the opening of criminal proceedings.

The confiscation of the goods will be possible only after the liquidation of the existing debts at the date shown above.

The court may assign some of the confiscated property to the persons to whom the convict owes food, according to the Civil Code.⁵²

Punishment attachments are:

- “1. Civic degradation;
2. the correctional prohibition;
3. Decay in parental power.

These penalties result from the deprivation of liberty, and their duration is equal to the duration of the execution of the penalty they accompany.⁵³

In his commentary on this institution, Professor Vintilă Dongoroz argues that: “Art. 22-27 of this Code set forth the *general framework* of punishments, that is, it determines by general provisions: *the classes, the genres, the nature, the degrees, the character and the overall amount* of the punishments.”⁵⁴

As regards the *classes*, it is stated that “this Code divides punishments in relation to their intrinsic gravity in three classes: criminal, corrective and police punishments or more correctly: punishments for crimes, punishments for offenses and punishments for contraventions.”⁵⁵

With regard to *genres*, “The Code creates, in terms of the substance of punishments, three types of punishments: *deprivation of liberty, pecuniary and deprivation of rights*.”

With regard to *degrees* “This Code did not provide for a differentiation in degrees, that is, a heterogeneity within the same type of punishment and within

⁵² Art. 25 of the Criminal Code of Carol II.

⁵³ Art. 26 of the Criminal Code of Carol II.

⁵⁴ Vintilă Dongoroz in Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, *op. cit.*, p. 71.

⁵⁵ *Ibidem*, p. 71.

the same class, than for custodial sentences in the class of criminal penalties which were ranked in 3 degrees with respect to the regime and their duration.”⁵⁶

Regarding the *character* “In relation to the way of their application, this Code has imprisoned the punishments either of the *principal punishments* or of the adjoining (secondary) penalties”⁵⁷.

Concerning the amount, “This Code has generally adopted the system of punishments determined in a relative (limit) manner, in the sense that to each type of punishment has been set a general maximum and a general minimum.”⁵⁸

We also specify that in art. 65-69 it was established the institution of the suspension of the execution of the punishments.

Regarding the origin of the institution, we mention that “the texts relating to the suspension of punishment are inspired by the French law of March 26, 1891, with its amendments of 28 June 1904 and 24 January 1923, and similar provisions of the Transylvanian Code (Article 1- 7, Act XXXVI of 1908, which amended and supplemented the Code, law called the *Criminal Novela*). Suspension of punishment execution, urgently required by the doctrine, was also permitted by art. 43 of the Romanian law of 1920 for the regulation of collective labor conflicts”.⁵⁹

Title IV with the marginal name “Safety measures” is regulated in Art. 70-91 where the following safety measures are proposed:

- “1. The admission of alienated offenders to a hospice;
2. the internment of offenders with physiological or psychological abnormalities in an asylum;
3. possession of criminals, in a special institute;
4. the admission of vagrants and beggars to a working place;
5. the admission of juvenile offenders to a college education institute;
6. supervised release for minors;
7. guardianship measures for minors;
8. the prohibition of being in certain localities;
9. the prohibition to enter certain localities;
10. the prohibition to practice a particular profession or trade;
11. expulsion of foreigners;
12. special confiscation;
13. good behavior on bail;
14. closing the premises;
15. dissolution or suspension of a legal person”.⁶⁰

⁵⁶ *Ibidem*, p. 72

⁵⁷ *Ibidem*, p. 72.

⁵⁸ *Ibidem*, p. 73.

⁵⁹ I. Ionescu-Dolj in Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, *op. cit.*, p. 156.

⁶⁰ Art. 71 of the Criminal Code of Carol II.

Regarding the origin of the institution in doctrine, it was noted that the regulatory provisions “are inspired by the resolutions of the international congress of Brussels in 1926, that of the Second International Conference on the Unification of Criminal Law, held in Rome in 1928 and the Congress of the International Commission Penalties and Penitentiaries, held in Prague in 1930. These resolutions contain the texts related to safety measures and their categories, and from which all the New Codes and Codes projects were inspired, such as ours. In art. 70, in particular the result of the Brussels resolution which laid down the principle that the security measure does not pronounce itself, but only accompanied by a penalty, except in exceptional cases.

