DELIMITATION OF PUNISHMENT FROM OTHER FORMS OF JUDICIAL CONSTRAINT

Diaconu Gheorghe

Punishment – a consequence of breaching the precept of criminal judicial rule: although it is a constraining measure, it significantly and functionally differs from the other forms of judicial constraint.
Thus, even if the punishment belongs to the area of criminal law sanctions, it differs thoroughly by its mainly repressive content from the other criminal law sanctions – educational measures and safety measures – the former having a mainly educational character and the latter a mainly preventive ones.
By its repressive character, the punishment is different from the administrative, disciplinary and civil sanctions, too.
Key words: Delimitation, differs, mistaken, constraint, repressive.

As we know, punishment is a form of judicial constraint specific to criminal law, representing a consequence of infringing the precept from a criminal legal norm. Although it is a means of constraint, punishment differs substantially and functionally from other forms of legal constraint.[1]
Firstly, punishment as criminal sanction differs from other means of constraint provided by criminal law. So punishment is not to be mistaken with the safety measures or with educational measures which, although provided in criminal law as well as the punishment, they are not punishments; they are named criminal law sanctions. They are mainly preventive (safety measures) and preventive-educational (educational measures), as they are meant to prevent the commitment of new offences provided by criminal law, acting either upon the state of danger of the offender, revealed by the commitment of an offence provided by criminal law, or acting preventively and educationally upon the persons who, due to their age, need a certain supervision, care and educational influence in order not to perpetrate new offences provided by criminal law.
Even if punishment is part of the area of criminal law sanctions, it differs very much from the other criminal law sanctions by its mainly repressive content.
Also, punishment should be distinguished from these sanctions which, although are provided and regulated by criminal law (administrative, disciplinary or civil law sanctions), are neither punishments (criminal sanctions), nor criminal law sanctions (punishments, safety or educational measures), but sanctions with a distinct name, which is sanctions in criminal law.[2] Although it is part of the area of sanctions in criminal law, punishment mainly distinguishes from all other sanctions, as mentioned above, including from the administrative, disciplinary or civil sanctions provided in criminal law.
Let's examine thoroughly these delimitations.

[1] Lidia Barac, Răspunderea şi sancţiunea juridcă, Ed. Lumina Lex, 1997, p. 213.
[2] V. Dongoroz, Tratat, Op. cit., p. 574; C. Bulai, Manual de drept penal, Editura ALL, Bucureşti, 1997, p. 278

1. Delimitation of punishment from the other criminal law sanctions

a. Delimitation of punishment from safety measures

The fight against offences could not be efficient if criminal law sanctions were only limited to punishments; may times, the offences provided by the criminal law reveal some human or social realities which could lead to the commitment of other offences provided by criminal law if they are not fought against. These realities, considered as „states of danger" are different from the social danger represented by the offences provided by criminal law and they cannot be fought against through punishments as they come from realities that are not susceptible of being influenced by punishments: the removal of these sates of danger could be accomplished only by preventive measures – safety measures.[3]

Safety measures could not be taken only by merely identifying the existence of a state of danger, this state of danger first having being revealed by the commitment of an offence provided by criminal law (*post delictum* measure).

So it was necessary that in the criminal law, along with the repressive constraint measures, to create within the criminal law sanctions system a complementary framework of purely preventive constrains measures – the safety measures framework. The safety measures provided by criminal law are similar in content to certain preventive measures established by extra criminal laws; but while extra criminal preventive measures are taken administratively, the safety measures from the criminal law can only be taken judicially (by the criminal investigation authorities or by the courts of law). The extra criminal preventive measures, even when their purpose is to prevent the commitment of some offences provided by criminal law (prevention of pre-offence-related states), do not belong to the area of criminal law, because they are decided *ante delictum*, while the criminal law sanctions (punishments and safety measures) occur only after an offence provided by criminal law has been committed.[4]

Enforcing some deprivations or restrictions, safety measures have mainly a preventive character and only subsidiarily have a coercive character, unlike punishments which are mainly coercive and only subsidiarily are preventive. The incidence of safety measures is not caused by the existence of criminal liability for the offence committed, but by the existence of the state of danger revealed by such offence.[5] Thus, the individualization of safety measures is not to be made according to the general criteria provided in art. 72 of the Criminal Code, but is to be made according to the nature and severity of the state of danger and to the possibilities to remove it.

