THE SPECIFIC OF "CONTRAVENTION FINES" IN THE LEGAL REGULATION OF THE LEGISLATION OF THE REPUBLIC OF MOLDOVA AND ROMANIA - ELEMENTS OF COMPARATIVE LAW

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Abstract: *The published material reveals clear information about the application by the empowered body of the state of the contravention sanction - the fine, as a pecuniary punishment, approached through the legislation of the Republic of Moldova and Romania - comparative aspect. The proposed study highlights the particularities and conditions of the application of the contravention fine, considering the degree of social danger regarding the committed action, the circumstances of the commission of the action and the personal circumstances of the contravener. At the same time, were approached the exceptions of unconstitutionality in both states regarding contravention provisions. An important section of the study was dedicated to the effects concerning the failure to pay the fine.*

Keywords: *contravention, contravention fine, contravention sanctions, individuals, official examiner.*

The application of the contravention sanction is the second phase of the contravention procedure. The contravention sanction is applied to reestablish the social relations that have been affected after the commission of the contravention, but also to resocialize the contravener, the last one is meant to support the action of statal constraint. The contravention sanctions generally have significant particularities from one legal system to another. Probably the contravention matter remains, however, one of the areas in which we most often encounter regulations composed of elements of a different nature. Therefore, the subject proposed for the research, which at first sight seems to be quite narrow - the specific of the contravention fine in the regulation of the legislation of the Republic of Moldova and of Romania - has a theoretical-practical interest as this is the most frequently applied sanction by the state authorities, but also to identify its specific particularities for each state, analyzing the existing legal framework.

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The framework that regulates the contravention fine in the Republic of Moldova is the Contravention Code of 24.10.2008 (hereinafter CC), and in Romania by the Government Ordinance no.2 of 12.07.2001 is approved the legal regime of contraventions (Government Ordinance no.2).

Therefore, according to article 34 of the CC, the fine is a pecuniary contravention sanction, evaluated in conventional units and which consists in "obliging the contravener to pay a sum of money"[1]. The fine is considered the most widespread and most effective contravention sanction. It is a sanction that affects the contravener by diminishing its patrimony, which consists in the forced taking of a sum of money from the contravener's patrimony and its passage into the patrimony of the state or the administrative-territorial units. [2] The size of a conventional unit in the Republic of Moldova is 50 lei. From the beginning the size was 20 lei, and with the changes that have intervened in the economy and finances, but also due to the lack of efficiency of the sanctions with small fines applied, all this has determined Moldovan authorities in 2017 to change the size of the conventional unit, from 20 to 50 lei. The modifications made were based on the following calculation formula: the average of a monthly salary per economy forecast for the year 2016 was 5050 lei. Thus, 1% of 5050 lei, as it was desired to be the new value of the conventional unit, constituted 50 lei and 50 bani.

Speaking about the Romanian legislation, this refers, generically, to the legal character of the contravention fine. In art.8 par.(1) of the Government Ordinance no.2 is provided: "The contravention fine has an administrative character".[3] We note here that, the legislator himself identifies the administrative nature of the fine, probably because it is always applied by the administrative bodies of the state. The unit of measure of the contravention fine in Romania is “lei”.

The amount of the contravention fine is determined by the degree of social danger of the act, by the contravener's guilt and must be within the limits provided by law. In art.34 par. (2) and (3) CC, it is determined the amount of the fine that can be applied to individuals and legal entities. For individuals from 1 to 500 conventional units, and for the persons with responsibility function - from 10 to 1500 conventional units.[4] Considering

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[1] The Contravention Code of the Republic of Moldova from 24.10.2008. In: Official Monitor no. 3-6 of 16.01.2009, republished in the Official Monitor No. 78-84 of 17.03.2017.

[2] Secula Mihai-R. Contravention procedure. Course support. Bucharest, 2002, page 17.

[3] Ordinance of Romania no.2 of 12.07.2001 regarding the legal regime of contraventions. In: The Official Monitor No.410 of 25.07.2001.

[4] The Contravention Code of the Republic of Moldova from 24.10.2008. In: Official Monitor no. 3-6 of 16.01.2009, republished in the Official Monitor No.78-84 of 17.03.2017.

the principle of individualizing the contravention sanction and the limits of the fine set by the legislator, the official examiner or the authorized person will determine the amount of the fine applied depending on the degree of danger and the contravener's guilt. For the repeated commission of the contravention, within a year, by a legal entity, the fine in double from the amount of the fine in the value of the maximum limit indicated by the law. And, for committing the contravention by the legal person for the third time and more, during one year, the person is sanctioned with a triple fine from the amount of the fine in the value of the maximum limit indicated.[5]

