ABOUT THE FORMAL SOURCES OF THE CURRENT ROMANIAN CRIMINAL LAW

Mihai DUNEA [1]

e-mail: mihai.dunea@uaic.ro

Abstract

This paper aims to make an overview in the field of the formal sources of criminal law in the current Romanian law system, as irreducible expressions who regulate the fundamental freedoms and rights in the domain of criminal law, their frame being determined right from the constitutional provisions (which we consider that realizes the inclusion of this scientific material in the conference theme which has occasioned it). We believe that the subject is of interest in the local (national) legal landscape, as it can be observed that the contemporary period reveals (also) in the Romanian criminal law, a substantial paradigm shift, regarding the formal sources of law. Thus, if in the traditional view in existence in our system of law (of continental origin, also known as the "Romano-Germanic" type of law system) the case-law / the legal precedent / the decisions pronounced by the courts of law in previous cases (regarded, in this system, as "jurisprudence") do not have - in principle - the value of sources of law, it has become a noticeable fact that, at present, this vision can not be stated, anymore, in absolute general terms, without some essential nuances being made. We believe that we can distinguish at least three types (categories) of compulsory domestic (national) jurisprudential sources, which the courts of law (at least) are to necessary comply with, having (for them) a similar imperative force to that of the law (in the broad sense, of normative enactment in the field of criminal law, namely: either organic law or Governmental emergency ordinance), which remains (still) the main source of criminal law. We are referring to the binding decisions (*erga omnes*) of the Constitutional Court of Romania, and to two types of binding decisions (for the courts of law) that may be rendered by some specialized panels of judges from the Supreme Court (the High Court of Cassation and Justice of Romania), namely: rulings regarding an appeal in the interest of the law and preliminary rulings aimed to settle some legal issues. Of course, to these, we might add the effects produced over our national law by the following mandatory rulings made by some international (supranational) jurisdictional forums, whose jurisdiction is recognized by the Romanian state: the rulings of the European Court of Human Rights, or the rulings of the judicial institutions belonging to the European Union.

Key words: formal source of law, Romanian criminal law, law (in the broad sense and in the strict sense), types of laws (strictly speaking), Government Emergency Ordinance, binding decisions of jurisprudential origin

Ubi societas, ibi jus! The legal rules and regulations, as an instrument of the state and society, for the organization and ordering of the social values and social relationships, as a way to indicate the permitted behaviors and the forbidden ones, appear as a result of certain needs felt by the social organism, thru the act of will manifested by the authority entitled to carry out the regulatory activity, being established / expressed in some official form through which is affirmed and it is brought to the knowledge and respect of its recipients (the subjects of law). Therefore, the concept of source of law - and thus, the concept of source of criminal law, also - bears different meanings, revealed from multiple perspectives of approach. Thus, the doctrine emphasizes:

- a natural meaning of the concept (in this regard, the source of law being the social necessity that prompted the legal regulation, therefore, the social needs which gave rise to the emergence of a rule of law, in order to regulate certain social relations, as legal relations);

- a political (creative) meaning of the concept (in this regard, the source of law should be represented by the interest and will of the competent determined authority - from a given country at a particular historical moment - to adopt some legal rules for the regulation of a specific area of interest, in a particular way);

- a formal meaning of the concept (in this sense, the source of law means the form officially taken by the regulation, the external way of expressing the legal regulation - that orders a certain behavior or sets the legal solution which is to be imposed within a certain determined context -

[1] Law Faculty, „Alexandru Ioan Cuza" University, Iassy, Romania

in order to be known and respected by its recipients).

We appreciate that, more often, in the legal discourse, are used the natural and formal meanings of the concept of sources of law, the latter being also the main sense of this concept. Thus, when a reference is made to the concept of source of law, without a specific indication, or without a different meaning emerging from the context of the reference, then it must be understood that the reference is made to the formal meaning of the term. As a result, our exposition will further refer to the concept of sources of criminal law, in the formal sense.