Par. II of Art. 70, contains and expresses the fundamental principle of the application of safety measures: the state of danger of the offense”⁶¹.

Safety measures “have been established to complement the means of fighting against *revealed* criminality and delinquency, thus expanding the scope of criminal law's reactive effectiveness in order to achieve as much as possible post-delinquency prevention.

Safety measures as well as penalties against an offender are caused by committing a crime; but while the punishments are based on the seriousness of the crime and the degree of guilt of the offender, the safety measures are justified and suffered by the existence and persistence of a danger of re-deviation of the criminal law, the danger arising from the offender's status indicating a real inclination to the crime or a particular receptivity to the action of criminogenic factors.

That is why the safety measures, by their nature, are applied by taking as an element of adaptation the nature of the symptomatic state from which the danger flows, and in terms of their duration they remain as long as the danger they have imposed.”⁶²

Regarding this institution as well as others, it is necessary to keep in mind the receptiveness and the readiness of the Romanian legislator to take from the European legislation and even from some expositions in scientific manifestations with European recognition some elements of novelty in the field of criminal law on the basis on which Romanian criminal law has evolved.

Title V is called “Refunds and Compensation” as provided in Art. 92-94.

Title VI with the marginal name “Offense”, in Art. 95-125, provides for some provisions on: classification of offenses, attempt, crime offense, recidivism and criminal participation.

We note that crimes are classified as crimes, offenses and contraventions, as in the case of the 1864 Criminal Code.

⁶¹ Ionescu-Dolj in Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, *op. cit.*, pp. 169 & 170.

⁶² Vintilă Dongoroz in Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu, N. Pavelescu, *op. cit.*, p. 170.

Title VII entitled "Causes that defend or reduce criminal liability" includes provisions regarding: mental alienation and other causes of unconsciousness, drunkenness, moral constraint, necessity, legitimate defense, physical constraint, fortuitous error of law and fact, order of law and order of legitimate authority, minority, deaf-mutism, provocation and attenuating circumstances.

Title VIII is called "Convicting aggravating and attenuating circumstances" and Title IX "Conditions for the incrimination of offenses subject to prior complaint".

Title X, entitled "Extinction of Incrimination, Execution of Punishment and Disability," includes: death, prescription, amnesty, pardon, reconciliation and rehabilitation.

Title XI with the marginal title "General provisions on press crimes" provided in Art. 181 and 182 contain some special provisions dealing only with the offenses of the press, with the concrete determination of the criminal liability for periodical and non-periodical publications.

In Title XII, entitled "Explaining Legal Terms", the legislator explains some terms used in the Criminal Code of Carol II.

Book II with the marginal name "Crimes and offenses in particular" includes the following titles:

- Title I "Crime and Offenses against the State" art. 184-231;
- Title II "Discrimination against Exercise of Political and Citizenship Rights" art. 232-235;
- Title III "Crime and offenses against public administration" art. 236-268;
- Title IV "Offenses against the administration of justice" art. 269-307;
- Title V "Offenses against cult and respect due to the dead" art. 308-314;
- Title VI "Crime and offenses against public peace" art. 315-351;
- Title VII "Public crimes and Offenses" art. 352-373;
- Title VIII "Offenses against public health" art. 374 384;
- Title IX "Crime and Offenses against public interests" art. 385-416;
- Title X "Offenses against credit of the State or private credit" art. 417 418;
- Title XI "Offenses against imposture and good morals" art. 419-442;
- Title XII "Offenses against the family" Art. 443-462;
- Title XIII "Crime and offenses against persons" art. 463-523;
- Title XIV "Crime and crimes against patrimony" art. 524-573;
- Title XV "Offenses against the right to respond by press and other offenses committed in the press" Art. 574-578.

Book III with the marginal name "Contraventions" includes the following headings:

- Title I "General provisions" art. 579-581;
- Title II "Contraventions in particular" art. 582-596.

Book IV with the marginal title "Special Provisions Related to the Death Penalty" art. 597-600.

Book V with the marginal title "Enforcement and Application of the Criminal Code" art. 601-608.

