Reflections regarding the Intermediary Offence Plurality

ELENA GIORGIANA SIMIONESCU
Department of Juridical Sciences
Faculty of International Relations, Law and Administrative Sciences
“Constantin Brâncuși” University of Târgu-Jiu
24, Victoriei Street, Târgu-Jiu, Gorj
Romania
giorgiana_simionescu@yahoo.com
www.utgjiu.ro

Abstract: The intermediary offence plurality regards an intermediary situation of the two main types of the offence plurality, the multiple offences and the second offence, and it assigns the situation when a person, after being permanently sentenced for an offence, commits a new offence, before the beginning of the punishment execution, during the punishment execution or in the escape status, and the legal conditions regarding the second offence status are not accomplished.

Key-Words: offence plurality, intermediary plurality, offence terms, second offence status, guilt, escape status, sanctioning treatment

1. Considerations regarding the legal regulation of the intermediary offence plurality

In order to correctly apply the criminal norms and to indirectly provide the guarantee of the legacy principle, the Romanian criminal law spotlights the legislator’s tendency to normatively regulate numerous juridical-criminal institutions, among which there is the intermediary plurality [1]. In this sense, the offence plurality [2] knows the third type, namely the intermediary plurality, next to the multiple offences and the second offence. This is visible by the reformulation way of the marginal name of art. 44 of the new Criminal Code, in “Intermediary Plurality” of the “Punishment when there is no second offence” [3].

In the conception of the new Criminal Code, the intermediary plurality becomes thus an institution having its own juridical figure [4], contested by some authors [5] and accepted by others [6].

The current Criminal Code stipulates no such institution. It was stated that the name of intermediary plurality is used in a didactic sense, not as a technical term consecrated in the criminal law. The intermediary plurality expression is kept because of didactic reasons, in a conventional way, and for better illustrating the special situation regulated by art. 40 of the current Criminal Code.

Considering these ideas, the specialty literature denied the existence of a plurality placed between the multiple offences and the second offence. The so-called intermediary plurality is only a post-sentence second offence de facto, not de jure, a post-sentence second offence in a special situation [7], because even if it objectively presents its essential features, it does not accomplish the legal conditions for the existence of the post-sentence second offence. However, for distinguishing the situation of art. 40 of the current Criminal Code from the proper post-sentence second offence (stipulated by art. 37 paragraph 1 letter a of the current Criminal Code and art. 40 index 2 paragraph 1 letter a of the current Criminal Code), it was stated that it is rather appropriated to be treated as a special situation [8], not as an intermediary plurality, a fact that would contradict the enumeration of the offence plurality types of art. 32 of the valid Criminal Code [9].

In the specialty literature, the plurality is called intermediary, meaning that it regards an intermediary situation of the two main types of offence plurality, the multiple offences and the second offence, an opinion which we totally agree with. The case is not considered as a multiplicity because a permanent sentence was interposed for one of the offences committed by the same person and the second offence conditions are not
accomplished because the conditions required for its existence are absent.

The French criminal doctrine created, in relatively similar conditions, a new juridical situation called reiteration [10]. This supposes for the first offence for which a permanent sentence was pronounced, followed by the committing of another offence in conditions excluding the application of the second offence to be.

According to the Romanian criminal doctrine and to the will of the legislator of the new Criminal Code, the marginal name is accepted by several authors [11].

2. The intermediary plurality concept
According to the stipulations of art. 40 paragraph 1 of the Current Criminal Code, the intermediary plurality, in case of the natural person, represents the situation when a person commits a new offence, after the permanent sentence, before the start of the punishment execution, during its execution or in the escape status and the conditions stipulated for the second offence status are not accomplished [12], as it is sanctioned according to the rules applicable to the multiple offences.

The new criminal law took over the regulation from the valid law, in case of the natural person, of the intermediary plurality, as a type of multiple offences, as representing the situation when a person commits a new offence, after the permanent staying of a sentencing decision and until the punishment is executed or considered as executed and the conditions stipulated for the second offence status are not accomplished [13] (art. 44 paragraph 1 of the new Criminal Code).

3. The existence conditions of intermediary plurality
There is intermediary plurality if the following conditions are accomplished: the permanent sentence for one or several offences should regard the 6 month imprisonment punishment or a shorter one or the fine [14]; the permanent sentence should be pronounced for one or several offences committed out of guilt [15]; the punishment stipulated by the law for the new offence should be the fine or the imprisonment for less than a year; the new offence should be committed out of guilt.