It is obvious that, once the competent authority it is aware of the need or appropriateness of legal regulating a particular field, and if this awareness is then followed by the corresponding shaping of the will to regulate, it than follows the configuration / formulation of a certain legal rule. This legal regulation, once developed, must be expressed, established and communicated to all those concerned, as persons to whom that rule / legal solution will be incident, to whom it will be applied (persons who present, therefore, the ability to be affected by the existence of that legal rule, in case of compliance or of non-compliance to it, after its entry into force). So, the formulation and communication of the legal regulations should be able of informing their recipients, should take an external shape capable of being perceived by them. This form represents the source of law in the formal sense, the material source incorporating the rule of conduct and / or the legal solution for a particular type of determined situations.

At a general reference level, during the evolutionary course of the legal system (as a specific social system of control and organization), such legal sources - formal sources of law - were represented, as the case, by: customary law; precedent (systematized, in some stages / within certain communities, as judicial precedent, generally named, in the Romanian legal literature, as "jurisprudence", or "case law"); normative legal rule, adopted / established thru various types of normative acts (laws - strictly speaking - or normative acts situated below the law, legally speaking, such as Governmental ordinances - simple ones or emergency ordinances - or Government resolutions, ministerial orders, other documents issued by public central or local administration entities - *e.g*: decisions of the Local Council - etc.); acts of administrative nature enacted by diverse entities (with many different names: methodologies, statutes, regulations, decisions / judgments, rules of conduct, recommendations, and so on), including, sometimes, even individual administrative acts. Of course, their field of coverage / scope and nature / legal force, has crucially varied over time and (still) ranges, being taken into consideration several factors and variables, such as: the specific regulatory competence, in a particular field, of the entity / authority who enacted the legal regulation; the relationship between the recipient and the issuer of the legal regulation (whether the rule is necessary and objectively imposed, automatically, to certain individuals, by the mere fact of them meeting some pre-determined conditions, or if there is a manifestation of will involved - and, if it is, to what degree / extent is such a manifestation of will involved - in order to acquire the status of recipient of that legal rule); the mandatory or permissive nature of the rule of conduct / legal solution set through the regulation, in a certain given situation; and so on. So, we think that at this general level of reference to the formal concept of source of law, it's restriction only to the category of legal rules enacted by laws it is not realistic.

But, if it were to relate only to the domain of criminal law, taking as fixed reference point the current Romanian criminal law, the coverage of the formal legal sources of law will be restricted, in direct proportion to the increased importance that this legal branch manifests in the general framework of the legal system. This is because, on the one hand, the criminal law regulates issues related to the core social values and social relationships - fundamental for the existence, perpetuation and development of society, essential to ensure social order and the proper course of the most basic legal relations - and, on the other hand, because the criminal law has the highest ability to bring limitations to the exercise of the fundamental rights and freedoms awarded / recognized (in a modern democratic state, characterized by the concept of rule of law) to the recipients of the legal order / legal system. The legal guarantees considered - in the current stage of development - as normal standards (in a state of law) of the relationship between society and the recipients of legal regulations in the criminal justice field, require, among other things, a certain limitation of the formal sources of criminal law. Thus, it was acknowledged, by the legislature, the desire to allow the power of regulating in criminal matters only to those formal sources of law who have a certain (high and very high) legitimacy, authority, and theoretically present all the guarantees of a significant, authorized and endorsed selection of the most optimal legal solutions, corresponding to its recipients.

This being asserted, we also believe that it is required to nuance the reference to the field of coverage which is to be analyzed within the concept of formal legal sources of (current Romanian) criminal law, recognizing that within this concept it can / and must be distinguished two types of legal sources. Of course, in a primary and strict sense of the concept, formal legal source of criminal law will mean a legal source that has the potentiality and intrinsic capability to perform any of the operations that can be conducted, theoretically, in the criminal law domanin, namely (by the case): to set (*ex novo*) a legal rule (either a general one or one that provides that a certain conduct represents an offence); to change such a pre-existing rule, either by supplementing it, or by limiting or extending its coverage field, or by reorganizing it and (possibly) re-focusing it in its practical application (implicitly by the process of legal, mandatory interpretation, required for its clarification); to eliminate such a pre-existing rule from the positive (active) law, removing it from being enforced, causing the termination of its effects, for the future. We choose to refer to such sources of criminal law as representing proper formal legal sources, with full effect in this area of law, and thus, primary (formal, legal) sources of criminal law.

