TECHNIUM
SOCIAL SCIENCES JOURNAL

Technium.

40/2023

2023

A new decade for social changes

Technium Social Sciences

Powered by PLUS COMMUNICATION
International Communication & PR

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

Aplication of the Criminal Law in time as for Thefts (art. 228-229)

Andrei Emil Moise

PhD. Candidate Constantin Stere University, Department of Law

andrei_e_moise@yahoo.com

Abstract. The penal law contains an ensemble of norms; rules of conduit which are enforced by criminal penalties. The penal law in reagard of theft is mandatory from the moment of its enforcement and it lasts, in time, until its abrogation. During the time of the enforcement, the penal law is active and is applied to all committed offences. Time limitation of the penal law represents an important part of the theory of penal law, first, because the penal law enforcement is limited in time, and second, the offences are committed in relation with the penal law. So, the penal law is applied to all crimes against patrimony offences committed while the penal law is enforced (active).The penal law doesn't apply to the offences committed prior to its enforcement (the law is not retroactive), or to those committed after the law was abrogated (ultraactivity).The study also refers to the situation of concurrence of the offencesinregard to theft crimes, the duration and limits of the efficiency of the penal law, retroactivity, and abolition of an offence, applying the mitior lex principle, the cases when the penal law is retroactive or ultraactive.

Keywords. law enforcement, mitior lex, retroactivity, ultraactivity, the active penal law

1. General considerations regarding the application of the criminal law

The criminal law regarding theft, art 228-229 Criminal Code contains a set of legal norms, rules of conduct, whose compliance is ensured by the application of criminal sanctions.

In carrying out this function, the rules of the criminal law are addressed, first of all, to the citizens who have the obligation to comply with the requirements of these rules, and secondly, they are addressed to the judicial bodies called to apply criminal sanctions to those who have not respected the precepts of the criminal law and harm in any way another's belongings.

The criminal law becomes mandatory from the moment it enters into force and lasts, in time, until it expires, during which the law is active, applying to all crimes committed during the time when it is in force, even if the theft art 228 is caryed out at different time moments. In principle, the criminal law is applied through the voluntary compliance by the recipients of the imposed precepts, which gives the law an active efficiency. In case of non-compliance with the precepts of the legal norms, the application of the law is enforced, by resorting to the sanctions

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

provided by the law (reactive efficiency of the law). The efficiency lasts until the law goes into effect[1] and is determined by four elements: time, space, facts and people.

By the application of the criminal law is meant the execution or fulfillment of the duties that it provides and can take place, either voluntarily, by respecting its precepts, or by force, in the case of committing the incriminated act.[2]

2. The principle of criminal law activity

According to the principle enshrined in art. 3, the criminal law applies only to acts committed while it is in force and to acts that have not been conciliated. This means that the criminal law does not apply to acts committed before its entry into force, it is not retroactive, but it also does not apply to acts committed after its entry into force, i.e. it is not ultraactive[3]. Therefore, the criminal law applies to all crimes committed while it is in force.

The criminal law norm establishes a mandatory rule of conduct for recipients. The norm must be prior to the commission of the act, because no one can be required to obey a law that did not exist before the commission of the act or be blamed for an act that was not prohibited by the previous law.

Likewise, the criminal law cannot be ultra-active, that is, to apply even after it has come into force, considering that the new law is more in line with the repressive needs than the previous one.

3. Entry and exit of criminal law

In terms of time, the criminal law is effective from the moment of its entry into force. This is the moment from which the criminal law is active, i.e. applicable to all social relations, both those of conformity and those of conflict. In relation to recipients who willingly comply with its requirements and who do not commit acts prohibited by criminal law, the effectiveness it is active. However, in relation to those who disregard the provisions of the criminal law by committing crimes, the legal order will be restored by the application of sanctions (society reacts), the effectiveness of the criminal law becoming reactive.

The principle of the activity of the criminal law[4], establishing the rule according to which an act could not be characterized as a crime except according to the norm of incrimination in force at the date of the act's commission, requires the determination of the moment when a criminal law enters into force and the duration of time in which it produces its effects . The criminal law is active from the moment it enters into force until the moment it expires, the period of time in which the law is active and produces effects (duration of application of the criminal law).

