

# THE INTERRUPTION OF THE EXECUTION OF PRISON SENTENCE OR OF LIFE IMPRISONMENT

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**ABSTRACT:** *THE INTERRUPTION OF THE EXECUTION OF IMPRISONMENT OR LIFE IMPRISONMENT IS THE MEASURE THAT MAY BE ORDERED BY THE COURT OF LAW, CONSISTING IN THE TEMPORARY INTERRUPTION OF IMPRISONMENT (WITH EXECUTION IN DETENTION) OR LIFE IMPRISONMENT IN THE CASES STRICTLY PROVIDED AND LIMITED BY LAW.<sup>1</sup>*

**KEYWORDS:** CONVICTED, INTERRUPTION OF IMPRISONMENT OR LIFE IMPRISONMENT, FORENSIC EXPERTISE

## 1. Introduction

Along with the postponement of imprisonment or life imprisonment, the law also regulates the interruption of the execution of these punishments. The difference between these jurisdictional measures lies in the fact that the postponement is granted before the commencement of the execution, while the interruption involves an ongoing enforcement.<sup>2</sup>

Therefore, the interruption of the execution of imprisonment or life imprisonment is the measure which may be ordered by the court, consisting in the temporary interruption of the imprisonment (with execution in detention) or life imprisonment in cases strictly limited by law.<sup>3</sup>

The interruption of the execution of the punishment cannot be confused with conditional release, because the interruption of the execution implies the resumption of the execution after a certain period of interruption, while in the case of the conditional release, the punishment is deemed executed if the convict does not commit a new offense discovered before the expiration the supervisory term, the revocation of conditional release is not ordered, and no cause for annulment is found.<sup>4</sup>

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<sup>1</sup> M. Udroi, *Procedură penală. Partea specială*, 4<sup>th</sup> Edition, revised and added, C.H. Beck Publishing House, Bucharest, 2017, p. 726

<sup>2</sup> D. Lupașcu, *Întreruperea executării pedepsei închisorii sau a pedepsei detențiunii pe viață*, in the Dreptul Magazine, no. 2/2002, p. 162

<sup>3</sup> M. Udroi, *op. cit.*, p. 726

<sup>4</sup> I. Neagu, M. Damaschin, *Tratat de procedură penală. Partea specială în lumina noului Cod de procedură penală*, Universul Juridic Publishing House, Bucharest, 2015, p. 608. Art. 106 Criminal Code: "If the convict did not

In the case of conditional release, it is possible to resume the execution of the punishment, but only in the case of revocation or cancellation of conditional release, but in these hypotheses the conditional release cannot be confused with the interruption of punishment.<sup>1</sup>

The interruption of the execution of the punishment cannot be confused with the suspension of the execution of the punishment, which can be ordered in the extraordinary means of contestation, when, in certain situations, the suspension of the execution of the punishment implies the interruption of the execution, if it has already begun. In such cases, the suspension of execution of the sentence is based on the alleged illegality or inappropriateness of the judgment under appeal.<sup>2</sup>

In the Criminal Procedure Code<sup>3</sup>, the interruption of the execution of imprisonment or life imprisonment is regulated in Title V of the Special Part - "Execution of Criminal Judgments", Chapter III - "Other Provisions Regarding Enforcement", Section 3 (Article 592-594).

## **2. Cases in which the interruption of the execution of imprisonment or life imprisonment may be ordered**

According to art. 592 par. (1) of the Criminal Procedure Code, the execution of imprisonment or life imprisonment may be interrupted in the cases and under the conditions provided by art. 589 of the Criminal Procedure Code (cases of postponement), namely:

a) when it is established on the basis of a forensic expertise that the convicted person suffers from a disease that cannot be treated in the sanitary network of the National Administration of Penitentiaries, and which renders impossible the immediate execution of the punishment, if the specificity of the disease does not allow its treatment in the sanitary network of the Ministry of Health, while providing permanent security, and if the court considers that the interruption of the execution of the punishment and the release at liberty does not pose a threat to public order [art. 589 par. (1) letter a) Criminal Procedure Code].

b) when a female convict is pregnant or has a child under one year of age [art. 589 par. (1) letter b) Criminal Procedure Code].