They are such sources of criminal law (in the current Romanian law system): the law (strictly speaking) of organic rank (and - *a fortiori* - the law of constitutional rank) (In Romanian legal system, the law (in the strict, proper sense of the term – meaning the normative act that has this official specific name, of "law", and it is enacted by the principal legislative authority of the Republic, namely the Parliament) is a type of normative act classifiable in three categories: ordinary laws, organic laws, constitutional laws. The criterion of classification is represented by the juridical force of the law, determined by the legal and procedural conditions which must be observed for its enactment (simple majority, qualified majority or special qualified majority at the time of voting of the law in Parliament). According to the dispositions of art. 73 par. 3 from the Romanian Constitution, some extremely important fields of activity and / or interest are reserved only to regulation by means of organic law (thus, a simple ordinary law will not be able to enact in those domains of interest). The doctrine explains that such a solution is needed in order to guarantee that a legal rule in those fields of activity and / or interest is only imposed with a reasonable political consensus, the qualified majority required for the enactment of such a law representing an (theoretical) assurance that the most optimal legal solution has been reached, with the most close overhaul possible of the macro-social implications determined by its entry into force. Letters h) and i) of the indicated article of the Constitution prescribe that, among others, the fields of determining what types of conduct are to be regarded as criminal offenses, and, also, those of determining the legal criminal sanctions and their enforcement regime, as well as granting clemency (by means of amnesty and collective pardon), are reserved for the regulation only by laws of organic rank); the normative acts with the same legal force or ability to regulate in certain legal areas as the laws of organic rank, namely, the emergency ordinances (not the simple ones) enacted by the Government (According to art. 115 of the Romanian Constitution, the Government may act as delegated (secondary, subsidiary) legislative authority, regulating (among others) by means of ordinances, which are normative acts with similar legal power to those of (certain) laws. Those ordinances can be classified in two categories: simple ordinances and emergency ordinances. The first ones can only be enacted by virtue of a law (enacted by the Parliament), that grants the Government the authority to regulate, for a specific period, in certain domains of activity and / or interest (e.g.: for the duration of the Parliaments vacation), but such a law may only delegate the power to enact in domains that are not reserved to the regulation by laws of organic rank (thus, the delegation can only cover the domains that can be regulated by ordinary law, and, as such, the criminal law domain is excluded). On the other hand, if there arise extraordinary circumstances, whose regulation may not be postponed, the Government is able to regulate by means of emergency ordinances, which must indicate and motivate the emergency that imposed their existence. They will produce legal effects until their subsequent approval or rejection by the Parliament, through a law. Those emergency ordinances of the Government may also regulate in fields reserved to regulation by organic laws, and thus, in the criminal law domain, as well); according to an opinion, in this category should also be specified the international conventions and treaties to which Romania is a party (to the extent that their provisions would cover a regulatory field connected to criminal matters).

On the other hand, we cannot ignore the present legal reality, in the context of which there are specific legal effects recognized, by the legislature, to some sources of law which do not have, however, the general ability necessary to (potentially) produce effects at all three levels (indicated above), as a primary (full, proper)

source of criminal law (namely: in the formation / enactment of the legal rule; in its amendment; and also in the withdrawal from active enforcement of a legal rule). The action - we emphasize: compulsory action (with a wider or narrower coverage of this mandatory nature) - involved by the latter sources of criminal law, is limited either to only one of the levels to which we referred above, either to some of them, but never to all of them, in their plenitude.