The procedure for the adoption and entry into force of the laws is regulated in art. 74-78 of the Romanian Constitution.

After the adoption by the Parliament, the law is sent to the President of Romania for promulgation, after which it is published in the Official Gazette and enters into force 3 days after the date of publication or at a later date provided for in its content.

[1] Vintilă Dongoroz şi colectiv, Explicaţii teoretice ale Codului penal român, Partea generală, vol. I, Editura Academiei României, Bucureşti, ediția a II-a, 2003, p. 63
[2] Idem
[3] George Antoniu şi colectiv, Explicaţii preliminare ale noului Cod penal, vol. I., Ed. Universul Juridic, Bucureşti, 2010, p. 41-42
[4] George Antoniu şi colectiv, Idem, p. 42

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

In the doctrine[5], it was argued that the existence of the criminal law should not be confused with its legal effectiveness, because the law exists from the moment of its adoption by the legislative body, and its legal effectiveness begins from its entry into force, which is subsequent to its publication in the Official Gazette. In the same way, the age of the law is not confused with its duration because the age takes into account the moment of adoption and its duration, the date of entry into force. The time interval between the date of publication and the date of entry into force is called vacatio legis (law's respite).

According to art. 115 para. 4 of the Romanian Constitution, the entry into force of the Government's emergency ordinance, if it includes criminal provisions, takes place when two conditions are met, respectively: its submission for debate in the emergency procedure to the competent Chamber to be notified and the publication of the ordinance in the Monitorul Official. If the two moments are different, in the specialized literature[6], contrary to the opinion that claims that the emergency ordinance enters into force, like the law, in 3 days from its publication, there is also the opinion that the date of entry into force of such an ordinance is the date when the second condition is met, in chronological order. As far as we are concerned, we are of the opinion that we are facing a provision derogating from common law (art. 78 of the Constitution), therefore, the entry into force of the emergency ordinance may take place in a shorter period of three days from the publication in the Official Gazette. Given the fact that legislation through emergency ordinances is motivated by the existence of "extraordinary situations", the question arises as to whether these can be considered exceptional laws.

If the issuance of the emergency ordinance had been motivated by the objective existence of exceptional causes, the respective ordinance could be considered as a temporary criminal law that would over-activate under the conditions of art. 7 of the new Penal Code, if the emergency ordinance is not motivated by the existence of such objective causes, it would mean giving the effects of a temporary law to situations that are within the scope of ordinary criminal laws, which would be inadmissible. The constituent legislator provided during the revision of the 1991 Constitution that the rejection law will regulate, if necessary, the necessary measures regarding the legal effects produced during the period of application of the ordinance (art. 115 paragraph 8 Constitution).[7]

The rejection by the Parliament of the emergency ordinances has the effect of the ordinances going out of force from the date of publication in the Official Gazette of the rejection law. The rejection of the emergency ordinance does not have retroactive effect. What happens when such an ordinance has criminalized ex novo a criminal offense and then the ordinance has been rejected by Parliament? The new Criminal Code provides for the application of the more favorable law also in the case of emergency ordinances approved by the Parliament with amendments or additions or rejected, if during the time when they were in force they contained more favorable criminal provisions (art. 5). It could be one more argument in favor of our claim that the ultraactivity of the temporary law would yield in favor of the constitutional principle of the application of the more favorable criminal law[8].

[5] George Antoniu şi colectiv, Explicaţii preliminare ale noului Cod penal, vol. I., Ed. Universul Juridic, Bucureşti, 2010, pag. 42-44; V. Pașca, Curs de drept penal. Partea generală, Ed. Universul Juridic, București, 2010, p. 83
[6] Ibidem
[7] V. Pașca, Curs de drept penal. Partea generală, Ed. Universul Juridic, București, 2010, p. 84
[8] V. Pașca, Idem

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

The amnesty and pardon laws will enter into force three days after their publication in the Official Gazette. The legislator must provide for the date from which they become incidents because this date is prior to the entry into force (the date of publication in the Official Gazette).

