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STUDY REGARDING THE LEGAL OR JUDICIAL REHABILITATION OF PERSONS ENGAGED IN ECONOMIC ACTIVITIES

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Abstract

The consequences derived from any sentence pronounced for a crime committed by a major person pertain to the constitutional law, administrative law, civil law, family law, labour law or commercial law and consist in legal effects of criminal or extra-criminal nature, perpetual or long term ones which result from the fact of the criminal conviction itself and they place the convict in a disadvantageous situation.

Having a legal tool character by which the legal consequences resulting from a conviction cease or, in a larger sense, a legal tool character by which the ex-convicts are legally reintegrated in the society, its effects are the same.

Keywords: *legal rehabilitation; judicial rehabilitation; disqualification; incapacity; Criminal Code.*

JEL Classification: K_{40}

Introduction

The effects of the legal or judicial rehabilitation refer to the termination of the disqualifications and interdictions, as well as the incapacity resulted from the conviction.

Rehabilitation does not represent the obligation to reintegrate in the function previously occupied by the convict, but only the fact that he may occupy a similar function. Rehabilitation does not have an effect on the safety measures, except for the measures to be in certain locations [Bică et al., 2016].

If there are no disqualifications, interdictions or incapacities resulted from the conviction, rehabilitation would not exist because it would have no actual object [Mândru, 1996].

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ICCS
Issue 1/2018

By 'disqualification' we understand a person's deprivation of certain civil or political rights as a result of a conviction for committing certain crimes. If these crimes are related to his profession or economic activity, this will generate a series of interdictions and the loss of political, civil and professional rights.

In the criminal law and procedure dictionary, the term "disqualification" means a consequence of legal character, permanent on a long term, of criminal or extra-criminal nature, consisting in the loss of certain rights and the restriction of the capacity of exercise. The disqualification results from the fact that a person was subject to a conviction [Antoniu & Bulai, 2011].

The 'incapacity' consists in the situation of a person who does not have the legal capacity to enjoy certain rights [DEX, 2009].

By 'interdiction' we designate the legal or judicial provision which forbids certain legal acts or concluding legal documents.

The delimitation between the three categories of consequences of the conviction is sometimes pretty difficult, since one and the same consequence of the conviction can be part of any of them.

The consequences of the conviction

As mentioned in the criminal doctrine [Mândru, 1996], the use of the three notions by the lawmaker in art. 169 paragraph (1) of the Criminal Code is due to his intention to include, in an exhaustive formulation, all the consequences of the conviction, which mainly consist of:

a. *The existence of a criminal record*. The most significant legal effect of the criminal record is that it may be the foundation of relapse (when the conviction is jail time of more than 1 year for a deliberate or accidental offense) or the intermediary plurality, or it triggers the decision of not giving up the execution of the punishment [art. 80 paragraph (2),Criminal Code] or the postponement of the execution of the punishment [art. 83 paragraph (1) letter b), Criminal Code] or suspension of the execution of the punishment under supervision [art. 91 paragraph (1) letter b), Criminal Code]. Even if not all the legal conditions of relapse are met, the criminal record will represent a general criterion of individualization of the punishment [art. 74 paragraph (1) letter e), Criminal Code].

b. *The interdiction to occupy functions*. Thus, according to Law no. 304/2004 regarding the judicial organization, modified by Law no. 247/2005, a person with criminal record cannot be appointed a magistrate; according to the Government Ordinance no. 65 from 19 August 1994, republished, regarding the organization of the activity of accounting expertise and authorized accountants, modified by Laws

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no. 186/1999 and no. 609/2003, art. 4, a person who was subject of a conviction cannot be an expert accountant which, according to the current legislation, forbids the right to manage and administer companies; according to Law no. 66 from 7 October 1993, the law of the management contract, art. 5, natural entities who were subject of definitive criminal convictions cannot occupy a managerial position, making them incompatible with this function, or were punished for violating the legal dispositions in terms of fiscal matter, in which purpose they will provide, upon selection, a proof issued by the financial institution; under the Law no. 22/1969, with the last modifications proposed by Law no. 187/2012, art. 4, a person convicted for committing one of the following offences cannot be an administrator: a) intentional offences against the patrimony; b) corruption and job-related offences; c) fraud offences; d) offences mentioned by Law no. 31/1990 regarding the companies, republished with the subsequent modifications and completions; e) offences provided by Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the enforcement of certain preventative and control measures against the funding of terrorism acts, republished; f) offences provided by Law no. 241/2005 for the prevention and fight against tax evasion, with the subsequent modifications; g) offences provided by the current law.