In other words, their incidence as sources of criminal law is not complete (full), but focused, limited in terms of the impact that may occur in the area of law to which we refer to. However, for the particular level at which they are incident, their action has binding effects (at least by relative reference to certain institutions, entities or recipients), in a similar manner (at least in practice) to the effects produced by a formal primary (full, proper) source of the criminal law. As a result, we believe that these latter legal sources are to be regarded also as formal sources of criminal law, mentioning that their peculiarity, the distinction between them and the other category of formal sources of criminal law (the primary / full / proper ones), might be caught straight from the terminological level. In this regard, we propose for them the name (under whom we mean to refer to them further on this article) of formal sources of criminal law with limited action (or limited sources of criminal law), thus representing secondary (adjacent) sources of criminal law.

We consider that into this category should be integrated:

- the decree of individual pardon granted by the President of Romania (According to art. 94 letter d) of the Romanian Constitution, among other attributes, the President of Romania has the aptitude to grant individual pardons) (it cannot create or change rules of criminal law, can neither remove them from enforcement, but has the ability to terminate the obligation of the offender to execute all or part of the penalty imposed as a result of its criminal liability for the offense committed);

- the mandatory rulings / the mandatory jurisprudence (in relation to criminal law matters) of the Constitutional Court of Romania (According to art. 142 part. 1 of the Romanian Constitution, the Constitutional Court of Romania is the supreme guarantor of the Constitution. Among other attributes (art. 146 of the Constitution), it has the competence to rule in relation to the constitutionality or lack of constitutionality of legal dispositions from laws and ordinances. According to art. 147 of the Constitution, those dispositions from laws and ordinances ruled to be unconstitutional, suspend their activity for a maximum period of 45 days from the day the Court's decision is published in the Official Bulletin of Romania. If, in that period, the legislature does not bring into line the legal rule, as indicated in the solution of the Constitutional Court, that legal rule shall be terminated (it ends its activity, it is removed from active enforcement) for the future. The effect produced by the rulings of the Constitutional Court is generally valid (*erga omnes*)) (without having - in principle - the ability to create proper legal rules, the Constitutional Court can, through the effect of an unconstitutionality ruling of a certain normative provision / or through the effect of a constitutionality ruling of such a legal disposition, but only under the condition of it being interpreted in a certain determined sense / or through the effect of a unconstitutionality ruling of such a legal disposition, in case it is interpreted in a certain determined sense, either to restrict or to expand - and, in fact, thereby, amend / modify / alter - the field of cover of a primary / fully / proper source of criminal law, or to terminate the activity of a legal rule of criminal law);

- the mandatory rulings / the mandatory jurisprudence (in relation to criminal law matters) of the High Court of Cassation and Justice of Romania, namely the decisions regarding an appeal in the interest of the law and the preliminary rulings aimed to settle some legal issues (According to art. 126 part. 3 of the Romanian Constitution, the supreme court (namely, the High Court of Cassation and Justice) of Romania, ensures the unitary application of the law (in a general sense of the term), by the other courts of justice (hierarchically inferior). In order to give effective character to these legal dispositions, in the Romanian Criminal Procedure Code (and in the Romanian Civil Procedure Code, also, but that is an issue that this article does not cover), there are some provisions that grant to certain specific panels of judges, created within the supreme court, the competence to pronounce binding (mandatory, compulsory) rulings (for the other courts of justice), in the process of interpreting rules of law which occasioned an uneven national practice (the case of the rulings regarding an appeal in the interest of the law - art. 471-474[1] from the Romanian Criminal Procedure Code), or in the process of interpreting unclear rules / issues of law (the case of the preliminary rulings aimed to settle some legal issues - art. 475-477[1] of the same normative act). According to art. 474 par. 4 and art. 477 par. 3 of the Romanian Criminal Procedure Code, these decisions are to be

published in the Official Bulletin of Romania, and, from that moment further, they produce an binding (mandatory, imperative) effect for all the courts of justice, at a national level) (this mandatory case-law is similar, to a point, with the binding decisions of the Constitutional Court; though these rulings, from the supreme court, cannot create proper legal rules, they provide a mandatory / binding interpretation of some normative provision, for all others courts of justice, and thus, a rule of law contained in a primary / full / proper source of criminal law may either be restricted or expanded - and, in fact, thereby, changed / modified - in its field of cover, or, through such rulings, it can be mandatory determined that a certain disposition, from a primary / full / proper source of criminal law, has ended its legal activity and is no longer able to be applied, in the future, for solving some particular cases).

