

THE FINE, SANCTIONS OF CRIMINAL LAW, APPLICABLE TO NATURAL PERSON

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ABSTRACT: THE FINE APPLICABLE TO NATURAL PERSON CONSISTS OF THE SUM OF MONEY THAT IT IS OBLIGED TO PAY TO THE STATE FOLLOWING THE CONVICTION BY FINAL JUDGMENT OF A COURT.

KEY-WORDS: FINE, NATURAL PERSON, DAY SYSTEM FINE, PERFORM A UNPAID COMMUNITY WORK

1. Introductory aspects

Against the background of the criminal sentencing system and the humanization of punishment, especially to principal and criminal fines have grown both in terms of minimum and maximum limits of application, but also in terms of legal regulation itself [1]. Currently, the Member States U.E. Humanism is based on criminal law, international law giving priority on human rights and fundamental freedoms [2]. Criminal law of this state governing various non-custodial sentences , including criminal fines.

Romanian criminal law regulates three categories of penalties applicable to individuals: principal, complementary punishments, punishments accessories. Criminal Code of 2009 did not bring changes on Main punishment previously existing species, maintaining them as life imprisonment, a prison and a fine. Of these penalties, the provisions of the Criminal Code of 2009 completely changed the fine regulation to the Criminal Code of 1968 [3].

2. The fine applicable to natural person - elements in the current regulation

The fine is the main pecuniary punishment for an amount of money that the convict is obliged to pay the state. The fine is to convict heritage decrease in deprivation of some financial means to enjoy the date of conviction or the future until it is paid. It can strengthen coercive imprisonment legislature creating this sense, the possibility of overlapping fine to imprisonment [4].

The fine know new regulations, but also significantly broadened in scope to the Criminal Code of 1968, by increasing the number of offenses or variations thereof for which a fine may be imposed as a punishment unique alternative punished with imprisonment overlapping times.

2.1. A first novelty is to calculate the fine through the day fine. Under this system, governed by art. 61 Criminal Code, the appropriate amount of a day-fine between 10 lei and 500 lei, multiply the number of days-fine, which is between 30 days and 400 days. So overall minimum fine is 300 lei and maximum overall 200.000 lei, were increased compared to the previous Criminal Code.

Because on day-fine system can establish a fine greater than that provided by the Criminal Code previously in transient situations, appears more favorable old law [5]. According to art. 13 paragraph 1 of Law Implementing the Criminal Code [6]: „If the fines set permanently under the influence of the Criminal Code of 1969, the mandatory application of the criminal law is more favorable in comparison to the amount of the fine imposed under the provisions of Article. 61 para. (2) and (4) of the Criminal Code, by using a reference amount for a day or a fine of 150 lei” [7].

Through the mechanism of determining the amount it provides better individualization of punishment actually imposed, both in terms of proportionality, expressed in number of days-fine and effectiveness by determining the value of a day-fine view of the patrimonial situation of the convict [8].

The court shall determine the number of days-fine according to the general criteria for deciding on punishment (art. 74 of the Criminal Code). The amount corresponding to a day-fine is determined taking into account the financial situation of the convicted and sentenced legal obligations to his dependents

Special days-fine limits are between:

- a) 60 and 180 days-fine, the law provides for the only offense the fine;
- b) 120 and 240 days-fine, the law provides the fine alternative to imprisonment not exceeding two years;
- c) 180 and 300 days-fine, fine alternative punishment the law provides punishment of imprisonment exceeding two years.

These special limits may be reduced by one third once, in the case of extenuating circumstances. Special Limits maximum may apply in case of aggravating circumstances, and if these are not sufficient, the maximum may be increased by one third once [9].

This system uses two essential elements for determining the amount of the fine, namely: the number of days-fine, which expresses the gravity of the offense committed and the offender's dangerousness, reason for which the number is determined by general criteria for deciding on punishment (art. 74 of the Criminal Code), and the value of a day - fine, which is the sum of money to a day - fine to be determined taking into account the financial situation of the convict and its legal obligations towards persons under his care. Once established, the number of days-fine is multiplied by the value of a day - fine, and the result is the amount that the convict was forced to pay as a fine [10].

This application system is found in the fine German criminal code (§ 40), Spain (art. 50), France (art. 131-5), Portugal (art. 47), Switzerland (art. 34), Sweden (Chapter 25, section 1), Finland (Chapter 2, Section 4).

Enforcement of criminal fine is according to art. 559 Criminal Procedure Code, which regulates the concrete execution of the penalty [11]. Within 3 months of the final decision, the person sentenced to fine is required to submit the receipt of full payment of the fine to the court for enforcement. When the convict is unable to pay the fine in full within the period specified, the executing court, at the request of the convicted, may order payment of the fine timing (procedure is common practice in EU Member States [12]). For

a period of at 2 years in monthly installments. If the obligation is not fulfilled, it will go to foreclosure, according to the procedures for enforcement of tax claims.

2.2. The second novelty is the possibility to increase or special limits of the fine (art. 61 par. 5 Criminal Code), or to apply a cumulative fine imprisonment (art. 62 of the Criminal Code), then when the offense was intended to obtain a patrimony.