In Romania, the amount of the contravention fines is much higher, being determined by law the minimum and maximum limits, according to the normative act that establishes the fine. Thus, the minimum limit of the fine is 25 lei, and the maximum limit cannot exceed:

a) 100,000 lei, in case of contraventions established by law and ordinance;

b) 50,000 lei, in case of contraventions established by Government decisions;

c) 5,000 lei, in the case of contraventions established by decisions of the county councils or of the General Council of Bucharest Municipality;

d) 2,500 lei, in the case of contraventions established in decisions of the local councils of the communes, cities, municipalities and sectors of the municipality of Bucharest.[6]

The sanction of the fine is applied within the limits provided and must be proportional to the degree of social danger of the act committed, taking into account the circumstances in which the deed was committed, the manner and means of committing it, the purpose pursued, the result produced, as well as the personal circumstances of the contravener and other data entered in protocol.

The term of payment of the fine in the Republic of Moldova is 30 days from the date of its establishment. Previously, if the contravener paid his fine within 72 hours from the moment the deed was established, he was entitled to pay half of it. In correlation with this norm, the Constitutional Court of the Republic of Moldova came with a Decision regarding the constitutionality of the text "from the moment of its establishment". The court found that, there is discrimination that is not objectively and reasonably justified among the people who can pay half a fine, because

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[5] The Contravention Code of the Republic of Moldova from 24.10.2008. In: Official Monitor no. 3-6 of 16.01.2009, republished in the Official Monitor No.78-84 of 17.03.2017.

[6] Ordinance of Romania no.2 of 12.07.2001 regarding the legal regime of contraventions. In: The Official Monitor No.410 of 25.07.2001.

some people receive in due time the copy of the protocol of committing a contravention, through the postal services and there are other people who receive the copy of the protocol with delay, and they cannot realize their right effectively to pay the fine in half. But, the contraventional law does not provide a mechanism that would allow sufficient remediation of the obstacles arising from the effective exercise by the contravener of his right to pay half of the fine established. Thus, the Court decided that until the law was amended by the Parliament, "the 72-hour time limit for payment half of the fine will run from the moment the contravener is notified regarding the setting of the fine".[7]

In the same context, on 12.10.2018 the Parliament of the Republic of Moldova adopted amendments to the Contravention Code, by which the 72-hour duration was replaced by "three working days from the date of notifying the decision to apply the sanction". In this case, the sanction of the fine is considered to be fully executed, except the case when the sanctioning decision has been challenged and the contravener has not withdrawn his request to challenge the decision issued in a contravention case until the judicial inquiry. The period offered will be synchronized with the working hours of the institutions responsible for receiving the fine.[8] Given the experience of the Government in recent years to declare several days in a row as non-working or rest days, the probability that the contravener will pay a half of the fine within the established 72-hours was minimized. Through these changes was guaranteed the right to a fair trial by ensuring the real right to pay a half of the fine, even if the protocol was challenged in court and the contravener did not withdraw his request to challenge the decision, issued on the contravention case until the judicial inquiry. If the contravener did not comply with the conditions or the request was rejected, the amount of the fine will be paid fully.

With reference to the same problem in Romania, the established term in which the contravener can pay a half of the fine is much wider. The art.28, Government Ordinance no.2 states that "the contravener may pay, within no more than 15 days from the date of receiving or communicating the protocol, a half of the minimum fine provided by the normative act, mention made about this opportunity by the official examiner in the

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[7] The decision of the Constitutional Court no. 7 of 26.04.2018 regarding the exception of unconstitutionality of the article 34 par. (3) of the Contravention Code. In: Official Monitor no. 176-180 of 01.06.2018.

[8] Informative note of the Ministry of Justice of the Republic of Moldova to the draft Law on the modification of the Contravention Code of the Republic of Moldova no.218-XVI of 24.10.2008.

[Online]http://www.justice.gov.md/public/files/2018/transparenta_in_procesul_decizional/martie/27/1/NF_COD_CONT.pdf, accessed on 23.11.2018.

protocol".[9] We consider that it is sufficient, up to 15 days, for the contravener to execute his obligations, which result from the application of the sanction. It would be illogical to restrict the term, insofar as the state has the interest to restore the social relations affected, to re-socialize the contravener and to determine him to pay the fine established. Until 2018[10], the deadline was much restraint, 48 hours, and the legislator specified the start of the deadline (midnight the next day) and the end of the term (on a legal holiday or when the service was suspended was extended until the end the next working day).