Usually, the termination takes place by repeal, which can be express (when the new law provides that the previous law is repealed) or tacit (when the new law regulates the same matter as the old law, which implies that the new law removes implicitly the old law). Repeal can also be total (when the law is repealed in its entirety) and partial (when the repeal of the law refers to certain of its provisions).

If the law was developed for a specific duration or for a purpose, upon completion of the duration or when the purpose is achieved, the law automatically expires (self-repeal)[9]. We meet such a method, according to art. 7 of the Criminal Code, in the case of the temporary law, which applies to the crime during the time it was in force, even if the deed was not solved during that time. This law foresees its coming into force, or whose interpretation is limited by the temporary nature of the situation.

Repeal always operates, whether or not there are differences between successive special laws. So, the new law implicitly repeals the provisions of the previous law, even if there is identity between the two laws, because the new law was intended to replace the old regulations.

There is an opinion[10] according to which the change in social-political conditions or the circumstances that determined the adoption of the norm cannot constitute a basis for the tacit repeal of the criminal law, as long as these changes did not render the criminal regulation without object by changing the form of government or the political regime, if the change did not leave the respective norm without object. Also, the legal norm does not go out of force by non-application (usuetudine contra legem), i.e. by obsolescence or by the establishment of a contrary judicial practice.

In the case of partial repeal, such a method can also occur as a result of the repealed declaration, as unconstitutional, of a norm of a criminal law by the Constitutional Court. The decision to declare a criminal rule as unconstitutional, published in the Official Gazette, has the effect of suspending the rule and repealing it after 45 days, if during this interval the Parliament or the Government, as the case may be, does not agree the rule declared unconstitutional with the provisions of the Constitution.

The inapplicability of the criminal law is a new situation in which a criminal law, without being repealed, can no longer be applied because either the Constitutional Court has issued a decision by which it was found unconstitutional, and the 45-day deadline has not been fulfilled after which the law is considered abrogated, or the Court of Justice of the European Union has issued a prior decision in the interpretation of Community law and the criminal norm contravenes Community law[11].

By repeal, as a rule, the legal effectiveness of the repealed law ceases. However, it is possible for the abrogated law to survive, as in the case of referral norms, when the borrowed norm forms a common body with the referral norm in the formulation in which the borrowed

[9] Dongoroz, op. cit., p. 96-98; Siegfried Kahane I, op.cit.; pag. 72-75; Oancea,op. cit., p. 118-122; Pascu, p. 70; Mitrache op. cit., p. 91-92.
[10] George Antoniu şi colectiv, Explicaţii preliminare ale noului Cod penal, vol. I., Ed. Universul Juridic, Bucureşti, 2010, pag. 45-47; Ilie Pascu, op. cit., ediţia a 2-a, pag. 70-72
[11] V. Pașca, op. cit., p. 73

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

norm exists at the time of entry into force of the referral norm. Norms of reference do not retain this independence, their activity being subordinated to the norm to which reference is made and which completes the content of the reference norm with those elements that it lacks.[12] The repeal of the complying norm or its modification by the legislator has direct effects on the reference norm either by repealing it or implicitly modifying it, as the case may be.

Regarding the framework rules or the criminal rules *in white*, these, although in force on the date of publication in the Official Gazette, or on the date shown in their contents, because they complete their content by indicating in subsequent rules the prohibited social conduct, for each way of commission of the crime, criminalization will only operate from the date of entry into force of the implementing law and not from the date of entry into force of the framework norm.

Some provisions of the repealed law may survive, when the new law explicitly provides that for certain situations the provisions of the repealed law will still apply. Thus, the norms of the previous law survive by virtue of the permission of the new law, which implicitly adopts them within its norms as unconditionally effective or transitional norms.[13]

Being still a law, the repealing law will enter into force three days after its publication in the Official Gazette. As a result, during the period from its publication until its entry into force, the previous law, which is not yet repealed, retains its effectiveness.