### *a) The convict's disease*

The first situation in which the convict may ask for the interruption of the execution of the prison sentence or life imprisonment is the one in which he/she suffers from a disease that makes him/her unable to execute the punishment.<sup>4</sup>

In case of interruption of the execution of imprisonment or life imprisonment for this reason, the following conditions must be fulfilled:<sup>5</sup>

- the convict suffers from a disease;
- the disease renders it impossible to carry out the punishment;

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commit a new offense discovered before the expiry of the supervision period, the revocation of the conditional release was not ordered and no cause of annulment was found, the punishment shall be deemed to be executed."

<sup>1</sup> I. Neagu, M. Damaschin, *op. cit.*, p. 608

<sup>2</sup> Ibidem

<sup>3</sup> Law no. 135/2010 regarding the Criminal Procedure Code, published in the Official Gazette no. 15 July 2010, as amended and supplemented, effective as of 1 February 2014

<sup>4</sup> Al. Boroi, G. Negruț, *Drept procesual penal*, Hamangiu Publishing House, Bucharest, 2017, p. 687

<sup>5</sup> Ibidem

- the disease cannot be treated in the sanitary network of the National Administration of Penitentiaries;

- the specificity of the disease does not allow its treatment in the sanitary network of the Ministry of Health, while ensuring permanent security;

- the court believes that the interruption of the execution and the release of the convicted person is not a threat to public order.

The existence of the disease from which the convict suffers can be proved only by forensic expertise.<sup>1</sup>

The forensic expertise should have the following objectives: 1. if the convicted applicant suffers from a disease that makes him/her unable to execute the sentence; 2. whether the disease from which the convicted applicant suffers can be treated in the network of the National Penitentiary Administration; 3. if the disease from which the convicted applicant suffers can be treated under guard in a hospital within the network of the Ministry of Health.<sup>2</sup>

According to art. 30 of the Procedural Norms on the Conduct of Expertise, Findings and Other Forensic Papers, approved by Order no. 1134/C-255 of 25 May 2000 of the Ministry of Justice (No 1134/C/2000) and of the Ministry of Health (No. 255/2000), published in the Official Gazette no. 459 of September 19, 2000, the forensic expertise for the interruption of the execution of a custodial sentence for medical reasons is performed only by the direct examination of the person by a commission. The expert commissions are composed of: a) a forensic doctor, who is the chair of the commission; b) one or more physicians having at least the degree of specialist physician, depending on the disease from which the person under examination suffers, who will establish the diagnosis and the therapeutic indications; c) a physician, as representative of the sanitary network of the penitentiary, who, knowing the possibilities of treatment within the network to which he/she belongs, establishes together with the forensic doctor where the treatment for the respective condition can be administered: in the penitentiary health care network or in the sanitary network of the Ministry of Health. After a new examination at the Institute of Forensic Medicine "Prof. Dr. Mina Minovici" Bucharest is conducted for the interruption of the execution of the imprisonment on medical grounds, no further expertise can be requested or performed by another hierarchically inferior forensic unit.

The execution of the punishment is interrupted for a determined duration [art. 589 par. (1) letter a) Criminal Procedure Code].

