

Romania has a New Criminal Code

After several years of wide-ranging social, professional, and political debates, on 1st February 2014 Law no.286/2009 entered into force, which deals with the Criminal Code (“**New Criminal Code**”). Further to this enactment, over 200 special criminal regulations were amended and completed, while numerous obsolete criminal legal provisions were repealed. The necessity of enacting the New Criminal Code was dictated by the major political, social and economic changes that occurred within Romanian society since the former criminal code entered into force in 1969.

According to the Explanatory Notes accompanying the New Criminal Code the objectives of this new regulation are:

- to create a coherent and concerted criminal regulatory framework by eliminating the existing overlap between some criminal offences provided for within the Criminal Code and those comprised within special regulations;
- to simplify the criminal legal provisions so as to promote consistency and promptness in the criminal process, eliminating unwanted disparity between cases and unjustified delays;
- to ensure that the criminal process observes the requirements enshrined in the Romanian Constitution and within the international covenants and treaties on human rights to which Romania is a party;
- to properly transpose the EU regulations into the national criminal legislation;
- to harmonize the Romanian criminal law system in line with the other EU Member States criminal law systems.

In addition, these new criminal regulations are expected to increase predictability with regard to their application, scope and meaning, as well as to improve general public trust in the criminal justice act.

Essentially, the New Criminal Code maintains the same structure as the former criminal code, being systemized in two broad parts: (i) **the general part**, comprising the general rules applicable to all criminal offences irrespective of their nature and (ii) **the specific part**, encompassing criminal offences grouped in accordance with their specific nature.

The New Criminal Code maintains the core principles of criminal law and at the same time brings in several long overdue changes, a short outline of which is presented below.

New definition of “criminal offence”

The New Criminal Code gives a new definition to criminal offence by introducing the concept of unjustified and imputable conduct as part of the constitutive elements of the criminal offence. As such, the criminal offence is defined as being “*the conduct provided for by the criminal law, committed with guilt* (for the purpose of this article “guilt” means (a) intention; (b) fault or (c) exceeded intention) *which is unjustified and imputable to the perpetrator*”.

Further the New Criminal Code provides that several causes are justifying and therefore eliminate the criminal character of the offence. This “justifying causes” are: lawful self-defense, state of necessity, the exercise of a right or the fulfillment of an obligation and the victim’s consent. Equally, the Code provides for several “non-imputable causes”, as follows: the physical and moral constrain, the justified excess, the perpetrator’s age (below the age of criminal responsibility), lack of mental capacity, intoxication, factual and legal error as well as the lack of reasonable foreseeability.

Adjusted criminal sanctions

According to the Explanatory Notes, the former criminal code provided for criminal sanctions with absurdly increased upper limits (e.g. up to 12 years for theft perpetrated in its basic form and up to 15 years for aggravated form of theft), infringing as such the normal hierarchy of social values within a democratic society. To this end, the New Criminal Code repositions the sanctioning treatment applicable to criminal offences within reasonable limits, ensuring that all sanctions are effective and proportionate to the criminal conduct.

As such, the upper limit of the sanctions for various criminal offences are now substantially lower compared to the former criminal code, including: fraud, aggravated theft, robbery, abuse of trust, fraudulent management, criminal damage, passive bribery and influence peddling.

On the other hand, only for a few criminal offences the New Criminal Code provides harsher sanctioning treatment either by increasing the lower limit of the sanction – e.g. for bribery, forgery of official documents, blackmail - or by increasing the upper limit of the sanction – e.g. forgery of non-official documents, disclosure of professional or trade secrets.

The new criminal regulation maintains to the greatest extent the same complementary sanctions as the former criminal code, introducing however two new ones: prohibiting the offender from approaching the home, the workplace, school or other places where the victim carries out social activities (applicable to natural persons) and placement under judicial supervision whereby the court appoints a judicial administrator to oversee the legal entities commercial activity for a period ranging from 1 to 3 years (applicable only to legal entities).

New manner of determining criminal fines

The New Criminal Code brings substantial amendments to the characteristics of financial penalties as a sanction for criminal offences. As such, the new provisions establish a new method for calculating the amount of the criminal fine based on a “day-fine” system, which will aid the courts when determining the fine to be applied in each individual case.

This system offers the courts two main elements for determining the amount of the fine to be applied: (i) **the rate of the fine per day**, representing the amount of money corresponding to one “day-fine” and which is determined based on the financial situation of the offender, amongst others, and (ii) **the number of “days-fines”**, which conveys the severity of the crime and the level of danger that the offender poses to the public

The courts are bound to determine separately and based on the particulars of the case, each of such elements and afterwards to determine the overall amount which must be paid by the perpetrator as a criminal fine by multiplying the (i) established number of “days-fines” by (ii) the established daily rate of the fine.

The general limits of the number of “days-fines” applicable to natural persons are set between 15 days and 400 days, while the general limits of the value of one “day-fine” is set between 10 Ron and 500 Ron. For legal persons (such as companies), the general limits are as follows: between a minimum of 30 days and a maximum of 600 days and between a minimum of 100 Ron and a maximum of 5000 Ron.

New sanctioning treatment applicable to juvenile offenders

Under the New Criminal Code juvenile offenders cannot be punished with imprisonment anymore. The new criminal provisions which follow in the footsteps of other European countries provide that only educational measures can be applied to juvenile offenders. Such educational measures may be applied to juveniles that have reached the age of criminal responsibility, which remains unchanged under the New Criminal Code at 14 years old, despite an earlier draft of the New Criminal Code which suggested that this could be reduced to 13 years of age.

The New Criminal Code provides two types of educational measures:

- (i) non-custodial - civic traineeship, surveillance, confinement at the end of the week or assistance on a daily basis; and
- (ii) custodial - confinement in an educational centre and confinement in a detention centre.

As regards the custodial educational measures the New Criminal Code provides a comprehensive listing of the cases when a court of law may apply them, as follows:

- if the juvenile offender perpetrates another offence, after being already convicted for another crime for which an educational measure was applied and executed in its entirety or only partially;
- when the punishment provided by law for the offence is 7 years or plus.

New Criminal Offences

The New Criminal Code identifies and incriminates several new criminal offenses, answering to a certain extent, the requirements of constantly evolving social needs and values. The following points highlight the main new criminal offences regulated by the New Criminal Code:

- i. **Crimes against persons:** *euthanasia* (art.190); *harassment* (art.208); *invasion of private life* (art. 226); *injury of the fetus during labor* (art. 203 para.1 and 2); *injury to fetus during*

pregnancy (art. 203 para.3); sexual aggression (art. 219); invasion of the legal entity's headquarters (art. 225);

ii. Crimes against property: *breach of trust by defrauding creditors (art. 239); insurance fraud (art. 245); diversion of public tenders (art. 246); financial exploitation of a vulnerable person (art. 247); carrying out financial transactions in a fraudulent manner (art.250); accepting financial transactions in a fraudulent manner (art.251);*

iii. Offenses against the justice act: *disloyal legal assistance and representation (art. 284); obstruction of justice (art.271); influencing statements relied upon in court (art. 272); revenge for helping the justice (art. 274); undermining the interests of justice (art. 277); exercising pressure over the justice system (art. 276);*

iv. Profession related crimes: *misuse of professional position for sexual purposes (art. 299); disclosure of secret or confidential information (art. 304).*

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