c. *The interdiction to perform certain jobs*. For instance, Law no. 51/1995 for the organization and practice of the lawyer profession, republished, provides in art. 13: "The following persons shall be deemed unworthy of being a lawyer: a) a person having received a final sentence to prison by court decree, for an intentional crime, which is likely to harm professional prestige; b) a person having committed abuses that have violated fundamental human rights and freedoms, as established by court decree; c) a person who has received a sentence prohibiting him/her from exercising the lawyer's profession, for a time duration set by a court or disciplinary decree; d) a fraudulently bankrupt person, even rehabilitated". The Law on public notaries and notarial activity no. 36/1995 republished in 2013 provides in art. 22 that a public notary can only be a person with no criminal records resulted from committing a job-related offence or deliberately committing other offences; Law no. 26/1993 regarding the establishment, organization and functioning of the Community Police, modified by Law no. 371/2004, a person who was convicted for deliberate crimes cannot be hired on a public guard position.

d. *The interdiction to have a gun permit or authorization to own or carry any type of guns* [Bălășescu, 2015]. Law no. 295/2004 regarding the regime of guns and munitions forbids the persons who, due to criminal record, represent a danger for the public order, state safety or the life and physical integrity of the persons, to own, carry and use guns and munitions.

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ICCS
Issue 1/2018

e. *the interdiction to be elected*. According to Law no. 70/1991 regarding local elections, modified by Law no. 67/2004, the persons who were convicted through definitive court decisions for abuse in public, legal or administrative functions, for the violation of human rights or for other deliberate crimes, if they were not rehabilitated.

f. *The interdiction to be a tutor.* The Civil Code provides under art. 113 paragraph (1) letters b) and c) that: "The following persons cannot be a tutor: b) the person disqualified from the exercise of the parenting rights or declared incapable of being a tutor; c) the one who was retired the exercise of certain civil rights, either under the law or through court decision, as well as the one with bad behaviour retained as such by a court instance".

g. *The interdiction on setting up of a new business.* According to Law no. 31/1990 regarding commercial companies with the latest modifications performed through Law no. 187/2012 art. 6 paragraph (2) "there cannot be founders the persons who, according to the law, are incapable or were convicted for crimes against the patrimony by disobedience of trust, offences of corruption, embezzlement, fake in documents, tax evasion, offences provided by Law no. 656/2002 for the prevention and fight against the money laundering, as well as setting up some measures to prevent and control the funding of terrorist acts, republished, or for the offences provide by the current law". The extension of the effects of rehabilitation is directly determined by the area of disqualifications, interdictions and incapacities that result from the conviction. In a repressive, wise system that works according to the finalities of the repressive reaction, no sanction or measure or consequence must be irrevocable or irreducible. The continuous focus point of the fight against criminality, on a legal plan, must be the creation of forces that would stimulate, encourage, provoke the will of the convict to be a better person; all this preoccupation however becomes void when the convict knows that, at the end of his efforts, there is a continuous decline characterized by those traces that will never disappear, which are the consequences of the conviction. [Dongoroz, 2000]

The removal of the disqualifications, incapacities and interdictions can take place in two single ways; or putting a deadline to these consequences, namely making them temporary, or creating a way to make them disappear. The latter solution was preferred, because it offers more possibilities to apply it and thus it led to creating and regulating the institution of rehabilitation.

The rehabilitation, both the legal and judicial one, does not make the conviction disappear; it remains a judicial reality, which can only be disbanded by admission of an extraordinary legal appeal, which would recognize the innocence of the convict.

