

## THE CONCEPT AND CHARACTERISTICS OF SAFETY MEASURES

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***Abstract:** This article deals with an important category of criminal sanctions: safeguards. The fundamental institution of criminal law, criminal sanctions, are nothing more than the effect of criminal liability, this in turn being the legal consequence of committing the crime. Within the framework of criminal sanctions, an important category is safety measures. The defense of society against crimes could not be effectively ensured if only the application of punishments, however severe they may be, both in duration and in the mode of execution, were used for this purpose. The crime must be examined in relation to the man who committed it, and not isolated as an abstract notion, without any connection to social life, and the criminal treatment to be applied must take into account everything that characterizes the person of the perpetrator as described it shows in the present and how it is shaping up in the future. When an act provided for by the criminal law is committed, the investigations carried out in the respective case sometimes reveal, in addition to the gravity of the respective act, some situations, some realities that reveal a danger for the future in terms of the commission of other crimes. In order to solve these "dangerous situations" safety measures were found as a solution.*

***Key words:** crime, safety measures, Criminal Code*

### **1. General safety considerations**

"Criminal biology came to the conclusion, then also accepted by the science of criminal law, that it is necessary to introduce into the criminal law some preventive sanctions which, together with the punishments, will bring about the correction of the perpetrators and their readaptation to social life, ensuring in this way, in a more efficient way, the defense of society" (Vasiliu, 1972, p. 574).

Society must not wait for those persons who are likely to commit crimes or acts under the criminal law to disturb the legal order again.

"Therefore, the needs of society's defense required the introduction of some preventive sanctions in the criminal law. In this way, a new realm of fighting crimes was created, which took the name of post-crime prevention, which meant progress in the fight against crime" (Vasiliu, 1972, p. 574).

Preventive sanctions were introduced into the legislation of different states starting from the end of the 19th century and continuing with the 20th century, with the role of complementing the effect of punishments, thus increasing the fighting capacity of society against some criminals or against the mentally ill or drug addicts.

The International Union of Criminal Law has chosen for these preventive sanctions the name of safety measures.

In Romania, safety measures were introduced for the first time through the Penal Code from 1936 as stand-alone measures, different from punishments that can accompany a punishment, or can be applied alone.

In the Criminal Code from 1968, the purpose of safety measures was expressly provided for, which was also preserved in the current criminal regulation:

- a) removal of a state of danger
- b) preventing the commission of acts provided for by the criminal law.

According to the Criminal Code in force, they can be taken against the persons who have committed unjustified acts provided for by the criminal law, even if the perpetrator is not punished.

Therefore, within the criminal law sanctions, an important category is safety measures (Popoviciu, 2014, p. 421).

## **2. The concept and characteristics of safety measures**

In the fight against crimes, if only punishments were used, this would not be enough, because, first, some criminals could not be punished, for example, irresponsible criminals. To them, instead of punishment, safety measures are applied, for example, medical hospitalization (Oancea, 1965, p. 293).

There are situations where, although offenders are responsible, if they were only punished, they could not be stopped from committing further offences, for example, offenders who have weapons on them or possess certain tools for the commission of the offence.

For these, it is necessary to apply, apart from the punishment, the security measure of the confiscation of these objects.

Defining the safety measures, it was said that "by these are understood certain coercive, restrictive measures, provided by law, applicable by the court to those who have committed acts provided by the criminal law, in which the state of danger is found, measures that are applied instead of or accompanying a punishment, in order to prevent the commission of new crimes" (Bulai, p. 152).

Or, in other words, security measures are light coercive measures, which are applied to those who have committed acts provided for by the criminal law, alone or accompanied by a punishment, in order to remove a state of danger and prevent the commission of new such acts.

They are measures taken against people who present a social danger and who, if these measures were not taken against them, there would be the fear that they will continue to commit dangerous acts in the future.

"The safety measure can therefore only be a post factum or post delictum measure; it appears as a consequence of the commission of an act provided by the criminal law, as a criminal law sanction that the law provides for the commission of such an act in connection with which the state of danger appeared and which is to be removed or reduced with the help of that measures" (Posdarie, 2000, p. 10).

It can be concluded that the safety measures have the following characteristics:

- a) The need for safety measures is determined by the prevention of the repetition of dangerous acts in the future (Oancea, 1971, p. 347).

b) They are criminal law sanctions with a primary prevention character, and only subsidiarily with a coercive character.

c) Safety measures are taken against persons who have committed acts –provided by the criminal law.

d) They can only be taken if there is a certain state of danger.

### **3. Purpose of safety measures**

From the content of art. 107 of the Criminal Code, it follows that the basis for taking safety measures is the state of danger of the person who has committed an act provided for by the criminal law. Committing a crime or an act provided for by the criminal law is not proof that the perpetrator presents a state of danger, this is only a symptom that shows that he can be dangerous and at the same time the starting point of this state.