In our recent doctrine, it is stressed that "The adoption of the 1936 Criminal Code actually ended a stage in the normal evolution not only of our criminal law, but also of the free development of thinking in the field of legal-criminal sciences. Only a year after the entry into force of the Code was introduced the regime of Carol II's royal dictatorship which imposed a new constitution to the country that replaced the democratic constitution in 1923, ending the period of parliamentary democracy and opening up the totalitarian regimes that followed, practically without interruption, until 22 December 1989. Under these circumstances, criminal law was used for the political purposes pursued by those regimes. The adaptation of criminal law to these aims was done mainly by the adoption of special criminal laws and less by the amendment of the Criminal Code. However, such changes were made even in the first years after the entry into force of the Code. Thus, in 1938, the death penalty for some crimes against state security was introduced in the Criminal Code, punishment that was maintained in our criminal law until 1990 when it was abolished by a Decree-Law of the National Salvation Front Council, at the beginning of January. The conditions of criminal liability for crimes against state security have been strengthened, the age of criminal liability of minors aged 14 years, as originally foreseen, at 12 years, the regime of punishments, etc. has been lowered, thus marking a tendency of increasing the repressive nature of criminal law. The situation remained generally the same during the Legionary and Antonescu's dictatorships, the latter largely coinciding with the Second World War, where criminal law was characterized by the existence of exceptional criminal law."⁶³

We appreciate that the most valuable scientific papers in this period were: Professor Dongoroz's Criminal Law Course, which appeared in Bucharest in 1939 and the great work in three volumes, The Criminal Code of Carol II, annotated, under the signature of reputable collective specialists, namely: Const. C. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, Vintilă Dongoroz, H. Aznavorian, Traian Pop, Mihail I. Papadopolu and N. Pavelescu.

We specify that after a period of 3-4 years since its adoption, the Criminal Code of Carol II has undergone several important amendments by decrees-laws no. 3629/1939⁶⁴ and no. 652 of February 29, 1940.⁶⁵

The research of the legal norms contained in the Criminal Code of Carol II compared to the Criminal Code from 1864 reveals a remarkable evolution, in full agreement with the general evolution of the society.

⁶³ *Ibidem*, p. 53.

⁶⁴ Published in the Official Monitor, part I, no. 233 of 7 October 1939

⁶⁵ Published in the Official Monitor, part I, no. 52 of 2 March 1940.

Moreover, as mentioned above, most specialists appreciated that the adoption of the Criminal Code of Carol II was a special success of the Romanian legislator at that time.

On the other hand, after being examined in its structure, the Criminal Code of Carol II represents the concrete evolution of Romanian criminal law after the adoption of the first Romanian Criminal Code.

The historical conjuncture in which this Code was adopted led the Romanian legislator to transpose into national law some criminal legal norms from the European legislation, norms that could be adapted to the education and culture of the Romanian people.

The Code also took on and perfected many legal rules that were promoted in European law at scientific events recognized at European and world level.

Last but not least, the Code has taken over and perfected some of the rules and institutions of criminal law that were laid down in the Criminal Code of 1864.

We conclude by appreciating that the evolution of Romanian criminal law in the interwar period is marked and determined directly by the adoption and entry into force of the Criminal Code of Carol II, although it was in force for about 12 years.

IV. 1969 Criminal Code

After the establishment of the regime of dictatorship, the new regime tried several times to adopt a new Criminal Code that would meet the political exigencies of those times.

Thus, a first attempt is represented by the adoption of the Criminal Code of the Romanian People's Republic in 1948⁶⁶.

The legal norms contained in this Criminal Code were almost identical to those of the Criminal Code of Carol II, which leads to the conclusion that at that time too little was mentioned on the texts.

In the period 1948-1968 the Criminal Code was successively amended by several acts of the law, of which we mention:

- Decree no. 192/1950 amending the Criminal Code⁶⁷;
- Decree no. 202/1953⁶⁸;
- Decree no. 265/1954 for amending and completing certain provisions of the Criminal Code of the Romanian People's Republic⁶⁹;

⁶⁶ Published in the Official Monitor no. 48 of 02.02.1948.

⁶⁷ Published in the Official Bulletin no. 67 of 05.08.1950

⁶⁸ Published in the Official Bulletin no. 15 of 14.05.1953.

