Summary of the Doctoral Thesis
Special Causes of Impunity and Special Causes of Reduced Punishment
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This doctoral thesis approaches two institutions of utmost importance among the legal instruments which allow expressing the legislator's criminal policy options in the national criminal law of Romania: impunity causes and causes of reduced punishment (*lato sensu*). Their impact on the concrete configuration of the manner in which the criminal liability of the offender produces actual effects (of certain intensity) upon him/her fully justifies an in-depth research of their existence, forms, legal basis, and legal manifestation.

In the present state of development of the law, as it appears in most contemporary national legislations, the social defence reaction regulated by the state through the rules of criminal law is known to be neither founded, nor formally justified solely by retributive explanations. Punishment as an end in itself, a form of constraint imposed only as deserved reparation for the harm caused by the offense, has ceased to be a satisfactory formula in most modern, state organized societies, at least in the official discourse.

The current reference penal systems are increasingly accepting the interference of thought systems focused on an utilitarian view, without allowing them to monopolize the debate framework, because the painful memory of disturbing excesses found in the history of the criminal law promoted by some political systems with strong ideological foundations in (diverted) utilitarian explanations (such as communism or fascism/Nazism) is still alive in the collective memory of humanity. Although more theoretically capable to allow the development of a theory of impunity and reduced punishment, the utilitarian substantiations incorporate the (often capitalized) potentiality of being developed exclusively or predominantly in a direction called in the doctrine *ex parte principis* (that is, generically, in the interest of the governing authority), not in a direction *ex parte populi* (that is, in the interest of the recipients of criminal law).

Lessons of the past have indicated that relative notions open to potentially manipulative ideological techniques, such as the concepts of *social usefulness, public interest, collective necessity* etc., tend to end up being incorporated into overall policy views (including the penal one) that disproportionately maximize the impact of the idea of maximum possible welfare for the individuals constituting a majority (in this case: abiding recipients of the criminal law), downplaying the attention that should be given to implementing measures ensuring a minimal negative impact on the delinquent minority. Under these conditions, the main coordinates

characterizing the causes of impunity and reduced punishment, respectively, tend to be dimmed to extinction, as in the case of absolute theories.

Therefore, the theories on punishment that currently have the highest potential, both theoretically and in terms of the legislators' philosophical and legal options, can be said to be (mixed) eclectic theories in which the substantiation of the penalty is accepted in considering both the idea of retribution, and that of usefulness. This state of affairs induces that, in the exercise of that prerogative (or power) of the state generally known as the *jus puniendi*, two sets of limits should be allowed, compliance with which is equally required: on the one hand, a limitation derived from the concept of guilt, related to the retributive idea of *deserved punishment*; on the other hand, a limitation extracted from the utilitarian dimension of *necessary punishment*.

Summarizing, we can say that (at least) in the modern criminal law characteristic of a normative system belonging to a society organized based on a state model true to the concept of *lawful democratic state*, the authority's sovereign power to punish is reasonably allowed to be thus limited so that no punishment is manifestly disproportionate to the offense and the danger posed by the person who committed it, and so that no penalty is imposed beyond its necessity and its legitimate usefulness. At this point of the modern view on the penal system and the fundamental institution of punishment (or, more broadly, criminal sanction), the analysis of (among others) the causes of impunity, and respectively, reduced (*lato sensu*) punishment becomes necessary.

Based on an evolutionary, historical analysis of the (mainly national) criminal laws and as a result of brief references to comparative law – the thesis found that there is a continuous process of decanting some causes that have a total or partial extinctive effect on the fundamental institutions of criminal law (generally recognized in most Romanian specialized literature – and not only – to be represented by: *crime*, *criminal liability* and *punishment* – or, more broadly, *criminal sanctions*). Thus, for a long period of time (throughout the transformations that gradually led to the emergence of the current criminal law system), there was no effective and accurate discrimination of the various categories of causes involving – in criminal law – a final and common effect of exempting the person who committed a punishable offense of the obligation to execute the concrete punishment corresponding to the abstract sanction prescribed for the violation of the law. In an evolutionary trend, this original impartibility has given way to more emphatic and useful separations, into different categories of causes, of the institutions which, discriminately from the

common and final effect that brings them together, also present particular characteristics that can differentiate them into entities whose autonomy requires recognition, affirmation and specific regulation.