*b) The pregnancy status of the convict or the existence of a child under one year of age.*

Obviously this case of interruption concerns only the female convicts. This case does not apply to male convicts, not even if they are the sole living parents of the children.<sup>3</sup>

The existence of the case of interruption of execution of imprisonment or life imprisonment in relation to the condition of pregnancy of the convict may be proved by the medical records issued by the specialist physician, and there is no need to carry out a forensic

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<sup>1</sup> Ibidem

<sup>2</sup> See M. Udroui, *op. cit.*, p. 717-718, 726

<sup>3</sup> See A. Zarafiu, *Procedură penală. Partea generală. Partea specială*, Editura C.H. Beck Publishing House, Bucharest, 2014, p. 482-484. In the opinion of the author M. Udroui, the male convict who is sole supporter of the minor can also benefit from the interruption of the punishment in order to care for the child of under one year of age, or the male/female convict who has adopted a child of under one year of age. (see M. Udroui, *op. cit.*, p. 720, 726)

expertise, because in order to determine the interruption of the execution the punishment provided in art. 589 par. (1) letter b) Criminal Procedure Code, the means of proof is not predetermined by the legislator, unlike the case of interruption stipulated in art. 589 par. (1) letter a) Criminal Procedure Code, for which forensic expertise is mandatory.<sup>1</sup> The child's existence and age are proven with the birth certificate.<sup>2</sup>

By "child" the child born of the convict is understood, irrespective of the civil status (legitimate, from adultery, outside of marriage). Because the text does not distinguish the child's filiation, the female convict who has adopted a child can also benefit from this.<sup>3</sup>

In such cases, the execution of the punishment shall be interrupted until the cause which caused the interruption ceases [art. 589 par. (1) letter b) Criminal Procedure Code].

### 3. Procedural Aspects

Article 592 par. (1) of the Criminal Procedure Code provides that the execution of imprisonment or life imprisonment may be interrupted at the request of the persons mentioned in paragraph (3) of art. 589, and in the case provided by art. 589 par. (1) letter a), and at the request of the penitentiary administration.

Therefore, the applicants for the interruption of the execution of the punishment of imprisonment or life imprisonment are the prosecutor and the convict, and when the interruption is based on the disease state, the request can also be made by the administration of the penitentiary.<sup>4</sup>

The request may be based on one or more grounds for discontinuing the punishment provided by art. 592 Criminal Procedure Code in relation to Art. 589 Criminal Procedure Code.<sup>5</sup>

If the convict formulates the request for postponement of the sentence, and until its judgement before the first court of law, he/she is imprisoned, the original request will be analysed by the court as an application for interruption of the execution of the punishment, without the necessity of formulating a new application with this object.<sup>6</sup>

In the case where the conviction for imprisonment or life imprisonment is not final, and the defendant preventively arrested calls for "interruption of the execution of the punishment", his/her application may be legally requalified as an application for revocation of the preventive arrest, in circumstances where the defendant shows that the purpose of formulating the demand is his/her release. Similarly, the contestation of enforcement forwarded by the convicted applicant may be legally requalified if, in the statement of reasons, the applicant submits that he/she wishes to interrupt the execution of the punishment (for example, for medical reasons), thus establishing the true nature of the request.<sup>7</sup>

When the convicted person is in detention, the court competent to order the interruption of the execution of the sentence is only the court in whose territorial jurisdiction the place of

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<sup>1</sup> See A. Zarafiu, *op. cit.*, p. 482-484

<sup>2</sup> F. Cotoi, *Amânarea sau întreruperea executării pedepsei închisorii sau a detențiunii pe viață în reglementarea noului Cod de procedură penală*, in the Dreptul Magazine no. 5/2011, p. 101

<sup>3</sup> D. Lupașcu, *Punerea în executare a pedepselor principale*, Rosetti Publishing House, Bucharest, 2003, p. 66 apud F. Cotoi, *op. cit.*, p. 101

<sup>4</sup> A. Zarafiu, *op. cit.*, p. 484

<sup>5</sup> M. Udriou, *op. cit.*, p. 726

<sup>6</sup> Ibidem

<sup>7</sup> Ibidem

detention is at the time of filing the application, corresponding to the degree of the execution court (even though the convict was transferred to another penitentiary); exclusive territorial jurisdiction is therefore regulated.<sup>1</sup>

