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The Conflict of Criminal Norms

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Abstract: In the current context of Romanian criminal law, characterized by a constant expansion of incrimination norms and a diversification of legislative techniques used to protect social values, the institution of the conflict of criminal norms becomes an indispensable tool for the correct interpretation and application of the law. The apparent overlap of several incrimination texts on the same conduct generates significant difficulties in judicial practice, and in the absence of an express regulation in the Criminal Code, the intervention of the doctrine is required to clarify the criteria for selecting the applicable norm. In this context, the fundamental works of cosacrate authors such as Vintilă Dongoroz, George Antoniu or Mihail Udrioiu provide essential theoretical references for understanding the mechanisms for resolving the competition of norms, each of these authors contributing, in a distinct way, to the definition of the concepts of specialty, subsidiarity and consummation. This article proposes a broad analysis of the institution, starting from the general concepts and conditions of existence, continuing with the forms of competition of norms, integrated in the vision of each author, and ending with the practical implications, analysis of legal texts, jurisprudential examples and relevant conclusions for the unitary application of criminal law and the application of the *non bis in idem* principle.

Keywords: concurrence of norms; specialty; subsidiarity; consumption; criminal law

1. Introduction

The conflict of criminal norms is the fundamental institution of criminal law, having the role of clearly and correctly delimiting the scope of applicability of the incriminating norms when a single act seems to fall simultaneously under several legal texts. This institution does not only concern sanctioning, but the exact legal qualification of the act, avoiding the cumulative application of norms that, in reality, regulate the same conduct.

The essence of the institution consists in eliminating artificial overlaps between norms and in selecting the text that most faithfully expresses the socially dangerous content of the act. This normative overlap, which may result either from imperfect legislative technique or from the legislator's desire to provide the broadest possible protection for social values, generates significant difficulties in judicial practice, with the courts having to determine which of the incident texts most faithfully expresses the legal significance of the analyzed conduct.

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In the specialized literature, the competition of norms is seen as a mandatory preliminary step in the legal qualification process. The contributions of authors such as Vintilă Dongoroz, George Antoniu or Mihail Udrioiu have outlined theoretical and practical benchmarks that allow for the correct understanding of this institution.

In this article, we aim to analyze the conflict of criminal norms starting from the concepts and theories formulated in the specialized literature, to identify the conditions of existence of the institution, to present the doctrinal and jurisprudential criteria for resolution and, last but not least, to examine in detail the contributions of the three Romanian authors who have decisively influenced the evolution of this matter. At the same time, we will integrate perspectives from comparative law, since European systems have developed relevant solutions for the delimitation of competing norms, solutions that can contribute to the clarification of some insufficiently defined aspects in our law.

2. Concept, Conditions of Existence and Practical Implications of the Competition of Criminal Norms

The conflict of criminal norms is defined in Romanian doctrine as the situation in which two or more incriminating norms, simultaneously in force, appear to apply to the same material fact, but only one of them can be applied in the concrete case, the others being excluded through specific legal mechanisms. This definition emphasizes the apparent nature of the competition, since the overlap of norms is not real, but only the result of an initial impression, which is clarified by applying the criteria of specialty, subsidiarity or consummation.

For the existence of the competition of norms, the doctrine establishes several essential conditions. First, there must be a single material fact, in the sense of a single external manifestation, which can take the form of an action or inaction, accompanied by its consequences. Second, there must be two or more criminal norms that, in the abstract, could cover the same act, protecting the same social value. Third, the norms must be in force simultaneously, since, otherwise, the problem is not one of competition, but of the application of the criminal law over time. Fourth, the norms must be susceptible to overlap, that is, to cover, at least partially, the same conduct. Finally, the competition of norms assumes that, in the end, a single offense will be retained, corresponding to the norm that most faithfully expresses the legal significance of the act.