The purpose of safety measures is not to have an influence on the offender's mentality and behaviour, as it is the case for punishments, or to correct a lacking education as it is the case for educational measures, but to remove a state of danger represented by the offender as a result of some deficiencies in his/her psycho-physical condition or of his/her dangerous way to perform a certain activity, function or job due to inability or professional incapacity, or of the danger represented by his/her presence in certain places, or as a result of possessing some things, substances or devices, if there is a risk of committing some antisocial offences.[6]

Although both punishments and safety measures occur *post factum* and *propter factum*, i. e. after committing the offence and because of it[7], while the enforcement of the punishment is

---

[3] F. Antolisei, Manuale de diritto penale, Parte generale, Giufre, Milano, 1991, p. 714.

[4] I. Oancea, Drept penal, Partea generală, Bucureşti, 1971, p. 346.

[5] M. Basarab, Drept penal, Parte generală, Ed. a-III-a, vol. II, Ed. Lumina Lex, Bucureşti 1997, p. 292

[6] V. Dongoroz şi colaboratorii, Explicaţii teoretice ale Codului penal român, Partea generală, vol. II, Ed. Academiei, Bucureşti, 1970, p. 274.

[7] There are also the provision of art. 113 al. 1 and art. 114 al. 1 from the Romanian Criminal Code in force,

done also in relation to the degree of guilt of the offender, the safety measure is taken in relation to the offender's state of danger, regardless of his/her guilt. As for duration, the punishment lasts within the limits established by the conviction judgment, while the safety measures usually last until the disappearance of the danger.[8]

Safety measures differ from punishments also because they are not provided for each offence separately, but only in the general part of the criminal codel[9]; also, they can complete the punishments or substitute them.[10]

As well as punishments, safety measures are taken only if an offence provided by criminal law was committed; while punishments are inevitably enforced upon those who committed offences, safety measures are only taken against the offenders who represent the danger of committing other offences provided by criminal law.

Safety measures, as well as punishments, are coercive, involving a restraint of the offender's freedom.[11]

Both punishments and safety measures are provided by criminal law, so taking them is done within and by complying with the principle of lawfulness and by taking them the same purpose is pursued, protection of the society against committing offences.

Safety measures do not have a mainly retributive character like punishments, because they are taken not because an offence has been committed, but because the offender who committed an offence provided by criminal law represents a state of danger; so they have an essentially preventive purpose and aim at protecting both the society and the offender himself.[12]

By applying punishments to those who committed offences, general prevention is also achieved; on the contrary, as the safety measures aim at removing a state of danger and protecting the ill of some diseases and those with some gaps in their professional training etc., they mainly achieve the special prevention.

Punishments have some legal and moral consequences after their execution (state of perpetrator etc.), safety measures do not have any consequences once the offender's state of danger ceased.[13]

Pursuant to art. 13 from the criminal code, the most favourable law is applied when one or more criminal laws have occurred until the final judgment of the case. As for safety measures, another rule is applied, according to which, if between the date of committing the offence and the date of the final judgment of the case, another law providing safety measures occurred, they are taken retroactively, i. e. it is not applied the law from the moment of committing the offence, but the one from the moment of judging the offender, as the latter protects more efficiently the interests of the society (art. 123, final paragraph, criminal code).

In case of concurrence of offences, the main punishments join, according to art. 34 and 36 from the criminal code; the unity of the sate of danger imposes that one safety measure of the same nature be taken, and not more, corresponding to the states of danger represented by them.[14]

---

according to which the safety measure of the obligation of the medical treatment or the medical internment shall last until recovery.