The repeal of the law is not the same as the decriminalization of the crime, because it may continue to be criminalized in another text of law. For example, in the case of complex crimes, when the abrogation of the rule of criminalization of the complex crime does not lead to the decriminalization of the crimes absorbed in the content of the complex crime. The decriminalization law enters into force from its publication in the Official Gazette because it is a decriminalization law that does not impose new rules of conduct on the addressees, therefore, the constitutional principle (art. 78) of respecting the three (3) days is not violated since publication.

Obsolescence (non-application of the criminal law for a long time) has no abrogative effects, and the doctrine is unanimous.[14]

In the event that the repeal provisions are included in an emergency Ordinance, the repeal takes place on the date of its entry into force (date of publication in the Official Gazette and submission to the competent Chamber of Parliament to be debated in emergency procedure - art. 115 paragraph 5)

4. The mix of norms

There may be situations when two criminal laws, one general and one special, both in force, regulate the same situation in parallel.

In the criminal doctrine, this situation is also called an apparent conflict of criminal rules or a fictitious ambivalent aplication of criminal rules[15]. The Romanian criminal doctrine deals only with the competition between the general law and the special or exceptional law[16],

[12] Mihail Udroiu, Drept Penal, partea Speciala editia 3, Ed. C.H. Beck, Bucuresti, 2016, pp. 213
[13] George Antoniu şi colectiv, Explicaţii preliminare ale noului Cod penal, vol. I., Ed. Universul Juridic, Bucureşti, 2010, pag. 46
[14] V. Dongoroz, op. cit., p. 119; F. Antolisei, Manuale de diritto penale. Parte generale, Ed. Dott a Giufre Milano, 1991, p. 17; G. Fiandaca, E. Musco, Diritto penale. Parte generale, Terzo edizione, Zanichelli Editore, Bologna, 1995, p. 59
[15] F. Antolisei, op. cit., p. 133
[16] V. Pașca, op. cit., p. 76

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

competition resolved according to the principle of specialty in the sense that the special law derogating from the general law applies its provisions (specialia generalibus derogant). At the same time, the special laws are always supplemented with the provisions of the general law when the special law is "silent"[17].

The principle of subsidiarity presupposes the existence of two laws or criminal norms that both regulate the same matter, the subsidiary law, subsuming its applicability to the main law whose applicability excludes the application of the first, (*lex primaria derogat legi subsidiare*)[18]. Subsidiarity is defined by other authors in the sense that there is subsidiarity when both laws criminalize different degrees or stages of damage to the social value protected by the criminal law, so that the act described by the subsidiary law, being less serious than the one described in the main norm, is absorbed by it.[19] In a similar sense, the principle of subsidiarity is also defined in the Romanian criminal doctrine by V. Dongoroz, exemplifying the criminalization of the attempt and the consummated fact, the norm of criminalizing the attempt having a subsidiary character[20]. The principle of consumption would regulate the competition of criminal laws when the fact described by a norm is absorbed by a fact provided by another norm that has greater importance (*lex consumens derogat legi consumptae*)[21].

We also believe that this principle does not express the existence of a contest of laws or criminal norms, because we are not in the presence of two identical criminal norms, the norm describing the absorbing fact being qualitatively different from the one describing the absorbed fact. Thus, the rule that describes the crime of robbery (art. 211 Penal Code) differs substantially from the rules criminalizing theft (228-229 Penal Code).

The circumstance that the legislator has chosen a different solution for solving the contest of laws than the principle of specialty does not remove the existence of the contest of criminal laws, this means on the contrary, that unlike the principle of specialty that solves the contest of criminal laws by default, the nature of the norm (law) general or special norm (law) resulting from the interpretation of the law, the principle of subsidiarity has this function only when the legislator expressly provides.

Also, there may be a situation when two criminal legal norms are in force that criminalize the same act, but one is provided for in the special part of the Criminal Code and another in an extra-criminal law.