⁶⁹ Published in the Official Bulletin no. 36 of 03.08.1954.

- Decree no. 102/1956 for completing and republishing the Decree no. 550 of 21 December 1953⁷⁰;

- Decree no. 318/1958 amending the Criminal Code and the Criminal Procedure Code⁷¹ and

- Decree no. 216/1960 for the amendment of the Criminal Code⁷².

By the aforementioned normative acts were amended and supplemented some norms that did not correspond to the criminal policy of the totalitarian state.

In these circumstances, it was necessary to adopt a new Criminal Code, a normative act that came into force on 01.01.1969⁷³.

Thus, the Criminal Code of Carol II was definitively abrogated with the entry into force of the 1969 Criminal Code.

We mention that since 1989, this Code has been successively amended by several normative acts, being effectively in force until 01.02.2014 when the current Criminal Code came into force.

Unlike the two previous Codes (Criminal Code 1864 and Criminal Code of Carol II), the 1969 Criminal Code comes with a number of structural changes.

Thus, the 1969 Criminal Code is structured into two parts, namely the General and the Special Part, this structure also determining the further development of criminal law, namely Criminal Law - General Part and Criminal Law - Special part.

The general part of criminal law essentially comprises a set of general rules applicable to all offenses under Romanian law.

In particular, **the general part** of the 1969 Criminal Code is divided into the following headings:

- Title I with the marginal title "Criminal law and its limits of application" - art. 1-16; this provision contains provisions governing the application of the criminal law in time and space;

- Title II "Offenses" - art. 17-51; under this title the essential features of the offense, guilt, attempt, criminal participation and causes that eliminate the criminal character of the deed are regulated;

- Title III "Penalties" - Art. 52-89; the provisions of the title include: the categories and general limits of the punishments, the main punishments, the complementary punishments and accessories, the individualization of punishments, the circumstances and the aggravating ways, as well as their effects,

⁷⁰ Published in the Official Bulletin no. 6 of 29.02.1956.

⁷¹ Published in the Official Bulletin no. 27 of 21.07.1958.

⁷² Published in the Official Bulletin no. 8 of 17.06.1960; Ion Rusu, *Infrațiuni specifice circulației și transporturilor feroviare /Offenses specific to railway traffic and transport*, Pro. Universitaria, Bucharest, 2009, pp. 83-91.

⁷³ Adopted by Law no. 15/1968, published in the Official Bulletin no. 79-79 bis of 21 June 1968, republished in the Official Bulletin no. 55-56 of 23 April 1973, republished by Law no. 140/1996, published in the Official Monitor of Romania, Part I, no. 65 of April 16, 1997.

the conditional suspension of the execution of the punishment, the correctional work and the calculation of the punishments;

- Title IV "Replacement of criminal liability" - art. 90-98;
- Title V "Minority" - art. 99-110;
- Title VI "Safety measures" - Art. 111-118;
- Title VII "Causes that remove the criminal liability or the consequences of the conviction" - art. 119-139 and
- Title VIII "Meaning of terms or expressions in criminal law" - art. 140-154.

The special part of the Criminal Code includes the following titles:

- Title I "Crimes against state security" - art. 155-173;
- Title II "Offenses against the person" - art. 174-207;
- Title III "Crimes against personal or private possession" - art. 208-222;
- Title IV "Crimes against the public" - art. 223-235;
- Title V "Offenses against authority" - art. 236-245;
- Title VI "Offenses affecting the activity of state organizations, public organizations or other activities regulated by the law" - art. 246-281;
- Title VII "Forgery offenses" - Art. 282-294;
- Title VIII "Offenses to the regime established for certain economic activities" - art. 295-302;
- Title IX "Offenses Affecting Social Cohabitation Relationships" - art. 303-330;
- Title X "Offenses against the Defense Force of the Socialist Republic of Romania" - art. 331-355 and
- Title XI "Offenses against peace and humanity" - art. 356-363.