[8] Gheorghe Nistoreanu, Prevenirea infracțiunilor prin măsuri de siguranță, Academia de Poliție A.I. Cuza, București, 1991, p. 69.

[9] V. Dongoroz şi colaboratorii, Explicații…, vol. 2, Op. cit., p. 275.

[10] R. Maurach, Deutsches strafrecht, Karlsruhe, 1965, p. 748.

[11] G. Levasseur, Droit penal generale et procedure penale, vol. I, Paris, 1964, p. 37.

[12] E. Garcon Code penal adnote, vol. I, Paris, 1952, p. 62

[13] G. Vidal, J. Magnol, Cours de droit criminel et de science penitenciare, vol. I, Paris, 1949, p. 615

[14] V. Dongoroz, Sinteză asupra noului cod penal al Republicii Socialiste România, S.C.J., nr. 1, 1969, p. 25.

Retrieving the execution of the punishment leads to its non execution, while the safety measure taken along with the punishment is executed, without having the regime of the main punishment.
Amnesty and pardon only have effect upon the punishment, not upon the safety measures, as they are taken in order to achieve a special end: preventing the commitment of offences and implicitly protecting the society from the danger represented by the offender.
The execution of safety measures cannot be prescribed as it is for punishments, because, being caused by the state of danger, no matter how long the term from the decision of a safety measure is, if the offender represents any state of danger, then the safety measures should be executed.
In the legislation of some countries, under the denomination of punishment, there are provided some safety measures, too, although their purpose and finality are different.
For example, the French lawmaker suppressed the difference between safety measures and punishments, applying them together as „Punishments" in title III of the Criminal code in 1994.[15]
In Italy, the 1947 Constitution caused the crisis of the binary sanction system, consecrated by the Rocco Criminal Code (1930), anticipating a sole sanction system (one person can only be applied one sanction oriented toward the re-education of the wrong doer). According to the addressee of the sanction, the punishment should have been applied to the normally psychic offenders, while the safety measure was meant for the offenders with behaviour disorders.[16] Similar solutions were adopted in other legislations (the Norwegian criminal code, the Swiss one, the Austrian one) that established in one section both the punishments and the safety measures.
In the subsequent evolution of punishments and safety measures, it was formulated the opinion (The new social defence, Marc Ancel) that, accepting the right to existence of the safety measures, they have to be understood not as a separate system, parallel to the punishment system, but as a unitary system, i.e. joining the punishments with the safety measures into a unique system of reaction against delinquency.[17] By this unitary system we do not have to understand a unique reaction system, an exclusive one (or only punishments – classical school, or only preventive measures – positive school), but a unitary system, i.e. joining the punishments with the safety measures into a unitary tool of prevention of the delinquency phenomenon.[18]
The idea of a repressive unitary system (punishments and safety measures) is opposed to the dual system which considers that the criminal law can react more efficiently against delinquency by using not only the punishment system (repressive, retributive sanctions), but also safety measures (preventive sanctions), as autonomous repressive modalities and that can be taken not only by administrative bodies, but also by judicial bodies, when they establish the commitment of an offence provided by criminal law.[19]
The dual system with its classical meaning, i.e. the parallel existence of a punishment system and of a safety measure system, each having its own nature and end, is adopted by many legislations (including the Romanian criminal law). This system which was opposed to the exclusive unitary conception (either only punishments or only preventive measures) still opposes today the integration unitary conception which anticipates the construction of

[15] J. Pradel, Droit penal general, Tome I, Cujas, Paris, 1987, p. 261; Nouvel Code Penal, Dalloz, 1990 – 1994.
[16] G. Findaca, E. Musco, Op. cit., p. 276.
[17] Marc Ancel, La defense sociale nouvelle, Cujas, Paris, 1971, p. 310. The author strongly opposes the dogmatic tendency to oppose the punishment to the safety measure
[18] A. Posdarie, Măsura de siguranţă a confiscării speciale, Editura Waldpress, Timişoara, 2000, p. 15
[19] V. Dongoroz, Tratat, Op. cit., p. 639

a single system of reaction against delinquency, made up of punishments and safety measures.