The reason for introducing this legislation is explained by the need to establish effective criminal coercive measures would impose life imprisonment increase. To ensure and effective legal means to prevent and sanction this category of crimes which sought to obtain a patrimony significant easing of life imprisonment, was chosen solution and introducing the possibility of applying a proprietary constraints, when the court considers that such a sanction is necessary and contributes to a better individualization of punishment.

Thus, if the offense, which was aimed at obtaining a patrimony, the law only provides the fine or penalty of fine is provided alternatively imprisonment but the court chooses the fine, its special limits may be increased by a third.

If instead the law provides for the offense committed only imprisonment or imprisonment alternatively the fine, but the court chooses the prison sentence, the court will apply in addition to imprisonment, when deemed necessary, and the fine will accompany such imprisonment. Length of imprisonment and the fine amount will be determined on the basis of the individualization of the two sentences from special limits provided by law for the offense committed.

According to art. 11 of the Act to the implementation of the Criminal Code „provisions of art. 62 of the Criminal Code on the fine accompanying imprisonment shall not apply to offenses committed before the entry into force and will not be considered for determining the most favorable criminal law” [13].

Possibility of a fine with imprisonment for the same offense is not a first for the Romanian criminal law, being found in the Criminal Code of 1936 [art. 25 point 5 and art. 52 para. (1)], and is now enshrined in French law (art. 131-2, 131-5 of the Penal Code), Dutch [art. 9 para. (3) of the Penal Code], Italian [art. 24 para. (2)], Switzerland (art. 50), Germany (§ 41), the proposed regulation inspired by the German code provisions.

2.3. Another novelty is how to reindividualizare fine if it is not paid, the current Criminal Code regulating replacing the fine with imprisonment (art. 63 of the Criminal Code.) Or the fine performance by providing a service work community (Article 64 of the Criminal Code) [14].

Replacing fine with imprisonment shall be in two different ways, as the fine was applied alone or in addition to imprisonment. In the latter case, the obligation to perform fine convict returns, although he is able to hold, art. 22 paragraphs 1 and 2 of Law no. 253/2013 on the enforcement of sentences, educational measures and other non-custodial measures ordered by the court in criminal proceedings [15], providing the person sentenced to fine the obligation to pay the fine in full within three months from the final the judgment of conviction or, if it is unable to fully pay within the prescribed period may, on application, timing of payment of the fine in monthly installments over a period not exceeding two years. So state inmate convicted of plano placed in the position of non-execution for reasons not attributable to the fine.

In case of non-fine in bad faith, it goes first to enforcement to convict and if any in this way can not get fine value because of bad faith of the convict, who has declined or dispose of property that could be executed forced, the court shall replace the fine with imprisonment by transforming day fine set by the original judgment of conviction in days in prison. Thus goes the inconvenience of the previous regulation that allowed the replacement of the fine to imprisonment only if the latter was under the rule of criminality. A similar provision is found in art. 36 para. (1) Criminal Code. Swiss or art. 49 Criminal Code Portuguese.

Note also that the fine for non-maliciously, a day-fine is equivalent to one day of imprisonment and fines for non-performance reasons beyond a day-fine is equivalent to one day of community service.

Transient situations covered by Art. 14 paragraph 1 of the Law of the implementation of the Criminal Code, according to which: „Replace fine with imprisonment is as follows: a) if the fine was finally applied before the entry into force of the Criminal Code is based replacement art. 63' of the Criminal Code of 1969, while the duration of imprisonment may not exceed the maximum days-fine determined according to art. 61 para. (4) of the Penal Code for the offense underlying the conviction; b) if the fine was imposed after the entry into force of the Criminal Code for offenses committed before that date, the replacement will be made under the provisions of law which applied fine”[16].

Assuming that the convict is in good faith but is unable to perform all or part of the fine and can not be enforced for reasons outside the court, with the consent of the convict days of fine replaced with a number corresponding days of community service. Regulated in this way, community work appears in terms of legal nature as a substitute form for penalty fines for people of good faith insolvent consenting to the fine performance in this way [17].

Until the full performance of community service obligation may cease if the convicted person pays the amount of money to fine days remaining unexecuted or can be converted into imprisonment by replacing executed fine days in days in prison , if the person convicted or not running community work under the conditions set by the court or commits a new offense.

Similar provisions contain art. 36 para. (3) c) Criminal Code Swiss, art. 53 Criminal Code Spanish, art . 48 Criminal Code Portuguese.

As transitional situations, according to art. 14 paragraph 2 of the Law of the implementation of the Criminal Code „provisions of art. 64 of the Criminal Code does not apply to crimes committed before its entry into force, even if the fine was imposed on the basis of art. 61 of the Criminal Code” [18].

Conclusion

Penalty fine at a large number of offenses is likely to extend the principle of humanism sentencing and imprisonment applies only to offenses which denotes a social risk. Criminal fine, as a criminal law sanction is likely to re-educate people who have committed criminal acts with a low social risk without the convicted person to be removed from its normal environment and without the state to spend money for the education of its . When the sentenced person can not pay the full fine, penalty fine in monthly installments, is a means of implementing that prevents contact person sentenced to the prison. Its

execution is done in normal life convict being isolated from its environment, social and family.