The non-accomplishment of the conditions stipulated for the post-sentence second offence, both regarding the first term and regarding the second one, leads to the accomplishment of the intermediary plurality [16]. For example, since the punishment prescribed by law for the offense of threat, provided and punishable under art. 193 of the current Criminal Code. is from three months to one year or fine punishable under art. 37 point b current Criminal Code, as to be in the presence of recurrence necessary condition that the convicted person to commit a crime again intentionally for which the law prescribes imprisonment exceeding one year [17].

4. The sanctioning treatment of intermediary plurality
According to the stipulations of art. 40 paragraph 1 of the current Criminal Code and to the stipulations of art. 44 paragraph 2 of the new Criminal Code by means of which the sanctioning system of offence plurality is established, in case of the natural person, the punishment for the new offence is cumulated with the punishment which was permanently pronounced according to the rules of the multiple offences, applying mutatis mutandi.

The Romanian Criminal Code consecrated the sanctioning system of the intermediary plurality by assimilating the sanctioning rules of the multiple offences, considering that, even if the intermediary plurality cannot be repressed by the sanctioning system of the second offence, which is the most severe sanctioning system of the multiple offences, it may and should be submitted at least to the sanctioning system of the multiple offences which it is the closest to, as an abstract degree of social danger of the committed acts and as the offender’s anti-sociability.

The reason for which the legislator considers that the intermediary offence plurality should be submitted to the criminal treatment of the multiple offences is that it is the most equitable solution in such a situation [18], given the proximity of this institution and of the multiple offences. The speciality literature [19] showed that, in case of this plurality, for not creating for the offenders a situation similar to the recidivists’ one, the sanction is established according to the multiple offences. This means that a punishment is established for the new offence which is cumulated with the previous punishment, even if it was executed partially or considered as executed. A part of the executed punishment is deduced from the resulting punishment [20]. If the new offence was committed in an escape status, the punishment for escape is
According to the stipulations of art. 40 paragraph 2 of the current Criminal Code, the rules of the multiple offences are also applied to the judicial entity committing an intermediary plurality and which does not accomplish the conditions of the post-sentence second offence regulated by art. 40 index 2 paragraph 1 letter a of the current Criminal Code. Regarding the regulation of the sanctioning system applicable to the judicial entity committing an intermediary plurality and which does not accomplish the conditions of the second offence regulated by art. 146 paragraph 1 of the new Criminal Code, the legislator was not explicit, neglecting thus this aspect. The provisions of art. 147 new criminal code only shows that legal person and can alleviate or aggravate criminal liability under certain conditions or incidental causes (except the state of relapse, the effects of which are covered separately in art. 147 new Criminal Code). In the report they make application of the fine, alternative sanctions and possible safety measures. I agree with the proposal made for the purposes of inserting a new paragraph to art. 146 new Criminal Code, which would provide that "the provisions of art. 44 shall apply accordingly" [22].

5. The cases excluding the intermediary plurality

Of course, the intermediary plurality – which is sanctioned in our legislative system, according to the rules of the multiple offences – even if it accomplishes neither the juridical status of the multiple offences, nor the one of the second offence, by its antisocial aspect, is placed under the report of gravity in an area where, even if it regards the reiteration of less harmful offensive behaviours, contains a gravity which cannot be mainly ignored and which is placed at least at the level of the social danger of the multiple offences.

However, like any offence plurality that is to be submitted, concomitantly or separately, to the sanctioning, according to certain rules supposing the combination of the individual punishments according to the rules of the multiple offences (with the potential subsequent de-combinations and combinations) and the intermediary plurality can be excluded or, where appropriate, restrained (in case of a plurality larger than the one composed of the reiteration of only one new offence) in the following situations: when, for one of the offences regarding both the first term and the second one, there is a cause removing the criminal feature, such as des-incrimination; when, for one of the offences in
question, there is a legal cause stopping the development or the continuation of the criminal process (reconciliation of the parties, prescription, the lack of the subsequent complaint etc.); when, for one of the offences in question, a legal cause is established and it stops the offence constitution (the self-defense, the constraint, the minority etc.); when, for one of the acts, a general or special impunity cause interferes; when the prescription of executing the applied punishment by the previous sentence or the pardon interferes; when, for one of the new offences, the replacement of the criminal responsibility is stipulated.

Any of the causes mentioned above or any other cause having the same nature attract the impossibility to constitute the intermediary plurality and its sanctioning, as they stop the offender’s sending to judgement or judgement for any of the reiterated offences or as they remove criminality, the criminal responsibility or the effects of the previous sentence.

References:


[9] According to the stipulations of art. 32 of the current Criminal Code, “the offence plurality constitutes, where appropriate, either multiple offences or a second offence”.


[21] Ibidem

[22] Gh. Ivan, op. cit., p. 472