Such situations constitute **the duality of criminal laws** which will be resolved according to the following rules:

a. when a general and a special law, both in force, will regulate the same criminal act, the special criminal law will be applied, due to the fact that the special law was adopted to derogate from the general law[22]; In this case, the general norm will not be abrogated, but temporarily ceases its activity while the special law is active.

b. when two criminal legal norms in force, one located in the special part of the Criminal Code and another located in an extra-criminal law, criminalize the same act, the

[17] V. Dongoroz, op. cit., p. 121-122
[18] F. Antolisei, op. cit. p. 136
[19] F. Grispigni, Diritto penale italiano, Milano, 1947, vol. I. p. 416
[20] V. Dongoroz, op. cit. p. 334
[21] V. Pașca, op. cit., p. 76
[22] Mitrache, op. cit., p. 92; Pascu, op. cit., p. 71

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

provision of the extra-criminal norm will be applied because it specifies the conditions for criminalizing and sanctioning the act respectively[23].

5. Establishing the time of the crime

Determining the moment when the crime was committed is very important because depending on it, it is determined whether it was committed while a certain law was in force and, therefore, falls under its scope, or outside the limits of action. By "committing a crime" or "committing a crime" is meant the commission of any of the acts that the law punishes as a consummated or attempted crime, as well as participating in their commission as a co-author, instigator or accomplice, according to art. 174 of the new Criminal Code.

When the crime is consummated instantly, i.e. with the commission of the action the result (follow-up) is produced, the applicable law is the law in force from that moment. The problem is not so simple where, after the commission of the act, some time elapses before the result occurs, when another law may come into force, or several laws may succeed one another.

"Substantive" (result) and "formal" (danger) offenses consummate at different times; the "material" ones when the result provided for by the law is produced, otherwise there is only an attempt at these crimes, regardless of whether the attempt is sanctioned or not. For example, theft is consummated when the movable property is taken for the purpose of misappropriating it. "Formal" crimes, the result of which is a state of danger, are consumed when the action (inaction) provided for by law is committed. For example, the crime of threatening is consummated the moment the communication is transmitted in any way to the injured person, even if the harm threatened has not occurred[24].

Continuing, ongoing and habitual offenses are characterized by a longer duration of time. The continued ones consist of at least two repeated actions or inactions at different time intervals based on the same criminal resolution (judgment). So the execution is extended in time. It is consumed after the first action (inaction), but it is exhausted only when the last action or inaction is committed (art. 122 last paragraph of the Criminal Code). Continuous crimes are consumed when the action (inaction) begins, but are exhausted when it has ceased according to art. 122 para. last Criminal Code, and those usually when the action took place that indicates the habit or occupation.[25]

As a result, when enforcement actions began under one law and continued under another, the new law will always apply, because the crime was exhausted when it was in force, it was active. The date of the commission of the act is the date of the last material act in relation to which the law applicable at the time of the commission of the act is determined.

When the commission of the act began under the old law which did not criminalize it and continues under the new law which does criminalize it, it will be punished only if the continuation of the action necessary for the existence of the crime took place under the new law[26].

In the case of habitual offences, acts committed under the previous law which did not criminalize them will not be taken into account in deciding whether the habit exists.

The moment of committing the act of instigation, as well as of the complicity prior to the execution of the action (inaction) by the author, is considered to be the time of the

[23] Ibidem
[24] V. Pașca, op. cit., p. 75
[25] Idem
[26] Puhk vs. Estonia, R.D.P. nr. 4/2005

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

commission of the action (inaction) by the author, because there is a crime unit in case of participation. Instigation and complicity, as acts of participation, acquire criminal significance only from the moment the author moves to the execution of the action (inaction). When it was "instigated" or there were acts of previous "complicity" in a deed that was not criminalized, but when the action (inaction) was criminalized, these will not be counted as acts of participation. In the case of complex crimes, the crimes that compose it, being indivisible, apply the provisions that criminalize the act in its entirety.

In such a situation, the question arises of determining the moment of the commission of the crime (time of committing the act) and, implicitly, the applicable law in relation to this moment, because the law active at the time of the commission of the action may no longer be in force on the date of its occurrence the result of that action, when the crime is considered consummated.

In relation to this problem, theories have been formulated in the criminal doctrine that emphasize either the moment of the action, or the moment of the result, or it is considered that one criterion and the other are applied simultaneously, as the case may be.