Of course, we acknowledge that the formal effect produced by the action of these (as we call them) secondary (limited) formal sources of criminal law (or by most of them, namely the jurisprudential ones), occurs in relation to the determination of the possible ways of interpreting the law, therefore (only) related to the determination of the field of cover of a legal rule already established by another source of law - the primary / full / proper source of law. This tends to disqualify them as sources of law, *per se*, ranking them only as tools useful in the domain of interpreting the proper sources of law. Actually (in fact) the effects posed by their mandatory action (either the *erga omnes* effects produced by some rulings of the Constitutional Court, either the compulsory effect produced only in relation to the courts of justice, by the mandatory decisions of the Supreme Court, that we already referred to above) is much deeper, with an real (effective) impact similar to that produced by the action of a primary / full / proper source of criminal law, itself.

Thus, a legal rule (regarding the criminal law) established by a disposition contained in an organic law or in a Governmental Emergency Ordinance, can sometimes determine multiple interpretations, practical solutions involving different - sometimes radically different - results; or it may apply for a certain period of time, in a certain sense (according to some interpretations), although there exist, also, other possible interpretations of the same text. Through a binding jurisprudential (case law) decision of those type to which we referred earlier, it may, afterwards (subsequently), be imposed (in a singular and uniform manner) only one of those multiple interpretations of the normative text; or, such an imperative ruling may empower, as mandatory, a solution which is (potentially) diametrically opposed to that which has been consistently applied until then. In fact, in such cases (not at all difficult to imagine, or even to be found, in the legal modern order of Romania), the effect produced upon the legal system will effectively (actually) be similar to that which would have occurred by means of entry into force of a new legal (normative) provision (*per se*), established through a primary (full, proper) source of (criminal) law. We appreciate that in a similar way may be regarded the situation in which, after the pronouncement of such a decision (ruling), the effect will be the deprivation of legal effectiveness (the ending of empowerment) of a regulatory provision imposed by a primary (full, proper) formal source of criminal law (either by effect of an unconstitutionality ruling, either by its assessment as a regulation which ceased its normative activity, for the future).

Or, in these circumstances, we feel that the limitation to a reference level of strictly formal assessment, regarding the sources of criminal law, is an inadequate approach, which conceals the current legal reality in existence in the present Romanian legal system and who refuses to admit (because of questionable reasons) the full coverage and manifestation of a juridical phenomenon which imposes itself as obvious in the objective reality! Therefore, we consider that, in the contemporary period, we must admit that the reference field of the formal sources of criminal law, in Romanian legal system, covers not only the legal rules imposed by certain categories of normative acts (organic laws and emergency ordinances of the Government), being also enriched with a category of other criminal law sources, of somewhat limited power, but who produce a real, effective and actual impact upon the criminal law domain of reference, namely: the decree of individual pardon granted by the President of the Republic and some specific jurisprudential mandatory sources (some rulings of the Constitutional Court, and two types of binding decisions, for the courts of law, that may be rendered by some specialized panels of judges from the Supreme Court - the High Court of Cassation and Justice - of Romania: the rulings regarding an appeal in the interest of the law and the preliminary rulings aimed to settle some legal issues in criminal matters).

