

# THE ESSENCE AND PROBATION TERM PERIOD IN THE CASE OF GRANTING THE CONVICTION WITH CONDITIONAL SUSPENSION OF SANCTION EXECUTION APPLIED TO MINORS PEOPLE IN ROMANIA

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**Abstract:** *The determination of probation term in relation with the concrete applied sanction, realizes an individualization of the measurement of sanction execution suspension in the connection with the obtained result in sanction individualization. Also, the test that the convict is subjected to in probation term, concerns only the good behaviour in the sense of not committing new crimes, proving that he/she can abstain from a dangerous behaviour. Giving the conditioned suspension of penalty execution, the judge believes that, in the future, the convicted will not make any penalties not only in the probation term. These elements will be systematically analyzed in the contents of this paper.*

**Key words:** *Conditional suspension of sanction execution, minors*

The determination of probation term in relation with the concrete applied sanction, realizes an individualization of the measurement of sanction execution suspension in the connection with the obtained result in sanction individualization. Also, the test that the convict is subjected to in probation term, concerns only the good behaviour in the sense of not committing new crimes, proving that he/she can abstain from a dangerous behaviour. Giving the conditioned suspension of penalty execution, the judge believes that, in the future, the convicted will not make any penalties not only in the probation term. Even though in the specialized literature there has been remained the term to be called *testing*, in the law there are not provided special behaviour obligations for the minor convict during this term, and the obligation not to make any crimes is for any addressee of criminal law, not only to that convicted to sanction execution suspension. Certain special obligations can be seen for the convict towards there have been taken safety measurements or there have been put certain civil obligations.<sup>1</sup> Though there are not connected to conditional suspension but can be imposed to any convict no matter if there have been applied or not this measurement of suspension.

The duration of the probation term is established by the law and cannot be modified by the court.

Beside the 6 months and 2 years period, in the probation term is included the penalty period applied by the court. If the court applied penalty was reduced following the convict's preventive arrest deduction, this does not influence the probation term period, does not reduce the probation term.<sup>2</sup>

But when the applied prison penalty has been reduced following the incidence of an unconditioned partial grace, the probation term period will be included in what has been left after the grace application plus the 6 month-2 years period that is provided by the law in the minors' case. So, the probation term is reduced by the punishment part that has been graced.

When the grace is total and unconditioned, the probation term is reduced to the 6 month-2 years period.

In the judiciary practice has been decided that (point of view that we agree with) in the case of partial conditioned grace, the probation term is not automatic reduced but only when the fixed

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<sup>1</sup> St. Danes, V. Papadopol, *Judiciary Individualization of Penalties Execution*, The Scientific and Encyclopedic Publishing, Bucharest, 1985, p. 250

<sup>2</sup> T.S. d. no. 2615/1973 through which has decided that "in the sense of the art. 82 Penal Code through applied penalty one can understand the whole penalty, like it was appreciated by the court, and not the unfulfilled rest after deduction preventive arrest".

duration will expire in the clemency act will expire and if the predicted condition in the grace act has been respected.

Really, the grace not being definitive until fulfilling the condition, it cannot produce effects previous its finalization. The probation term of conditional suspension and conditional grace's finalization term go parallel.

If first the grace definition term is to be the first, the grace produces its *ex tunc* effects (from the granting date) and thereby the probation term of the conditioned suspension is reduced by the penalty duration that has been totally or partially grace, and if, like that, the attempt conditional suspension term is done, its final effects are produced- the fairly rehabilitation of the convict (art. 86 Romanian Penal Code).

If the attempt conditional suspension term is done first, its final effects are produced- the fairly rehabilitation, and the conditioned grace remains without its cause.

We mention the fact that the above presented solution is valid, in what concerns the effects, on the assumption conditional grace or matter if this is total or partial.<sup>3</sup>

The High Court of Cassation and Justice had another opinion, expressed in a 2005<sup>4</sup> decision in which it established that the effects of penalties conditional grace of which performance is conditional suspended, consisting in reducing the probation term provided in art. 82 Romanian Penal Code, with pardoned sentence, are produced immediately and not when the condition term provided by the grace law to which is exclusive referred to executable penalties is fulfilled. When this reduced probation term is accomplished, the convict is fairly rehabilitated if the provided conditions on art. 86 Penal Code are fulfilled.

If in the conditional suspension probation term, disposed for a resulted penalty in a crime contest, occurs the grace for one or more penalties that have been merged, the grace produces its effects provided by the art.120 alin.2 Romanian Penal Code, that means that the probation term period is reduced by the penalty that has been graced, but taking into consideration grace particularity in compared with the applied penalty in a crime contest.

Thereby, the grace is about established competitive penalties and, in consequence, the penalties will be seen in their particularity and one will observe if after the grace has been applied there has left to be executed only the hardest penalty, the probation term is reduced with the penalty gain that has eventually been added to the hardest penalty, because the gain is not any longer justified.

But when after applying the competitive crimes punishment grace – penalties that have been separated – there have been left at least two that have not been graced, the penalty gain cannot be but partial justified, and the court can appreciate it again once the penalties that have not been graced are merged, and if this has been reduced, this reduction will go over the probation term also.<sup>5</sup>

We appreciate that after the definite conviction penalty decision by penalty execution conditional suspension, the probation term may be reduced in the case of mandatory applying a more favourable penal law (art. 14 Romanian Penal Code) which would provide a penalty with more reduce limits than that applied and suspended or another penalty species (fine) or a smaller probation term.

We consider that the penalty period applied to the minor by definitive court order will not be reduced on the assumption that a new penal law will appear, in the conditions of art. 15 Romanian Penal Code, on optional application of a more favourable penal law about definitive judged crimes. In this case, for conditional suspended penalty, the court cannot appreciate the accomplishment of law provided conditions towards convict's behaviour during penalty execution and by the time has been left from it, because the penalty execution has been suspended.

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<sup>3</sup> Dobrin Clocotici, *The Effects of Conditional Grace on Freedom Privative Penalties of which Performance Was Conditional Suspended*, *Romanian Law Magazine*, no. 6/1982, p. 62 and the following.

<sup>4</sup> I.C.C.J. – united sections, the Decision no. XIV dated 25<sup>th</sup> of November 2005, published in Monitorul Oficial no. 284 dated 29<sup>th</sup> of March 2006

<sup>5</sup> Ludovic Biro, *Considerations with Respect to Judiciary Effects of Grace on Penalty Execution Conditional Suspension in Romanian Law Magazine* no. 10/1972, p. 103 and the following.

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