The view that gives priority to the moment of the commission of the action, also called the theory of the action, considers that the date of the commission of the crime is the date when the action was carried out, and the law in force at that time will apply to the committed act. In support of this theory, the argument is invoked, among others, that the law in force protects the social values defended by the criminal law from the moment the criminal action is committed. In the same way, from this moment the social danger of the act appears, against which the criminal law must react.

In the opinion that gives priority to the moment of the result of the action, called the **theory of the result**, it is argued that the law in force is the law applicable from the time of the production of the result, because at that moment the offense is consummated. In support of this opinion, it is invoked, among other things, the unity that must exist between the action and the result produced and the fact that only from the moment the result is produced, the full dimension of the danger posed by the action for the social values protected by the law is highlighted, and the prescription of criminal liability it could only flow after the production of the result.[27]

In another theory, also referred to as the **mixed theory**, it is proposed that the moment of committing the act should be, at the choice of the court, either the moment of the performance of the action or the moment of the production of the result.

The arguments invoked in support of the theory of action, based also on the principle of the legality of criminalization with which they are in full agreement, do not offer solutions in case of incidence with other institutions of criminal law and which concern the result produced. So, for example, in the case of progressive crime, it is admissible that the date of commission of the crime be considered the date of the action, taking into account the last result produced. In the same way, in the case of the crime of hitting or other violence causing death for the reason of theft, the date of the commission of the crime should be the date of the violent action and from this date start the limitation period for criminal liability runs out, which will be calculated in relation to the punishment corresponding to the definitive result produced [art. 229

[27] George Antoniu şi colectiv, Explicaţii preliminare ale noului Cod penal, vol. I., Ed. Universul Juridic, Bucureşti, 2010, pag. 48

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

para. (3) the new Criminal Code]. This means that the limitation period should run parallel to the occurrence of the consequences of the incriminated action.[28]

In addition, the **theory of the result** is not entirely convincing regarding the establishment of the date of the commission of the crime; for example, when the progressive crime is committed by a minor under the age of 14 at the time of committing the action and who turns 16 at the time of the result. In such a situation, the minor under 14 years of age will not be criminally liable, if the commission of the action is considered, but he would be criminally liable if the date of the result is considered, which is debatable. On the other hand, the theory of result can be invoked only in the case of crimes of result, not in the case of formal crimes, i.e. of simple action.

Special problems also arise if the action is committed before the fulfillment of a term to which certain legal consequences are linked, and the result is produced after the fulfillment of that term. We have in mind, for example, the statute of limitations for the execution of the sentence or the term of supervision in the case of suspension of the execution of the sentence under supervision, the term of conditional release, the term of finalization of a conditional pardon, the term of legal or judicial rehabilitation, etc. In such situations, the moment of committing the action is important, if it is located within the respective deadlines, which will lead to their interruption or to the non-production of the legal effects specific to the institution in connection with which the deadlines exist, even if the result is produced after their fulfillment.

As for the so-called mixed theory, we believe that it cannot be supported, because the moment of committing the crime, as a general rule, cannot be, at the same time, both the moment of the action and the moment of the result, at the discretion of the court, because the result may occur at a more distant time than the action takes place. As a result, the moment of committing the act can only be either that of the action or that of producing the result, with all their shortcomings. The applicable criminal law is the law in force at the time when the conduct required by it had to be carried out and when the offense is consummated and, moreover, the result is produced.

With regard to the moment of committing the crime, the development of which takes place over a period of time due to the execution of successive or fragmented acts, such as the case of a continued crime or the extension in time of the moment of consummation, as in the case of a continuous crime or the repetition of acts of execution, as an expression of a habit, as in the case of habitual crimes, the moment of commission, implicitly the moment in relation to which the applicable active law is determined is the law from the moment of exhausting all the consequences of the deed, i.e. the moment when these forms of criminal unity came to an end, respectively with the last act of enforcement in the case of a continuing crime, at the end of the continuing action or with the last component action of the usual crime. In the above cases, the law in force at the time of exhaustion is the applicable law, even if the commission of these crimes began under the jurisdiction of another criminal law. In this case, the principle of the crime unit operates, the principle unanimously recognized in the criminal doctrine and enshrined in the regulations of the Criminal Code.