Regarding the characteristics of the Criminal Code of 1969, the Romanian doctrine stated that "The adoption in 1968 of the new criminal law (...) marked another important moment in the evolution of our criminal law. Although elaborated under the influence of Marxist ideology, the Criminal Code is largely deprived of this influence, establishing the principles of criminal policy encountered in all contemporary laws. The principle of the lawfulness of incrimination and sanctions of criminal law (penalties, safety measures and educational measures) provides the classical legalistic skeleton. Also, the principles of personal and subjective accountability based on guilt, the exclusion of the afflictive and humiliating purpose of punishment and others prove the Code's attachment to the principles of the classical school. At the same time, taking into consideration the person of the offender, the individualization of punishment and other sanctions, safety measures and educational measures and others give expression to some principles of the positivist school, and some institutions, such as replacing criminal liability or corrective labor, prove proximity to the principles of criminal policy of the new social defense.

All of this marks a clear alignment of the 1968 Criminal Code to the new trends in contemporary criminal law."⁷⁴

⁷⁴ Costică Bulai, Bogdan N. Bulai, *op. cit.*, pp. 55 & 56.

According to the same authors, "It is to be noted that despite these distortions of the purpose of criminal law, the fundamental principles and conceptions underlying the elaboration of the Criminal Code of 1936 remained in force, influencing in a substantial and beneficial way the regulation of social relations defense under the new conditions. This explains, inter alia, the fact that the institution of analogy did not find its practical application, and in 1956 it was expressly abrogated as incompatible with the principles of the lawfulness of incrimination and punishment. The same beneficial influence on the achievement of criminal justice had the other classic principles mentioned in the Code".⁷⁵

Although adopted under specific conditions of socialist dictatorship, in our opinion, the adoption of the 1969 Criminal Code was an important moment in the evolution of Romanian criminal law.

The importance of this Code in the evolution of Romanian criminal law results also from the position of the Romanian legislator who, in the new Criminal Code (which entered into force on 01.02.2014), maintained the majority of the institutions and offenses from the Criminal Code of 1969.

V. Conclusions

In this study, we have examined the evolution of the Romanian criminal law from the first Criminal Code, published during the period of the reign of Alexandru Ioan Cuza, until the entry into force of the current Criminal Code.

The examination highlighted the importance of the first Criminal Code adopted during modern Romania, which appeared in special conditions only a few years after the union of the two Romanian Principalities.

The historical conditions at that time did not allow a concrete analysis of the determinant elements that should have been taken into account by the legislator of that time (economic evolution, mentality, culture, etc.), which led to the promotion of a Criminal Code identical to the French one year 1810, with sensitive Austrian influences.

Even under these conditions, the importance of this Code cannot be ignored, given that, in its essence, it was the foundation upon which all the Romanian criminal science was built and developed.

We should mention that after its adoption in 1864, and until the entry into force of the Criminal Code of Carol II, this code has undergone numerous modifications and additions, imposed by the general evolution of the Romanian society.

On the other hand, the criminal legislation was supplemented by numerous special laws regulating certain areas of economic activity that included some

⁷⁵ *Ibidem*, p. 54.

criminal provisions defending through criminal law the most important social values specific to them (the respective domains).

In this context, it can be appreciated that the analysis of the Romanian criminal legislation, including its evolution, starts from the provisions of the Criminal Code of 1864 but must also be supplemented by the criminal law provided for in the special laws with criminal provisions.

In its essence, the criminal legislation contained in other normative acts comes to complement the Romanian criminal law of the time.

The second Romanian Criminal Code in the modern age of Romania is, as we have pointed out, the Criminal Code of Carol II.

The Criminal Code of Carol II represented the first Romanian criminal code adapted to the economic, social and political realities in Romania, a normative act that had a major importance in the entire evolution of Romanian criminal law.

We do not insist on other considerations, considering that what we have said above is sufficient, emphasizing only the national character of this normative act and the appreciations it enjoyed in Europe.

Although adopted in difficult conditions (in a regime of socialist dictatorship), the Criminal Code of 1969 continued the tradition opened by the Criminal Code of Carol II, and in turn brought a valuable contribution to the development of the Romanian criminal law.

We conclude by appreciating that the special value of the three Romanian Criminal Codes adopted in the modern era of Romania, as well as the scientific papers published by the well-known authors we have previously referred to, have made a decisive contribution to the evolution of Romanian criminal law.

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