There are people who have committed acts provided for by the criminal law for the first time and regarding whom the conclusion could not be drawn that they present a state of danger.

They are recidivist or multi-recidivist criminals, they do not always present a state of danger, and therefore taking safety measures against them does not automatically do so.

In the case of committing a crime, the perpetrator is penalized even if he does not present the danger of committing other acts provided for by the criminal law. Safety measures are taken, however, only if the existence of the state of danger is established.

### **4. The legal framework of safety measures**

The legal framework regulating these criminal sanctions is included in the provisions of Title IV (art. 107-112) of the general part of the Criminal Code in force.

These provisions are the subject of regulations contained in two chapters:

- Chapter I: General provisions
- Chapter II: Regime of safety measures.

There is no regulation of the methods of application and execution of security measures common to all these measures.

"This would otherwise not be possible due to the differences that exist between the various safety measures, the particularities resulting from the different nature of the danger states that justify and impose the measures and that naturally have an impact on their application and execution" (Posdarie 2000 , p. 22).

The security measures regulated in Title IV are general sanctions, which means that they can be taken if a person who has reached the age of 14 and has committed an act provided by the criminal law (Basarab, 1997, p. 294).

They are listed in art. 108 Criminal Code:

- a) obligation to medical treatment
- b) medical hospitalization
- c) the prohibition of occupying a position or exercising a profession
- d) special confiscation.
- e) extended confiscation.

Obligation for medical treatment is a medical, curative, rights-restrictive measure that can be taken against the person who has committed an act provided for by the criminal law

and which is unjustified when this person poses a danger to society, being forced to undergo medical treatment until he recovers, or until, through amelioration, he is no longer dangerous.

Medical detention is a medical, curative, custodial measure that can be taken against the person who has committed an act provided for by the criminal law and which is unjustified due to a mental or infectious disease or chronic intoxication with a psychoactive substance when this person poses a danger to society, being hospitalized in a specialized health unit until he recovers, or until, through improvement, he no longer poses a danger.

Prohibition of occupying a position or exercising a profession is a security measure restricting rights that can be taken against the person who has committed an act provided by the criminal law and which is unjustified, due to incapacity, lack of preparation or other causes that make him unfit for occupying a certain position, for the exercise of a profession or trade or for carrying out another activity when this person poses a danger to society.

Special confiscation is a patrimonial security measure that can be taken against the person who has committed an act provided by the criminal law and which is unjustified, consisting in the forced and free transfer into the property of the state of some assets used or belonging to it due to the connection with the act committed or due to their nature present the danger of committing similar acts in the future.

Extended confiscation is a patrimonial security measure that can be taken against the person who has committed a crime of a certain gravity and consists in the forced and free transfer into the property of the state of some assets that belong to it if the value of the assets acquired by the convicted person, in - a period of 5 years before and, if applicable, after the time of the commission of the crime, until the date of issuance of the act of referral to the court, clearly exceeds the income obtained by it lawfully and if the court is convinced that the goods in question come from activities criminal.

### **5. Practical case in which a safety measure of medical admission is applied**

Medical hospitalization is a safety measure regulated in art. 110 Criminal Code according to which "When the perpetrator is mentally ill, a chronic user of psychoactive substances or suffers from an infectious disease and poses a danger to society, the measure of hospitalization in a specialized health unit can be taken, until he recovers or until he obtains a improvements to remove the state of danger".

"This security measure is a medical, curative, custodial measure that can be taken against the person who has committed an act provided for by the criminal law and which is unjustified due to a mental or infectious disease or chronic intoxication with a psychoactive substance when when this person poses a danger to society, being hospitalized in a specialized health unit until he recovers, or until, through improvement, he no longer poses a danger" (Neagu, 2021, p. 389). It is an optional measure (Udroiu, 2019, p. 420).

The state in which the perpetrator must be in order to be able to order this security measure against him is clearly specified by law. In addition to the fact that the perpetrator must be sick, this must create the state of danger that he presents.

The serious alteration of a person's psycho-physical capacity and the commission, because of this, of an act provided for by the criminal law highlights his social danger and justifies taking a safety measure against him. By admitting such a person to a specialized

hospital, the danger of committing such acts in the future is prevented and, at the same time, the health condition of the person in question is improved (Vasiliu, 1972, p. 586).

This safety measure is not incompatible with the application of a punishment (Pașca, 2012, p. 464). It is usually ordered against irresponsible persons, but there are situations where, for example, the responsible person is, in addition to the prison sentence, also obliged to undergo medical treatment, which can be replaced by medical hospitalization, in which case the two criminal sanctions will coexist, without they exclude each other (Neagu, 2021, p. 390). I will present a practical example by which the medical hospitalization of the said X., domiciled in the locality Y., was ordered in a specialized medical assistance unit, until he recovers or until his state of health improves, which removes the dangerous condition that determined to take the measure.