The conclusion can be drawn that the moment of committing the crime can only be, as a general rule, the moment of the act. Exceptionally, this moment will be that of the result or exhaustion, if the action is prolonged or fragmented, i.e. whenever some consequences of the

[28] George Antoniu şi colectiv, Explicaţii preliminare ale noului Cod penal, vol. I., Ed. Universul Juridic, Bucureşti, 2010, pag. 48

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

application of criminal provisions could only occur from the moment the result is produced (prescription , amnesty, pardon). Problems of applying the criminal law over time also occur if, from the commission of the crime until the final judgment, there are several criminal laws applicable to the committed act; in this case, the more favorable criminal law applies, which may be the new one (which means it will be retroactive) or the old one (in which case the law will be ultra-active).

Such transitory situations are regulated in the Criminal Code by general rules with permanent application (art. 4-7), either by special rules contained in the final part of the Criminal Code in the chapter "Final Provisions" or by a special law implementing The Criminal Code, as was Law no. 30 of November 12, 1968 for the implementation of the Criminal Code in force. Nothing prevents the legislator from using all the methods shown above in the regulation of transitory situations, the provisions of the special law implementing the code may even derogate from the general provisions of the Criminal Code.

Exceptions to the principle of criminal law activity. There are exceptions to the rule that criminal law cannot be retroactive or ultra-active. Thus, the criminal law that decriminalizes an act will always be applied retroactively. Also, as we have shown, the more favorable law will retroactive (if the new law is more favorable) or will be overactive (if the old law is more favorable). be retroactive and interpretive law. The temporary criminal law will be applied ultra-actively, in the sense that its effectiveness occurs even after its termination, but only in relation to the acts committed while it was in force.

The retroactive or ultraactive application of the more favorable criminal law, as exceptions to the activity of the law, refers only to substantive, material criminal law laws. Procedural laws are always active, because they refer not to committed acts, which are always prior to the application of procedural provisions, but to the time of the performance of the procedural or procedural act. As a result, the rules of procedure apply immediately to all procedural acts performed while the law is in force, according to the tempus regit actum principle that operates in this matter.

If the competence of the courts is changed by the new procedural law, the new law will also apply, except in the case of a court decision, even non-definitive on the merits of the case. In this case, the provisions of the old procedural law will continue to apply, including those that refer to appeals against the decision on the merits.

It is possible for the new criminal law to amend a provision of a **non-criminal law**; (for example, to provide that only the performance of a profession under certain conditions is penalized and that these conditions are more restrictive than those provided for in the non-criminal law that regulates the exercise of that profession). If the new criminal law does not say anything about the rights gained by those who benefited from the old law, they will continue to benefit from the previous rights. If the law provides that the rights gained under the old law are suppressed, these new provisions will apply.

References:

1. Dongoroz, op.; Siegfried Kahane I, op.; Oancea,op.; Pascu, ; Mitrache op.
2. George Antoniu, Tudorel Toader, Explicatiile Noului Cod Penal, vol.3, Ed. Universul Juridic, Bucuresti, 2015
3. G. Fiandaca, E. Musco, Diritto penale. Parte generale, Terzo edizione, Zanichelli Editore, Bologna, 1995
4. F. Antolisei, Manuale de diritto penale. Parte generale, Ed. Dott a Giufre Milano, 1991
5. F. Grispigni, Diritto penale italiano, Milano, 1947, vol. I.

Technium Social Sciences Journal
Vol. 40, 649-659, February, 2023
ISSN: 2668-7798
www.techniumscience.com

6. George Antoniu şi colectiv, Explicaţii preliminare ale noului Cod penal, vol. I., Ed. Universul Juridic, Bucureşti, 2010
7. Mihail Udroiu, Drept Penal, partea Speciala editia 3, Ed. C.H. Beck, Bucuresti, 2016
8. Vintilă Dongoroz şi colectiv, Explicaţii teoretice ale Codului penal român, Partea generală, vol. I, Editura Academiei României, Bucureşti, ediția a II-a, 2003
9. V. Pașca, Curs de drept penal. Partea generală, Ed. Universul Juridic, București, 2010