REFERENCES

- [1]. See Section 3, entitled, as amended (Art. 61-64 of the Penal Code.) of Law no. 286/2009 on the Criminal Code, published in the Official Monitor of Romania, Part I, no. 510, 24 July 2009, with subsequent amendments, effective from 1 February 2014.
- [2]. See L. M. Trocan, Guaranteeing the right to defense in light of the provisions of international treaties specialized in human rights and ECHR jurisprudence, Annals of the „Constantin Brâncuși” University of Târgu Jiu, Juridical Sciences Series, Issue 4/2010, p. 111-127.
- [3]. According to art. 53 Criminal Code (1968), limits on the fines were 100 lei, respectively 50.000 lei. Special limits of the fine is determined according to Art. 63 the Penal Code, depending on the term of imprisonment to which the fine was provided alternately. Whenever the law provides that an offense is punishable only by a fine, without showing the limits, its special minimum is 150 lei and the maximum 10.000 lei. When the law provides the fine without limits show alternately with imprisonment not exceeding one year, special minimum fine is 300 lei and the maximum of 15.000 lei, and it provides the fine alternative to imprisonment exceeding one year, special minimum is 500 lei and the maximum of 30.000 lei.
- [4]. I. Chiș, *Pedepsele principale*, in I. Pascu (coordinator), *Noul Cod penal comentat*, vol. I, the general, Legal Publishing House, Bucharest, 2012, p. 414.
- [5]. B. Bulai, *Pedepsele principale*, in G. Antoniu (coordinator), *Explicații preliminare ale noului Cod penal*, vol. II, Legal Publishing House, Bucharest, 2011, p. 36.
- [6]. Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, published in the Official Monitor of Romania, Part I, no. 757, 12.11.2012.
- [7]. www.mpublic.ro/ncp.pdf, p. 66.
- [8]. Explanatory memorandum of the draft Law on the Criminal Code of 2009, pc. 2.17., <http://www.just.ro>.
- [9]. I. Chiș, *op. cit.*, p. 415.
- [10]. F. Streteanu, R. Moroșanu, *Instituții și infracțiuni în Noul Cod penal*, Manual for use by trainers SNG, Bucharest, 2010, p. 162 (Example: „Suppose that a person commits an offense of theft, punishable under Art. 228 Criminal Code with imprisonment from six months to three years or a fine, and the court turns to the fine. In this case, the court will first determine the number of days fine. being a fine alternative provided by imprisonment exceeding two years, special days-fine limits will be 180 and 300. Between these limits, the general criteria of individuation, the court shall determine the number of day - fines for example 250. Subsequently, the court determines the appropriate amount of day - fines between 10 and 500 lei, given the financial situation of the convict and obligations. suppose that the court sets a rate of 50 lei for a day - fine. In Finally, to determine the amount that the convict will have to pay, the court multiplies the amount corresponding to the day - fine - fine -dayestablished. In the example, the amount will be $50 \times 250 = 7500$ lei”).
- [11]. Law no. 135/2010 Code of Criminal Procedure, published in the Official Monitor of Romania, Part I, no. 486, 15.06.2010, with subsequent amendments, effective from 1 February 2014.
- [12]. Romania, as an EU member state must transpose into the internal law a series of measures, including in criminal matters. (L. M. Trocan, *Quelques considérations sur la Loi no. 298/2008 par rapport aux prévoyances constitutionnelles de la Roumanie et aux documents internationaux de garantie et de protection des droits de l'homme*, Proceedings of the 1st International Scientific Conference „The Role and Place of Law in a Society Based on Knowledge”, „Academica Brâncuși” Publishing House, Târgu-Jiu, 2009, p. 579).
- [13]. www.mpublic.ro/ncp.pdf, p. 67.
- [14]. Criminal Code of 1968 provides that bad faith theft sentenced to pay fine driving the replacement of the fine to imprisonment (art. 63 '), but this was possible only if the offense for which the sentence was handed the fine provided alternative punishment prison (for details see, I. Pascu, P. Buneci, *Noul Cod penal. Partea generală și Codul penal. Partea generală în vigoare*, Legal Publishing

House, Bucharest, 2010, p. 78). If the offense was punishable only by a fine or theft proof of bad faith to pay the fine to which he was sentenced, the institution became inoperable fine replacement. Also, if the convict, even in good faith, could not execute the fine and had no assets that can be seized, finally could not stand any kind of constraint as a result of crime.

- [15]. Law no. 253/ 2013 the execution of sentences, educational measures and other non-custodial measures ordered by the court during trial, published in the Official Monitor of Romania, Part I, no. 513, 14.08.2013.
- [16]. www.mpublic.ro/ncp.pdf, p. 68.
- [17]. Explanatory memorandum of the draft Law on the Criminal Code of 2009, pc. 2.17., <http://www.just.ro>.
- [18]. www.mpublic.ro/ncp.pdf, p. 69.