An issue that cannot be overlooked represents the consequences of not paying the fine. Thus, art.34 para. (4) of the CC establishes the effects for non-payment of the fine due to the lack or insufficiency of the goods or due to the malevolence avoidance of the contravener from its payment. In this case the court can replace the unpaid amount of the fine with:

- fine in double size, which cannot exceed the maximum limit of the sanction with the fine provided by the contraventional material norm;
- deprivation of the right to carry out a certain activity for a term from 6 months to one year;
- unpaid work for the benefit of the community, calculating one hour of work for a conventional unit, the working time being of maximum 60 hours;
- contraventional arrest, calculating an arrest day for 2 conventional units, the duration of the arrest being of maximum 30 days, taking into account the rules of the arrest application;
- for traffic offenses the fine may be replaced by deprivation of the right to drive vehicles from 6 months to one year.

The fine is replaced by the court of the territorial area in which is located the authority from which takes part the official agent who examined the case, at his request or at the request of the prosecutor who examined the case.[11]

In this respect, there are some subtleties regarding the non-payment of the fine under the above conditions. First of all, it must be demonstrated that it is impossible to execute the case by the executor, this means that is impossible to collect the amount of the fine by the actions ordered: blocking the amount on the salary card, seizures on goods, others.

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[9] Ordinance of Romania no.2 of 12.07.2001 regarding the legal regime of contraventions. In: The Official Monitor No.410 of 25.07.2001.

[10] The Law of Romania no. 203/2018 regarding measures to make the payment of fines more efficient. In: Official Monitor no.647 of 25.07.2018.

[11] The Contravention Code of the Republic of Moldova from 24.10.2008. In: Official Monitor no. 3-6 of 16.01.2009, republished in the Official Monitor No.78-84 of 17.03.2017.

Then, the replacement of the fine with the unpaid work for the benefit of the community can only take place if the contravener has expressed his agreement in writing to execute this form of sanction. In the absence of the contravener's agreement, the court will not be able to apply the replacement of the contravention sanction.

With regard to the contraventional arrest, a day of arrest for two conventional units (100 lei), the court usually does not apply these provisions, because detaining a person would cost about 198 lei per day today (expenses for communal services, alimentation, salaries of the civil servants who provide supervision and guard) and respectively, it makes no sense to detain a person in custody for 100 lei daily, spending from the budget for this almost double.

Analyzing the Romanian legislation in this respect, we find in art.391 of Government Ordinance no.2 that, if the contravener has not paid the fine within 30 days from the definitive stay of the sanction and there is no possibility of enforced execution, he will notify the court in the constituency to which the contravention was committed, in order to replace the fine with the sanction of performing an activity for the benefit of the community, taking into account, as the case may be, about the part of the fine that was paid. If the contravener, summoned by the court, did not pay the fine within 30 days, the court proceeds to replace the fine with the sanction of performing an activity for the benefit of the community for a maximum duration of 50 hours, and for juveniles from 16 years about 25 hours[12]. The contraventional prison as a sanction has been abolished in Romania since 2003[13].

In the previous legal provisions (art.9 Government Ordinance no.2), the application of the sanction for the benefit of the community was conditioned by the consent of the contravener, a mandatory condition, which had the effect of exempting it from any sanction, in the case that it had no income that could be tracked. Under the conditions shown, the state was practically devoid of the compulsory power through which it ensures the observance of the law, respectively it was inefficient and the sanction applied for committing an antisocial act. The problem was solved by the decision of the Constitutional Court of Romania no.354 of 10.12.2008[14], which found that the phrase "with its agreement" from the

[12] Ordinance of Romania no.2 of 12.07.2001 regarding the legal regime of contraventions. In: The Official Monitor No.410 of 25.07.2001.

[13] Emergency Ordinance of Romania no.108 of 24.10.2003 for the abolition of the contraventional prison. In: Official Monitor no.747 of 26.10.2003.

[14] The decision of the Constitutional Court of Romania no.1.354 of 10.12.2008 regarding the admission of the exception of unconstitutionality of the provisions of art. 9 paragraph (5) of the Government Ordinance no. 2/2001 regarding the legal regime of contraventions, as well as art. 1 paragraph (3), art. 8 paragraph (5) b) and art. 13 of the

art.9, of the Government Ordinance no.2/2001 regarding the legal regime of contraventions, is unconstitutional.

From the beginning of the establishment of contravention sanctions until today, the legal regulations regarding the "fine" have been dynamic in terms of methods / procedures of application. It has been constantly maintained in the general system of sanctions applied by authorities for contravention acts, which damage the social values and social relations protected by the law. The fine consists of the amount of money that the contravener is obliged to pay to the state. It is part of the whole set of measures, with the use of state power, and if necessary against the will of the people, to prevent the committing of anti-social facts and to protect the rights and freedoms of the people.

The evolution of people cannot really be conceived outside the assurance of social order, law, peace, public order and public security, basic attributes of any human community.

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