The previous considerations relate to the classical sphere of identification of the criminal law formal sources, namely the domestic (national, local) legal system. Indeed, the criminal law reference domain, involving - by excellence - relationships of authority between state and the recipients of the legal rule (in the broad sense),

involving also a mandatory and repressive regulation, generally imperative (which ensures the greatest theoretical protection of the social values appreciated as essential, fundamental, for a certain society, at a given time), establishing - at the same time - the most drastic (theoretically) sanctioning measures in existence in that society (suitable in the highest degree of bringing limitation to the exercise of fundamental rights and freedoms of the recipients of that legal system), was traditionally perceived - and it still is, to a large extent - as a special domain of manifestation of sovereign authority by each and every state! On the other hand, the phenomenon of increased globalization requires, to a certain extent - it's true, (perhaps) less intense than in other areas, such as the economic field of reference - also in the legal domain, a trend of harmonization and - under certain aspects - even legal standardization, in the emerging international context of an ever closer cooperation of states from a legal point of view, by ways of integration in various forms and supranational entities established through the sovereign adhesion to numerous conventions and treaties, involving certain legal obligations for the parties concerned. Thus, through some of these international conventional instruments, states undertake the legal obligation to establish, within their own internal system of law, certain regulations, adopting and applying legal rules of a uniform or harmonized character, in certain areas of law. In other cases, member states agree to submit to the jurisdiction of a supranational decision making entity, competent to rule in a particular domain, entity created by their sovereign understanding, under the convention ratified by them; these entity's decisions are to be enforceable against each individual member state, and to all the internal authorities of such a state.

Such international commitments may have distinct implications in the domestic law of each state, but in terms of Romania's case, they will be perceived in accordance with the provisions of articles 11 and 20 of the Constitution (According to art. 11 of the Romanian Constitution, it is stated that: "(1) The Romanian State pledges to fulfill as such and in good faith any obligations as may derive from the treaties to which it has become a party. (2) Once ratified by Parliament, subject to the law, treaties shall be part of domestic law. (3) Where a treaty to which Romania is to become party comprises provisions contrary to the Constitution, ratification shall only be possible after a constitutional revision".

According to art. 20 of the Romanian Constitution, it is stated that: "(1) The constitutional provisions relative to the citizens' rights and freedoms shall be interpreted and applied in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party. (2) Where inconsistency exists between the covenants and treaties on fundamental human rights to which Romania is a party, and national law, the international regulations shall prevail except where the Constitution or domestic laws comprise more favorable provisions".

(Unofficial translation of the Constitution's text, by the Constitutional Court of Romania - see: http://www.ccr.ro/constitutia-romaniei-2003)).

Thus, the international reference standard is integrated into the domestic law system, once the sovereign will of the Romanian state (to ratify a legal instrument emerging at this level) is formally manifested and assumed (through legal specific means), with the particularity (of constitutional rank) that those sources of law have priority over the domestic (local, internal, national) law rules, if they concern fundamental rights and freedoms (in consequence, we appreciate that this priority involves, also, the criminal law regulations), under the reserve of more favorable national dispositions.

Of course, if we relate to rules of law established by normative provisions emerging at a supra-national level, those will need to be ratified by the Romanian legislature, act by which the Romanian state formally commits to assume the obligations arising from these international documents. We consider that such a procedure would have to comply to the constitutional rules imposed in terms of hierarchy and legal force of the sources of internal law, so that an international document by which the Romanian state assumes legal obligations in the criminal law filed of reference will be ratified by an organic law or (where appropriate and justified circumstances exist) by a Governmental emergency ordinance. Thus, the international document becomes a part of the national law (in accordance with art. 11 par. 2 of the Constitution), so, even if it would directly introduce rules in criminal matter (without any need for a separate and distinct intervention of the Romanian legislator, in order to formulate and also adapt these rules to the national law system profile), this legal effect would be produced pursuant to the normative act of ratification (either organic law or equivalent: emergency ordinance of the Government).