The contemporary criminal law, after assimilating the safety measures as means of fighting against the criminal phenomenon, along with punishments, cannot give up now to any of these categories of sanctions which complete each other, without any category being able to replace the other. It is true that the process of joining the two categories of sanctions is stronger and stronger: punishments and safety measures.[20]

b. Delimitation from educational measures

The problem of using judicial constraining means, of criminal nature, towards underage persons was and continues to be one of the main preoccupations of criminal law science.[21] This problem is modern due to the reality of the offence-related phenomenon among the underage which is worryingly recrudescent, and the drama of this situation is caused by the nature itself of juvenile delinquency where we meet on one hand the lack of complete understanding of the social meaning of the offences committed and the lack of experience that many times makes the underage do unreasoned deeds and, on the other hand, the clear harmfulness of the offences commited by the young, the severity, sometimes significant, of their offences. Criminal law cannot be indifferent to these realities, but cannot consider the same the offence-related activities committed by the underage and those committed by the grown-ups, both from the point of view of the degree of social danger of offences, and of the means of judicial constraint, necessary to sanction the offenders.[22]

The offences committed by the underage related to their age and life experience represent a lower degree of social danger than that of the offences committed by grown-ups. This objective finding normally leads to the conclusion that for underage offenders a corresponding attenuation of the measures of criminal constraint (of punishments) is imposed.[23] But related to the bio psychical state of the underage, the means of criminal constraint, mainly the punishments, appear as less appropriate to achieve the purpose of the criminal law related to underage offenders. These means of constraint, if they could contribute to the re-education of the grown-up offender, might not have the same effect for the underage offenders, to whom a re-education, i.e. a remake of the previous education, is not necessary, but an initial education with proper means. These findings made the criminal law science to consider that the main solution in settling the underage offenders issue is the differentiation of the sanction regime from the one provided for grown-up offenders.[24]

The criminal legislations from all times included special provisions regarding criminal the liability and the way of sanctioning the underage.[25]

The age when the criminal liability of the underage started has been different in time, according to legislations. For the Romans, Justinian limited to 7 years old the criminal liability age; for barbarian legions, until 12 years old, the children were protected against punishments; the canonical right considered that the child until 7 years old is not *doli capax*; in Middle Age legislations, the underage child was not criminally liable until a certain age (the limits were different) but after this age, they were sometimes punished more severely, because they said that their malignity replaced the small age (*malitia suplet*

---

[20] V. Dongoroz, Tratat, Op. cit., p. 583.

[21] Roger Merle, Andre Vitu, Traite de droit criminel, tome I, Traisieme edition, Paris, Edition Cujas, p. 730

[22] J.Piratel, Traite de droit penal et de criminologie. Paris, 1963, vol. I, p. 67; V. Manzini, Tratatto di diritto penale italiano

[23] J. Hall, General principles et criminal, Law, New York, 1960, p. 54

[24] V. Dongoroz şi colaboratorii, Explicaţii teoretice ale Codului penal român, partea generală, vol. II, Ed. Academiei, Bucureşti, 1970, p. 73

[25] R.Garraud, Traite theorique et pratique du droit penal francais, Paris, 1913,vol.I,p. 536

aetatem). It was, of course, a tragic error, as the severe punishment of the underage who were criminally liable could not have other result than the physical destruction or their definitive failure in the crime world.[26]

The modern criminal legislations established the age limit for criminal liability between 7 and 12 years old, and the more recent legislations raised this limit from 13 to 16 years old at present.[27]

In the old Romanian texts, the children („coconi") until 7 years old were not subjected to punishments, and between 7 and 25, they were punished with smaller punishments.