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The rehabilitation makes this reality stop generating disqualifications, interdictions and incapacities, which represent rights restrictive measures, determined by the existences of a definitive conviction [Dongoroz et al., 1972]. The effects of rehabilitation are limited to the privative or restrictive consequences (disqualifications, interdictions, incapacities), as well as to the eventual criminal nature consequences (criminal record).

According to the dispositions of art. 6, Law no. 187/2012, the disqualifications, interdictions and incapacities resulting from a conviction pronounced based on the old law produce their effects until the legal rehabilitation intervenes or the judicial rehabilitation is decided, under the condition that the offence for which the conviction was pronounced is provided in the new criminal law as well and if the disqualifications, interdictions and incapacities are provided by the law.

Limits to the effects of judicial or judicial rehabilitation

Art. 169 paragraph (2) from the Criminal Code provides that *rehabilitation does not result in the obligation to reintegrate the convict into the post from which he / she was removed after the conviction or to return his / her lost military rank.*

According to these dispositions, replacing the ex-convict, through rehabilitation, in the fullness of his political, social and economic rights that he had prior to the conviction does not mean that he will be appointed back in the function he had prior to the conviction or that he would regain the military rank he used to have because *rehabilitation is no restitutio in integrum* [Pascu et al., 2009]. Still, both the function previously occupied and the rank lost through conviction may be gained back by the ex-convict through the regular ways, because the law does not forbid the access to them, but only their automatic regain, as effect of the rehabilitation. This limitation of the effects comes to protect the stability of the functions occupied meanwhile by other persons, under the conditions of the law, the ex-convict not having any rights to have the function he lost subsequent to committing the offence and being convicted reserved [Hotca, 2008]. Subsequently, the persons who currently occupy those positions cannot be removed from their functions in order to reintegrate the ex-convict which may still get to occupy such a position following the legal ways, for instance through contest.

Based on art. 169 paragraph (3) from the Criminal Code, rehabilitation does not have effects on the safety measures taken in regards to the convict. This limitation of the effects of legal and judicial rehabilitation is justified, taking into account the fact that the safety measures, through their nature, are sanctions that mainly have a preventative character and must last as long as there is a state of danger, which triggered their implementation.

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Rehabilitation does not put an end to any obligation regarding civil compensations and the trial costs; on the contrary, it stimulates their fulfilment. Although the law does not expressly state, the person who lost the rights to an inheritance subsequent to conviction will not regain this rights through rehabilitation exactly because rehabilitation does not have effects regarding the civil obligations of the ex-convict.

Conclusions

The effects of legal or judicial rehabilitation are regulated in art. 169 from the new Criminal Code. Unlike the previous Criminal Code which places the disposals regarding the effects of rehabilitation in the first text of regulations which make up this institution, in the new Criminal Code these disposals are placed after the ones which establish the conditions of existence of rehabilitation, according to their type: legal or judicial.

The legislative technical solution, adopted by the new Criminal Code, is justified, since it is logical to impose first the regulation of the conditions for the existence of legal rehabilitation and the judicial rehabilitation and then the regulation of the effects of rehabilitation, as long as they are common to the two types.

Article 169 paragraph (1) from the new Criminal Code provides that "Rehabilitation puts an end to the disqualifications and interdictions, as well as the incapacities which result from the conviction".

On a regular basis, the conviction for committing an offence determines a restriction of the convict's legal capacity, which does not cease once the sentence is executed or the criminal legal report is removed in another way (unconditional pardon, amnesty, prescription of the execution of the punishment). Subsequent to this moment, certain extra-criminal consequences will continue to exist, provided in special laws or other normative acts, resulting simply from the existence of the definitive conviction.

It is necessary to mention that the effects of rehabilitation are limited only to consequences which derive from the criminal conviction, they do not pertain to the civil consequences of the crime, namely the civil dispositions of the conviction decision (compensations, trial costs whose fulfilment is on the contrary, favoured by the institution of rehabilitation when the material means of the convict do not allow him to).

In addition, rehabilitation does not have as a consequence the obligation to reintegrate the ex-convict in the function he was removed from subsequent to the conviction or to give him back the lost military rank [art. 169 paragraph (2), Criminal Code].

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ICCS

Issue 1/2018

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