The practical implications of the competition of norms are significant, since its correct resolution determines the legal classification, the applicable sanction, the jurisdiction of the judicial bodies, the limitation period, the need for a prior complaint and the application of the *non bis in idem principle*. In jurisprudence, the courts have consistently held that hitting is absorbed by robbery, that destruction as a means is absorbed by theft when it serves to access the stolen property, and the threat is absorbed by blackmail when it constitutes the means of coercing the victim.

3. Concepts and Forms of the Competition of Norms in the Vision of the Doctrine

In criminal doctrine, the competition of norms is resolved by applying three fundamental criteria: specialty, subsidiarity and consummation. Although these criteria are universally recognized, each author has interpreted them differently, lending them a unique nuance.

3.1. Specialty

Speciality occurs when a special norm contains additional elements to the general norm. Dongoroz considers specialty to be the criterion with the greatest legal force, because the special norm more accurately expresses the gravity and particularities of the act (Dongoroz, 1971, p. 312). George Antoniu emphasizes that the application of the special norm excludes any additional sanctioning for common elements (Antoniou, 2015, p. 221). Mihail Udriou provides numerous jurisprudential examples, which we will return to later, which show how the courts apply specialty in practice (Udriou, 2023, p. 145).

3.2. Subsidiarity

Subsidiarity applies when the subsidiary norm intervenes only if the conditions of the main norm are not met. Prof. Vintila Dongoroz distinguishes between express and implicit subsidiarity (Dongoroz, 1972, p. 198). Prof. George Antoniu recommends the restrictive interpretation of subsidiarity, in order to avoid the unjustified expansion of the scope of subsidiary norms (Antoniou, 2016, p. 304). Prof. Mihail Udriou highlights the importance of analyzing the purpose of the act to determine the applicability of the subsidiary norm (Udriou, 2023, p. 152).

3.3. Consumption

Consummation occurs when a -mean crime is absorbed by the end crime. Vintila Dongoroz provides classic examples, such as theft that consumes the destruction of -the means or robbery that consumes the hitting (Dongoroz, 1970, p. 411). George Antoniu draws attention to the prudent application of consummation, in order to avoid the absorption of autonomous crimes (Antoniou, 2015, p. 229). Mihail Udriou presents numerous jurisprudential examples, such as the absorption of threat by blackmail or of hitting by robbery (Udriou, 2023, p. 160).

4. A Doctrinal Analysis, Examples and Interpretation of Legal Texts

In Romanian criminal literature, the institution of the competition of norms has been constantly analyzed, but not always systematically, and among the authors who have contributed decisively to the clarification of this matter, we can highlight – from our point of view – the already mentioned professors Vintilă Dongoroz, George Antoniu and Mihail Udriou, each of whom approached the institution from their own perspective, influenced both by the legislative context of the era and by the specific doctrinal orientation. The analysis of their contributions allows us to understand the evolution of the institution and the way in which it was adapted to the new realities of criminal law.

In the view of Professor Vintilă Dongoroz, the competition of norms represents a problem of legal logic, a preliminary stage to legal classification, intended to clarify the relationships between the incriminating texts before discussing the existence of a competition of offenses. In the *Theoretical Explanations of the Romanian Criminal Code*, Vintila Dongoroz insists on the fact that the apparent overlap of norms should not be confused with the plurality of offenses, since, in reality, only one of the norms expresses the true legal significance of the act in which it falls. He analyzes in detail the forms of the competition of norms, showing that the specialty intervenes when the special norm contains additional elements compared to the general norm, which justifies its application with absolute priority. In this sense, Vintila Dongoroz offers examples such as the relationship between the crime of domestic violence and the crime of assault,

showing that the former, through the element of the family relationship, expresses a distinct gravity and must be applied whenever its conditions are met.

Subsidiarity is analyzed by Vintila Dongoroz as a relationship in which the subsidiary norm intervenes only in the absence of the conditions required by the main norm, and consummation is presented as an absorption of the means-crime by the purpose-crime, when the former represents a necessary stage for the accomplishment of the latter. In this sense, Dongoroz shows that theft can consume destruction when it is necessary for access to the stolen property, and robbery consumes hitting, since violence is an indispensable means for the accomplishment of the theft. His analysis is complemented by numerous jurisprudential examples, which confirm the application of these criteria in judicial practice.