If the conviction to imprisonment or life imprisonment has been determined by a decision from a foreign court, recognized under Art. 134-136 of Law no. 302/2004, republished, the court that carried out this procedure does not become an executing court, which will be subsequently determined according to the norms of national law, respectively the court which, according to the Criminal Procedure Code, has the jurisdiction to judge in the first instance the offenses for which the applicant was convicted abroad.<sup>2</sup>

After the interruption of the execution of the punishment has been ordered, the convict may make a request for extension of the previously granted interruption, which shall be solved by the court that ordered the interruption of the punishment; it will be the first judicial body to rule on the application for interruption of the execution of the sentence, both in the case in which it has ordered the admission of the application, and in case it rejected the request, and the court of judicial control has accepted the appeal, ruling the interruption of the execution of the sentence.<sup>3</sup>

In the event that the convict is reincarcerated after the expiry of the term for which the measure of interruption of the execution of the sentence was ordered, a new application for interruption of the execution of the sentence shall be settled by the court in whose jurisdiction the place of detention is, corresponding to the degree of the execution court.<sup>4</sup>

In the case provided by art. 592 Criminal Procedure Code in relation to Art. 589 par. (1) letter a) Criminal Procedure Code, the request for interruption of the execution of the punishment based on medical grounds shall be filed with the judge delegated with the execution of the court in whose territorial jurisdiction the place of detention is found, accompanied by medical documents. The judge entrusted with the execution of the case verifies the jurisdiction of the court and orders, as the case may be, by definitive conclusion, to decline the jurisdiction to settle the case, or to carry out the forensic expertise. The hearing is not public and takes place without the participation of the prosecutor or of the convict.<sup>5</sup>

In the case provided by art. 592 Criminal Procedure Code in relation to Art. 589 par. (1) letter b) Criminal Procedure Code, the request for interruption shall be submitted to the competent court; if the court to which the application has been submitted has no material or territorial jurisdiction to resolve it, it will rule to decline jurisdiction by a final judgment delivered in public session.<sup>6</sup>

If the convicted applicant maintains his/her request, upon receiving the forensic report, the judge delegated with the execution shall notify the court in whose territorial jurisdiction the place of detention is found, for the purpose of solving the request for interruption of the execution of the sentence; in the event that by the time the forensic expertise report is elaborated,

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<sup>1</sup> Ibidem. See also F. Cotoi, *op. cit.*, p. 108-109

<sup>2</sup> M. Udriou, *op. cit.*, p. 727. Law no. 302/2004 on International Judicial Cooperation in Criminal Matters, published in the Official Gazette no. 594 of 1 July 2004, republished in the Official Gazette no. 377 of May 31, 2011, as subsequently amended and supplemented

<sup>3</sup> M. Udriou, *op. cit.*, p. 727

<sup>4</sup> Ibidem

<sup>5</sup> Ibidem

<sup>6</sup> Ibidem

the convicted applicant withdraws his/her request, the judge delegated with the execution will take act by a sentence of the convict’s manifestation of will, without the need to notify the court in whose territorial jurisdiction the place of detention is, in order to rule such a solution; if, however, this court is notified by the judge delegated to the execution, it will take act via a sentence of the manifestation of will of the convicted petitioner.<sup>1</sup>

The procedure for resolving the application for interruption of the execution of the sentence takes place in a public hearing, with the obligatory summoning via subpoena of the convicted petitioner (free from a previous interruption) or with the compulsory presence of the imprisoned convict, assisted by an elected lawyer or an attorney appointed ex officio (legal assistance being mandatory) and the prosecutor's participation. The imprisoned convict petitioner may request that the trial be conducted in absentia, in which case he/she will be represented by the lawyer elected or appointed ex officio. For the judgement of the case of interruption of the execution of imprisonment or life imprisonment (regardless of the case of interruption on which the request is founded), the administration of the penitentiary in which the sentenced person is imprisoned is also summoned with a subpoena.<sup>2</sup>

Once the evidence has been administered, the court gives the floor for the debate of the application: to the convicted petitioner and the prosecutor; the convict will have the right to the last word.<sup>3</sup>