On the other hand, when it comes to ratification of an international document that creates a jurisdictional entity at a supranational level and submits member states to its rulings, the effect of the decisions of that jurisdiction will become mandatory (as a rule, if there is no stipulation to the contrary or reservations to the

ratification) for that state the all that state's authorities / institutions, directly by the normal effect of the ratification. So, we appreciate that the field of reference of the formal sources of (criminal) law, in the Romanian contemporary legal system, needs to be enriched by indicating the rulings of such jurisdictional supranational entities, to which the Romanian state has expressed its sovereign will to submit, such as the rulings of the European Court of Human Rights. The case-law in Romania (including a mandatory jurisprudential ruling) (See the ruling pronounced through the decision no. LXXIV (74) since the 5th of November, 2007 - published in the Official Bulletin of Romania, no. 545 since 2008 - at the address: http://www.scj.ro/1093/Detalii-jurisprudenta? customQuery[0].Key=id&custom Query[0].Value=86156. For a scientific analysis of the legal matter solved by this ruling, also see: M.I.Michinici, M. Dunea: "*Reflecting E.C.H.R. standards in Romanian criminal law - considerations upon a particular case: the evolutionary pattern of the additional (accessory) punishment (from the criminal code of 1968 to the criminal code of 2009) [part I]"*, in "Alexandru Ioan Cuza" University (from Iassy, Romania) Scientific Annals, Juridical Sciences Series, no. 1/2014, at the address: https://laws.uaic.ro/) has already demonstrated, even from the time when the former Criminal Code (since 1968, entered into force in 1969 and removed from activity on February 1st, 2014) was in force, that in case of contradiction between internal regulations in criminal matters and the solution ruled by such a supranational jurisdictional entity, who's decisions the Romanian state sovereignly understood to obey (namely, the European Court of Human Rights), priority has the latter (if more favorable domestic regulation do not exist, in accordance with the provisions of art. 20 par. 2 of the Constitution), so that the national courts will be able to pronounce decisions directly in accordance with the international / supranational jurisprudential source of law, being granted the permission not to obey their own national law dispositions, who expressly regulate otherwise.

From the explanations above, we can retain, however, a possible new classification of the sources of law that have incidence in criminal law, namely: sources that have a direct effect, and sources that have an indirect effect. Thus, relative to the action produce upon the national law system by the regulations established at an international level, we specified that sometimes they can produce direct effects in the domestic (national) legal system (by the mere act of ratification), and overtimes, the ratification will only imply formally, in legal terms, that the state assumed the obligation to develop / establish / enact and also enter into force, into its active law system, a legal rule of some sort, which ensures the achieving of a particular result, the normative connection to a certain standard of harmonized regulation, assumed through the sovereign act of ratification of the said international legal (conventional) instrument. In the first case (to whom it must be added the amount of national jurisprudential sources of law), one can speak of direct sources of law (criminal law included), in the second case, we are only in the presence of an indirect source of law (criminal law included). The rules of law corresponding to the latter sources will not produce effect in the national legal order (will not become active as actual legal rules), until their transposition, by the Romanian legislature, through means of a formal (internal) source of criminal law with direct effect upon the legal system (the lack of action in this direction will only incur the international liability of the state that has committed itself to the unfulfilled obligation).

As a result of all that has been indicated in the rows above, we believe it is safe to affirm that in the current Romanian legal system, by comparison with its traditional status, a real change of paradigm has occurred, in the sense that, although it remains primarily a continental (Romano-Germanic) type of law system, based especially upon written normative sources of law, it has become undeniable that some forms of jurisprudence (case-law, judicial precedent) must be, today, acknowledged as mandatory (imperative) sources of law (even with the stipulation that they are, in principle, sources of law with a limited effect, thus secondary sources of law). Of course, this general statement is also valid in what concerns the particular aspect of the criminal law's formal sources in Romanian contemporary legal system, either if we refer to some internal jurisprudential sources (namely, as indicated above: some rulings of the Constitutional Court, and the two types of binding decisions, for the courts of law, that may be rendered by some specialized panels of judges from the High Court of Cassation and Justice of Romania: the rulings regarding an appeal in the interest of the law and the preliminary rulings aimed to settle some legal issues in criminal matters), or to supranational ones (*e.g.,* the rulings of the European Court of Human Rights, or some rulings of the judicial institutions belonging to the European Union).

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