In the contemporary law, the sanction system of the underage evolved towards the application mainly of the educational measures. The specialty literature strongly recommends and some legislation systems explicitly consecrate the application of educational measures mostly and the focus of the exceptional character of the punishments applied to the underage offenders. Unfortunately, nowadays the application of punishments upon the underage has a less exceptional character than initially hoped, as it is more frequently necessary to appeal to the coercive and intimidating character of the punishment.[28]

In our criminal law, the sanction system of the underage offenders has the same evolution as the western systems.[29] The 1864 criminal code did not provide a special sanction system for the underage, and their punishments were easier. Only in the 1936 criminal code, a mixed sanction regime was provided made up of punishments and educational measures, called safety measures and provided together with the punishments. The law provided that the underage person who was criminally liable could be applied either educational safety measures (parole or internment in a moral re-education institute), or punishments (reprimands and reformatory prison). If the underage offender was already 15 when committing the offence and had his own property or a job, he could be also given a fine.

The 1968 Romanian criminal code established a special sanction system for the underage, in parallel with the common sanction system. The new system includes, like the 1936 criminal code, punishments and educational measures (reprimands, parole, internment into a re-education centre and internment into an educational medical institute), the latter being called educational measures, not safety measures.

The sanction regime for the underage provided in the 1968 criminal code was subsequently considered as inappropriate, being replaced by the Decree 218/1977 with a sanction regime made up exclusively of educational measures (re-education committed to the team where he/she works or studies and he/she was sent to a special work and re-education school. It was admitted that it kept the applicability of the provisions of art. 99 of the criminal code regarding the educational measure of internment into an educational medical institute.[30]

Through Law no. 104/1992, Decree no. 218/1977 was annulled, thus it was reinforced the provisions of the criminal code providing the mixed sanction regime made up of punishments and educational measures.

The unique sanction system of the underage offenders made up only of educational measures is present in some modern legislation systems, such as the Swiss criminal code which, although adopted on 21st December 1937, by its subsequent modifications has

---

[26] V. Rămureanu, Limitele şi consecinţele răspunderii penale a minorilor, R.R.D., nr. 7/1970, p. 46.

[27] The Spanish criminal code establishes the limit of 16 years old; the Norwegian one to 14; the Criminal Code of the Russian Federation to 16; the German criminal code to la 16i; the Hungarian criminal code to la 14.

[28] Roger Merle, Andre Vitu, Op. cit., p. 734

[29] V. Dongoroz, Tratat, Op. cit., p. 413

[30] Tribunalul Suprem, dec. de îndrumare nr. 1426/1982; R.R.D. 4/1983, p. 75; sent. pen. 1508/1979 în C.D. 1979, p. 367; sent. pen. 2322/1985, R.R.D., 9/86, p. 75

become one of the most modern in Europe.
Other legislations provide a mixed sanction system for the underage made up of punishments and educational measures. For example, the New Criminal Code of the Russian Federation provides that the criminal treatment of the underage is based both on punishments and on educational constraint measures[31]; the educational measures can only be applied to the underage person who committed a less or medium severe offence for the first time; the internment into an educational institution (with general or hardened regime) is not an educational measure, but a punishment specific to the underage. Thus, art. 107 from the Hungarian criminal code provides that the underage offender can be applied the punishments if taking some educational measures is considered not to be efficient.[32]
Also, other legislations provide only punishments for underage offenders which are more reduced compared to those applied to grown-up offenders. Here is the Romanian criminal code in which, although providing a mixed sanction system, the limits of punishment are reduced to a half (art. 109).
Unlike punishments which mainly have a repressive-retributive character, the purpose of the punishment (general and special prevention) being achieved by its constraining character, by causing sufferance to the punished one, the educational measures, as sanctions applied exclusively to underage offenders, have mainly a preventive-educational character, as its is aimed the coming back of the sanctioned ones in the society, the remake or correction of the educational process. Although some educational measures (especially the imprisonment ones) also have a coercive character because they involve certain freedom restrictions of the underage offender, these measures have a mainly educational function.
At the beginning of modern law, the under age of the offender was considered as an attenuated excuse, the underage offender being thought as a Lilliput offender[33], and he should be given a less severe punishment compared to the grown-up offender, by recognizing his insufficient psycho-physical development and lack of maturity. Gradually, in sanctioning the underage, the educational measures[34] were imposed, thus leading to a mixed sanction system for underage offenders, made up of punishments and educational measures. As a rule, priority is given to educational measures and among them to the non imprisonment educational measures, the more severe educational measures and the punishments being applied only if the non-imprisonment educational measures were not efficient
This last system was consecrated also by the Romanian criminal law, regarding mostly the application of educational measures and the focus on the exceptional character of the punishments applied to underage offenders.[35]