George Antoniu, in *Explanations of the New Criminal Code*, resumes and adapts the classical theory of the competition of norms to the requirements of the new Criminal Code, insisting on the fact that the analysis of the competition of norms represents a mandatory preliminary stage in the process of legal qualification. George Antoniu pays special attention to the relationship between apparent competition and the principle of *non bis in idem*, showing that the correct application of the criteria of specialty, subsidiarity and consummation prevents multiple sanctioning of the same conduct. He analyzes numerous situations of normative conflict, insisting on the fact that the special norm not only particularizes the general norm, but also restricts its scope, and consummation is justified by the instrumental function of the absorbed act.

George Antoniu provides relevant examples, such as the absorption of the blow by robbery or the absorption of the destruction-means by theft, when this is necessary for the theft of the good. In his view, subsidiarity must be interpreted restrictively, in order to avoid the unjustified expansion of the scope of subsidiary norms, and consummation must be applied with caution, in order to avoid the absorption of autonomous crimes that express distinct social values. His analysis is complemented by the interpretation of legal texts, such as art. 199 C.pen., which represents a special norm compared to art. 193 C.pen., or art. 206 C.pen., which is a subsidiary norm compared to crimes such as blackmail or robbery.

Mihail Udroi, in his works *Criminal law. General part* and *Criminal law fact sheets*, proposes a modern and systematic approach to the competition of norms, defining it as a mechanism for excluding incompatible norms, intended to ensure the unitary application of criminal law. Udroi maintains the classic tripartite structure, but explains it through numerous jurisprudential examples, which gives the institution an essential practical dimension. He shows that the specialty intervenes when the special norm contains additional elements compared to the general norm, subsidiarity can be explicit or implicit, and consummation operates when one crime constitutes a necessary means or preparatory phase for another.

Udroi offers examples such as the absorption of threat by blackmail, the absorption of hitting by robbery or the absorption of destruction by theft, showing that the courts have consistently retained these relationships in judicial practice. His analysis is complemented by the interpretation of legal texts, such as art. 233–234 of the Penal Code, which consumes hitting and threatening, or art. 228–229 of the Penal Code, which consumes destruction when it is necessary for access to the stolen property.

5. Comparative Synthesis

Comparing the conceptions of the three authors, it is observed that, although each of them belongs to a different era and legal paradigm, they all converge on the idea that specialty, subsidiarity and

consummation represent the fundamental criteria for resolving the competition of norms. Vintila Dongoroz provides the classical theoretical foundation, George Antoniu adapts it to the requirements of the new Criminal Code and correlates it with the modern principles of European criminal law, and Mihail Udroiș transposes it into a form accessible to practitioners, through examples and jurisprudential solutions.

If Dongoroz emphasizes the legal logic of the institution, Antoniu insists on its role in preventing double jeopardy, and Udroiș highlights the practical application and clarity of the criteria. All three emphasize the importance of respecting the *non bis in idem principle* and the need to apply a single norm, which most faithfully expresses the legal significance of the act.

6. Conclusions

The conflict of criminal norms represents an essential institution for the correct application of criminal law, as it allows the identification of the applicable norm in situations where a single act seems to be found simultaneously in the content of several incriminating texts. The doctrinal and jurisprudential analysis highlights the fact that specialty, subsidiarity and consummation represent the fundamental criteria for resolving the competition of norms, and their correct application ensures compliance with the *non bis in idem principle*, avoiding artificial overlaps of incriminations and guaranteeing a correct and unitary legal framework.

The contributions of Vintilă Dongoroz, George Antoniu and Mihail Udroiș offer a complete, coherent conceptual framework adapted to both theoretical and practical requirements, and the comparative analysis of their conceptions allows us to understand the evolution of the institution and the way in which it was adapted to the new realities of criminal law.

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