The competent court resolves the application for interruption of sentence by a sentence, which may be of admission or rejection.<sup>4</sup>

If the court orders the interruption of the execution of imprisonment or life imprisonment, the court must impose on the convicted person the following obligations:

a) to not exceed the established territorial limit, other than under the conditions established by the court;

b) to liaise, within the time limit set by the court, with the police body designated by it in the decision to interrupt the execution of the prison sentence, in order to be recorded and to establish the means of permanent communication with the supervisory body, as well as to come to court whenever he/she is summoned;

c) not to change his/her dwelling without prior notification of the court that ordered the interruption;

d) to not own, use or carry any category of weapons;

e) for the case provided by art. 589 par. (1) letter a) Criminal Procedure Code, to immediately submit to the health unit to be treated, and for the case provided by art. 589 par. (1) letter b) Criminal Procedure Code, to care for the child under one year of age [art. 592 par. (2) Criminal Procedure Code referred to Art. 590 paragraph (1) Criminal Procedure Code].

On these measures, the court will make a reference in the minute and in the text of the criminal sentence.<sup>5</sup>

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<sup>1</sup> Idem, p. 727-728

<sup>2</sup> Idem, p. 728

<sup>3</sup> Ibidem

<sup>4</sup> I. Neagu, M. Damaschin, *op. cit.*, p. 611

<sup>5</sup> Al. Boroi, G. Negruț, *op. cit.*, p. 688

In addition to the obligations listed above, the court which orders the interruption of the execution of the sentence may require the convicted person to comply with one or more of the following obligations:

a) to not be in certain places or at certain sports, cultural or other public gatherings, as established by the court;

b) to not communicate with the injured person or with his/her family members, with the persons together with whom he/she has committed the crime or with other persons, established by the court, or not to approach them;

c) to not drive any vehicle or certain established vehicles [art. 592 par. (2) Criminal Procedure Code referred to Art. 590 paragraph (2) Criminal Procedure Code].

An appeal may be filed against the sentence by the prosecutor or by the convicted person in the higher court, within 3 days of the receipt of the copy of the minute.<sup>1</sup>

The administration of the place of detention has no active legal capacity to appeal against the sentence pronounced in the matter of the interruption of the punishment, the law providing only the possibility to file a request for interruption of the punishment in the case provided by art. 592 Criminal Procedure Code in relation to art. 589 par. (1) letter a) Criminal Procedure Code, as well as its summoning to the judgement of case.<sup>2</sup>

The prosecutor's contestation against the sentence which orders the interruption of the execution of the sentence is suspensory.<sup>3</sup>

According to art. 594 par. (1) of the Criminal Procedure Code, the court that ordered the interruption of the execution of the sentence shall immediately notify this measure to the executing court, to the place of detention and to the police.

According to par. (2) of art. 594 Criminal Procedure Code, the court of execution and the administration of the place of detention keep records of the interruptions granted. If at the end of the interruption period, the person sentenced to imprisonment is not present at the place of detention, the administration shall immediately send a copy of the execution warrant to the police for enforcement. The copy of the execution warrant also mentions how much time remains to be executed from the duration of the sentence.

The administration of the place of detention communicates to the enforcement court the date in which the execution of the punishment has re-started. The time during which the execution has been interrupted is not taken into account in the execution of the punishment [art. 594 par. (3) and (4) Criminal Procedure Code].

If a new term of imprisonment is issued for the convict during the interruption of the punishment, it cannot be executed until the expiry of the interruption period granted by the court or, as the case may be, until the cause determining the interruption ceases [art. 592 par. (1) Criminal Procedure Code referred to art. 589 par. (6) Criminal Procedure Code].

The accessory punishment is also executed during the interruption of imprisonment or life imprisonment [art. 594 par. (5) Criminal Procedure Code].

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<sup>1</sup> M. Udriou, *op. cit.*, p. 729

<sup>2</sup> Ibidem

<sup>3</sup> Ibidem

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