2. Delimitation of punishment from some forms of extra criminal judicial constraint.

Punishment should be distinguished from the noncriminal sanctions, i.e. those means of administrative, disciplinary, civil, fiscal etc. constraint provided in the extra criminal laws referring to infringements of the precept provided in these noncriminal provisions. The punishment differs from these means of constraint both by its legislative source (criminal

[31] The new Criminal Code of the Russian Federation was enacted on 13th June 1996 and became effective on 1st January 1997.
[32] The present Hungarian criminal code became effective on 1st March 1979, as modified subsequently, especially by law no. 87/1998.
[33] Roger Merle, Andre Vitu, Traite de droit criminel, Zonne I, Troisieme edition, Paris, Ed. Cuyas, P. 730.
[34] C. Bulai, Manual de drept penal, Partea generală, Ed. ALL, 1997, p. 570
[35] Art. 100 paragraph 1 of the Romanian criminal code establishes: "When choosing the sanction, it is taken into account the degree of social danger of the deed committed, the physical condition, the moral and intellectual development, his behaviour, the conditions he was raised in and where he lived and any other elements that could characterize the underage's nature."

law) and by its severity, being able to lead to the life conviction of the sanctioned one. The choice between punishments and forms of extra criminal forms of constraint is made according to the nature of the offences; the offences that could lead to punishments have some features that distinguishes them from extra criminal offences, by operating an extra criminal constraint.[36]

Regarding the way the se two categories of offences are distinguished, there are two conceptions in the criminal law science, totally opposed, two theories, of quantity and quality difference, respectively.[37]

The authors of the quantity difference theory deny the existence of some significant quality differences between criminal offences and extra criminal illegal offences, claiming that between them there is only a difference in the severity of the consequences. Therefore, the criminal offences are considered as such because they represent a higher social danger than the noncriminal ones; as illegal means indivisible, there in not an intermediary situation (*genus tertium*). The quantity difference theory is not confirmed by reality. For example, a person who does not pay his debt in due time can cause damages to the creditor, can even cause him bankruptcy; however, although there are very serious consequences, the offence is still outside the criminal area, being sanctioned with extra criminal sanctions.[38] On the contrary, when a person steals an asset, even of small value one, the deed is considered an offence, subject to criminal sanctions.

The second theory, of the quality difference, proposes to distinguish the criminal illegality from the extra criminal one and therefore their corresponding sanctions, according to their nature, the quality difference between them, using either subjective criteria (the psychical attitude of the wrong doers) or objective criteria (the internal nature of the material offence).

Although the problem of finding some differentiation criteria of the criminal offences from the extra criminal ones, and establishing their specific sanctions, is controversial, it seems closer to the truth the point of view expressed in the Romanian doctrine, that the decisive differentiation element would be the source of the criminal offences (violence, fraud, social indiscipline) and their social resonance (the state of anxiety and uncertainty they produce).[39] Using these criteria, the lawmaker could appreciate correctly when drawing up the judicial norms (*jure condendo*) in what case they should provide punishment as sanction, and in what cases an extra criminal sanction.[40] It will be considered as offence any deed for which a punishment is provided, and an extra criminal illegal deed, the one for which another type is sanction is provided: administrative, disciplinary, reparatory etc.

a. Delimitation of punishment from administrative sanctions.