The court, based on the analysis of the documents and files of the file, found that the conditions stipulated by the law for the provisional medical hospitalization of the said X are met. It was noted that he beat the female Z. Thus, being on the street, in the context in which he wanted to go to the store to buy a loaf of bread, named X, saw his neighbor, named Z, on a bicycle. She was heading home, passing X-perpetrator on her way. When he approached the perpetrator, he called out to the victim and told her that he had something to talk to her about. The injured party Z. got off the bike in front of his neighbor. He asked her to let him have the bike to go with her to the store. The injured party refused the perpetrator's request, reasoning that he cannot borrow his bicycle because he has luggage, and he cannot carry it in his hands, and also, after leaving the luggage at home, he still has other ways to go, in order to clear more problems. When the injured party refused, the perpetrator pushed her off the bike. The injured party lost her balance, fell, and the perpetrator punched and kicked her until she was unconscious.

In this case, it was established that the act provided by the criminal law is not a crime, because the essential feature of imputability is not met, the suspect not having the discernment of his actions.

According to the medico-legal psychiatric expert report submitted in the case, it appears that X. has a diagnosis of paranoid schizophrenia, he does not have the mental capacity to critically assess the content and socially negative consequences of the act for which he is being investigated.

He has no discernment, and the expert committee recommended the safety measure provided by art. 110 Criminal Code.

During the hearing by the court, the perpetrator showed that his actions were committed as a result of the halving of the dose of medication with which he is being treated.

Bearing in mind that the perpetrator, due to the mental illness he suffers from, presents a danger to society, based on art. 110 Criminal Code in conjunction with art. 315 paragraph 1, lit. it is also art. 246 para. 13 of the Criminal Procedure Code, the medical hospitalization of the said X. was ordered, in a specialized medical assistance unit, until he recovers or until his state of health improves, which removes the state of danger that determined the taking of the measure.

The measure of medical hospitalization is taken by the court that judges the perpetrator for committing the act provided for by the criminal law after a medical examination has been carried out, if it is found that he is mentally ill, a chronic user of

psychoactive substances or suffers from an infectious disease and from this cause poses a danger to society.

The measure is ordered for an indefinite period, but it cannot last longer than the condition exists that generated the danger of repeating a behavior and that determined its taking. The measure of medical hospitalization can be ordered provisionally, during the criminal process or by final decision by the court. The replacement or termination of the safety measure of medical hospitalization occurs when the state of health improves, so that medical treatment is no longer required, either at all, or under hospitalization regime (Neagu, 2021, p. 388). It can be replaced when the disease has improved, with the safety measure of requiring medical treatment.

The medical hospitalization of the mentally ill, chronic users of psychoactive substances or those suffering from an infectious disease is justified by the fact that their mental faculties are altered due to pathological causes, physiological anomalies.

The legislator considers only those diseases capable of seriously altering the psychophysical state of the perpetrator (Dima 2014, p. 649).

According to the law 487/2007, the person with mental disorders is that person who presents mental imbalance or is insufficiently mentally developed or dependent on psychoactive substances, which belong to psychiatric practice, and the person with serious mental disorders is the one who is not able to understand the meaning and the consequences of his behavior, thus requiring immediate psychiatric help (Neagu, 2021, p. 389), for example: paranoid schizophrenia.

The infectious-contagious disease (communicable, transmissible, contagious) is caused by a biological agent (virus, bacterium, mono or multicellular parasite, fungus, insect or prion, a peptide, a protein fraction) against which the attacked organism, in complex circumstances, he is not able to defend himself, for example: syphilis.

Psychoactive substances are established by law. People who consume them tend to introduce increasing amounts of these toxic substances into the body, which cause important physiological changes, creating unusual, euphoric sensations and experiences with serious consequences for mental and physical balance (hallucinations, delirium).

During the execution of the safety measure, these persons are subject to the prescribed medical treatment.

## **Conclusions**

The importance of safety measures is expressly deduced from the purpose established by law and provided for in art. 107 of the Criminal Code, namely the removal of a state of danger and the prevention of the commission of the acts provided for by the criminal law.

The state of danger provided by art. 107 Criminal Code concerns the person of the perpetrator or certain things that are related to the act committed by him and constitute a threat for the future.

Taking safety measures is the result of fulfilling certain conditions:

- a) An unjustified act provided for by criminal law must be committed.
- b) The perpetrator presents a state of danger.
- c) There is a fear that in the future the person will again commit an act provided for by the criminal law.

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