Therefore, at present, the Romanian criminal law contains a separate hierarchy of causes that exclude (remove) the offense, causes that remove criminal liability, causes that remove the serving of a sentence, and respectively, causes that modify the sentence, including causes of reduced (lessened, mitigated) punishment. This regulatory stage is, certainly, an improvement compared to earlier stages (past criminal laws of 1864, and 1936, which knew no such causes or only provided a partial classification thereof). Conversely, the thesis argued that the separation process thus outlined is not yet completed, as there are new dimensions which can be and are to be distinguished and individualized.

Thus, we found that most of the current Romanian doctrine regards the institution of impunity causes as a particular form of expression of the causes for removing criminal liability (special causes for removing criminal liability), where most related elements tend to identify this category of causes (impunity) as institutions with extinctive effect on the fundamental institution of punishment and not on that of criminal liability. As a result, we proposed *de lege ferenda*, that the institution of impunity causes should be expressly regulated as a distinct category from that of causes for removing criminal liability, insisting on emphasizing this solution at the level of the rules of criminal procedure. In this regard, it should be noted that, at present, retaining the incidence of a source of impunity determines an outcome of the criminal trial similar to the corresponding solution in the case of the verification of a cause for removing criminal liability. The proposal insists on highlighting the distinctions that must be allowed between the two categories of causes, in terms of substantive criminal law, through the criminal procedural solution implied by retaining each of them, so that when applying an impunity provision, criminal proceedings should be conducted according to the usual procedure, followed by sentencing (if appropriate), with the particularity of the court's impossibility to impose a punishment. This distinction formally underlined as regards the causes for removing criminal responsibility would allow a clear affirmation of the existence of the crime and its undeniable imputation on the person proven to have committed it, at fault, overthrowing the constitutional presumption of innocence. This should be able to allow the production of a plurality of consequences (including non-criminal consequences) of committing the offense, whereas the granted legal privilege, of impunity, remains unaffected, because of the existence of an absolute obstacle in the materialization of criminal liability, in its

main consequence: setting and enforcing a sentence (generally speaking, a criminal sanction imposed as a result of criminal liability).

As regards the institution of special causes for reduced (*lato sensu*) punishments, after a detailed analysis (like in the case of impunity sources covered by existing legislation), we noted that there are several alternative ways to express and enforce the legislator's wish to reduce the legal sanction for certain people who have committed certain crimes. Thus, where necessary, one can build a case proper for reduced punishment (specifying, usually as a fraction or percentage of the penalty provided by law for an offense, the degree of its reduction), or one can argue for a mitigated form of that crime (starting from basic offense, whose content is preserved in the construction of a less severe variant, by adding an element that diminished the dangerousness of the offense or of the offender), or establish an independent, autonomous offense, which is actually a lower gravity form of another, separately regulated offense.

Although each of these methods for reducing (*lato sensu*) the punishment ultimately leads to the expression of a unitary will of the legislator (to lower the intensity of the repressive state response to the commission of an offense), we observed that their effects present differences, from the point of view of other institutions of criminal law, such as the occasional plurality of offenders (criminal participation). For this reason, the thesis emphasizes the need for undertaking an exhaustive doctrinal study on in this area, to detect and propose to the legislator clear and firm criteria that would allow understanding the inherent differences of the various choices to be made from among the indicated options. In this way, the current alternatives to obtain a reduced punishment may be restricted, and the accuracy and consistency of legislation could be potentially improved as a result of necessary theoretical clarification.

In terms of scope, the thesis analyzed the institutions proposed for study having regard to the provisions of: the current Romanian Criminal Code (Law No. 15/1968); special criminal or non-criminal laws, also including relevant criminal provisions in the field that were in effect at the time of the preparation of the thesis; the new Romanian Criminal Code (Law No. 286/2009), which was yet to enter in force when the paper was written. As regards the temporal dimension of the study, it considered the legislative development until 12.11.2012 inclusive.