Traditionally, the administrative liability is identified with the contraventional liability, defined as a form of legal liability, i.e. the application of contraventional sanctions to the persons guilty of breaching the stipulations that provide and sanction the contravention.[41]

But, in order to establish the judicial nature of contraventional liability, they render equal the administrative liability with the contraventional one, or the contraventional liability is considered as a form of administrative liability, the contravention being a form of

[36] M. Eliescu, Răspunderea civilă delictuală, Editura Academiei, Bucureşti, 1972, p. 84.
[37] V. Dongoroz, Tratat, Op. cit., p. 19
[38] R. Savatier, Tratat de răspundere civilă în dreptul francez, Paris, 1939, p. 263
[39] V. Dongoroz, Tratat, Op. cit., p. 2-23
[40] C. Bulai, Manual, Op. cit., p. 275
[41] A. Ţiclea, M. Toma, Răspunderea contravenţională, Casa de Editură şi Presă "Şansa" S.R.L., Bucureşti, 1992, p. 9

manifestation of the administrative illegality, its most severe form.[42]
The administrative – contraventional sanctions were initially breaches of the criminal law, because in the beginning the contraventional illegality was consecrated by the criminal legislation within the traditional three part separation of the criminal illegality in offences, crimes and contraventions.
The three part system was consecrated in the 1865 Criminal Code and maintained in the criminal legislation until 1954; within this system, the punishments for contraventions were: imprisonment form 1 to 15 days and the fine from 5 to 25 lei.[43] At present, the contraventional sanctions established by the framework law (Law no. 32/19680) and by special laws are: warning, fine, seizure and contraventional imprisonment. The administrative – contraventional liability, defined as a form of the administrative liability, starts whenever a contravention was committed and to the extent that all the requirements of this form of liability are met.
Regarding the way the contravention is defined[44], a part of the doctrine claimed that the administrative – contraventional liability is not a self-contained liability, but a form of criminal liability, the difference being only in the appreciation of the degree of social danger, the unique distinction element between the two forms of liability.[45]
The hypothesis of the dependence of the contraventional liability to the criminal liability cannot be accepted. As we know, the illegal behaviour in the hypothesis of the criminal liability is directed against some different values compared to the social values defended by the administrative law. In art. 1 of the Criminal Code, they show explicitly the values protected by the criminal law, such as: the State safety, the property, the person and his/her rights, its entire order. Or, the illegal behaviour regarding contraventions concerns other social values, with more reduced areas, such as: good performance of the relations in the society, good performance of some public services, good operation of some economic agents etc. The application of an administrative – contraventional sanction does not remove the criminal liability when it is established subsequently that the deed committed is an offence, hypothesis in which the criminal liability will coexist with the contraventional one.[46] If the deed was considered as an offence and subsequently it was considered as a contravention, the contraventional liability would replace the criminal one. On the other hand, in case of committing several contraventions, it will be applied the arithmetic cumulation of the contraventional sanctions and not the judicial cumulation, as in the case of the concurrence of offences.

b. Delimitation of punishment from civil sanctions

By committing offences, the social values protected by the criminal norm are damaged or endangered; the individual's patrimonial or non patrimonial rights could be affected, too. The criminal doctrine, regarding the consequences caused, separates the offences in two categories: material offences (result-related) conditioned by the production of a material injurious result, and formal offences creating some states of danger, without being conditioned in their existence by the production of some injurious consequences.[47]

---

[42] A. Iorgovan, Drept administrativ şi ştiinţa administraţiei, Universitatea Bucureşti, 1989, p. 163.
[43] By Decree no. 184/1954, the contraventions were removed from the area of the criminal illegality, being considered as administrative deviations
[44] Art. 1 from law no. 32/1968 regarding sanctioning the contraventions, defines the contravention as „the deed committed with guilt, representing a less social danger than the offence " and it is provided and sanctioned as such by laws, decrees or by other normative acts
[45] Paul Negulescu, Tratat de drept administrativ, vol. I, Principii generale, ediţia a IV-a, Bucureşti, 1934, p. 258
[46] A. Iorgovan, Drept administrativ, Tratat elementar, vol. III, Bucureşti, 1993, p. 202.
[47] C. Bulai, Manual …, Op. cit., p. 178

Anytime such injurious consequences are produced, there is the problem of re-establishing the breached rights; in such cases, the proper criminal means are not enough, they appeal to some types of sanctions specific to other forms of judicial liability.[48]

The authors of civil law state that the civil liability represent a sanction specific to civil law, applied for committing an illegal deed which causes damages, constituting a reparatory civil sanction respectively, without being a punishment at the same time.[49]

The civil liability has as purpose the accomplishment of the patrimonial interests of the injured one by the illegal deed, so it becomes operative only if such deed caused a material or moral damage to the victim.[50]

The production of damage to the victim through the illegal deed is and remains an essential condition of the civil liability which, by its nature, implies the idea of reparation, the length of the civil liability being determined by the size of the damage caused to the victim by the illegal deed.

The civil liability, especially the crime-related one, usually occur when the illegal deed represents a breach of both the objective right, i.e. the legal norms in force, and some subjective rights of the victim. In case of criminal liability, the guilt is outlined more precisely, having a legal definition, while the civil liability is engage even for the easiest transgression, the civil transgression being much more flexible. The criminal liability is based on the principle of the lawfulness of the incrimination, while the civil liability is engaged for any deed causing damages, regardless of the concrete description of each deed separately.[51] While the punishment is retributive, the civil sanction is reparatory, meant to remove the patrimonial and non patrimonial consequences caused to the injured person by the offence.[52]

The cumulation of the two forms of criminal and offence-related liability takes place in case the damage-generating illegal deed is at the same time an offence. If a moral damage was caused to the civil party by means of the offence, the civil party can claim reparations even in case of offences of simple action (formal ones).

c. Delimitation of punishment from disciplinary sanctions

The disciplinary sanctions represent means meant to ensure the good performance of the public or private units and institutions, the performance in good conditions of the committed activities, while the punishment is a means of repression of the serious severe deeds, a reaction of the society against some serious breaches of fundamental social values.[53]

The disciplinary sanction is meant to correct the inappropriate behaviour of the employees from a public or private institution; it only aims at the relation between the individual and the respective institution, while the punishment expresses a disapproval of the society towards the offender's inappropriate behaviour, and this behaviour cannot only be corrected by causing a sufferance to the guilty one, whose sanction will be an example for those around him/her.

There are many differences between the disciplinary and the criminal liability: the criminal liability comes from the law, while the disciplinary one comes from the labour contract[54];

---

[48] Petru Andrei, Eugeniu Safta-Romano, Protecția juridică a drepturilor civile, Revista Dreptul nr. 5-6, 1993, p. 50

[49] C. Stătescu, C. Bârsan, Drept civil, Teoria generală a obligațiilor, Editura ALL, București, 1994, p. 114

[50] Mircea Costin, Răspunderea juridică în dreptul R.S.R., Editura Dacia, Cluj, 1974, p. 65.

[51] M. Eliescu, Răspunderea civilă delictuală, Editura Academiei București, 1972, p. 284

[52] Gh. Boboș, Răspunderea responsabilitatea și constrângerea în domeniul dreptului, Editura RGONAUT, Cluj Napoca, 1996, p. 76

[53] George Antoniu, Sancțiunea penală-concept și orientări, R.R.D., nr. 10/1981, p. 3

[54] I. T. Ștefănescu, Disciplina muncii și răspunderea disciplinară, Editura Academiei, București, 1979, p. 176

the degree of affecting the social relations is different, as we speak about disciplinary deviations or offences. These differences make possible the cumulation of the two forms of liability, cumulation established by article 15 paragraph 1 from law no. 1 of 1970 regarding labour behaviour. If a deed represents at the same time an offence and a disciplinary deviation, "the criminal hols on the disciplinary", so the unit/institution cannot open the administrative investigation and apply the sanction, in parallel or separately from the performance of the criminal suit.[55]

[55] V. D. Firoiu, Dreptul muncii şi securităţii sociale, Editura Universităţilor Creştine D.Cantemir, Cluj Napoca, 1994, p. 249