

SOME CONSIDERATIONS ON EXECUTION OF NON-CUSTODIAL SANCTIONS

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ABSTRACT: FOR COMMITTING ANTISOCIAL ACTS WHICH ARE CRIMES AND ARE CIRCUMSCRIBED TO CRIMINAL PENALTIES, ARE APPLIED SANCTIONS THAT ARE INDIVIDUALIZED, MAINLY IN RELATION TO THE SERIOUSNESS OF THE DEEDS OF THEIR DANGEROUS CONSEQUENCES AND THE OFFENDERS’ PERSONALITY. EXECUTION OF SENTENCES IS DONE DIFFERENTLY IN TERMS OF ATONEMENT CUSTODIAL OR NON-CUSTODIAL. THE EXISTENCE OF A MINOR SOCIAL DANGER OF THE OFFENSE WITH LOWER LIMITS OF PENALTY, AND POSITIVE ATTITUDES AND BEHAVIOR OF THE OFFENDER, MAY LEAD TO A LIGHTER PENALTY, WITHOUT DEPRIVATION OF LIBERTY.

KEY WORDS: CRIME, CRIMINAL LIABILITY, NON-CUSTODIAL SANCTION.

I. Introduction

Committing an act that affects social values and meets the legal requirements to be considered a criminal offense, generates a specific legal conflict between the society, represented by the state on the one hand, and by the offender, on the other part. This relation is legally based on the existence of a norm incriminating a certain deed, stipulating, in case of committing, a criminal sanction and as legal basis in fact breaching the norm by performing the prohibited action or omission, non-performance of the ordered[1]. The subject matter of the criminal legal relationship is the criminal liability of the perpetrator, liability which is reflected by the measure of constraint procedure, namely the principal, subsidiary and complementary penalty. It can be said without hesitation that the existence of criminal liability is held by the existence of the offense as defined by the Article 15 of the New Criminal Code, provision that "(2) *The offense is the only basis for criminal liability*"[2].

In doctrine, criminal liability was defined as all rights and correlative obligations of subjects of criminal justice relation, which is achieved mainly through state coercion exercised against the offender, under the conditions and forms prescribed by law, in order to restore law and order and of the offender’s re-socialization[3].

Application of the criminal sanction, so performing criminal liability of the offender, a key factor in criminal law relation, which extinguishes with the execution of

the sentence or when it is determined that there is any cause that removes the criminal nature or execution of punishment, is carried out through a legally criminal procedure. Criminal liability can not be considered only an abstract penal institution, whereas the existence and enforcement of sentences as well as their execution involves an operationalization, a criminal justice executive relation, which sets out the concrete, institutional body in which sentence is expiated[4].

Social progress has led to a reconsideration of the position towards the institution of penalty[5] in criminal law so that, taking into account new psychosocial and behavioral concepts related to the person deprived of liberty, as well as a comprehensive knowledge of crime phenomenon and methods applied by reinsertion and social, family and professional reintegration, the sanctioning spectrum of Romania, with a natural European evolution has diversified, and for certain offenses with a low *social threat*[6], stipulates the possibility of application of non-custodial sanctions such as criminal fine.

II. Assessing the criminal fine.

In accordance with Art. 53-55 of the New Criminal Code, penalties are divided into three categories: main, subsidiary and complementary, the only one of the main punishment that does not involve a deprivation of liberty being the fine.

The New Criminal Code regulates criminal fine by art. 61-64 and its execution as a non-custodial sanction is done according to Law no. 253/2013 on the enforcement of sentences, educational measures and other non-custodial measures ordered by the court during criminal trial.

Criminal fine is determined by the court as day - fine and represents the amount of money that the convict is obliged to pay the state. This fine differs from the fine contravention or other types of fines as a criminal fine is a penalty imposed for an offense and the court ordered for other cases involving violations of statutory provisions that do not meet the elements of an offense and shall be established and applied by the bodies of state authority, established expressly for this purpose.

Appropriate amount of a day-fine is ranging from 10 lei to 500 lei and is multiplied by the number of days - fine, that is between 30 days and 400 days (Article 61, paragraph 2 NC pen.).[7]

The court shall, in accordance with the provisions of Article 61 paragraph. (3) of the New Criminal Code, establish the number of day - fine given the general criteria for individualizing the sentence, namely: the circumstances and manner of committing the offense, the means used, the state of danger for protected value, the nature and severity of the outcome or other consequences, the reason and purpose of committing the deed, any history of the offender, the offender's conduct after committing the deed and during trial and the level of education, age, health and family situation.

In determining the amount of the sum corresponding to a day - fine, the court must take account the financial situation of the convicted and his legal obligations to his dependents.

The New Criminal Code stipulates in Article 61 paragraph. (4) that the special limits of the day - fine are between :

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

A novelty regarding the establishment of the fine as criminal sanction stipulated by par. (4) of Article 61 of the Criminal Code. is related to the fine imposed in relation to the subjective part of the offense, i.e. committing a criminal offense in order to obtain a patrimonial benefit when the penalty provided by law is only a fine or court if alternative sanctions are stipulated, opting for fine penalty , special limits of the day - fine may be increased by one third.

In establishing the fine ,fractions set by law for reasons of mitigation or aggravation of penalty are applied to the limits of special day - fine stipulated in paragraph (4) and (5) of Article 61 of the Criminal Code.

Regarding the possibility for the court to apply in addition to imprisonment a financial penalty, a criminal fine, we note that this is possible only if the offense was committed in order to obtain a material benefit ,when determining the appropriate amount of a day - fine will take into account the value of the obtained or sought patrimonial means. According to art. 62 para. (2) the special limits of days - fine stipulated by Article 61 para. (4).letter b) and let. c) are determined according to the length of imprisonment set by the court and can not be reduced or increased as a result of mitigating or aggravating causes of penalty.[8]

It may be noted that the legislator has left to the appreciation of the court the enforcement of such fines and did not make the necessary distinction between the situation where the offender has obtained patrimony use pursued at the time of the offense, which would have involved the generation of an injury and the situation where the purpose of the crime was not achieved, given the relation between the individualization of the fine penalty and the value of the material goods sought or obtained.

The fine is one of the major penalties stipulated in Art. 53 of the New Criminal Code, but when it is associated with imprisonment , it acquires an accessory character, although the regulatory regime of accessory punishment does not include the fine penalty. It can be seen that are applied simultaneously to the same offense, two of the principal penalties , imprisonment and fine, which raises discussions on the tangency of the principle of *ne bis in idem* in these situations.

In the old criminal code the establishment of the criminal fine was set ,when the law does not expressly stipulated its limits, only generally referring to the punishment of the crime by a fine, by inclusion it in the special minimum of 150 and maximum of 10,000 RON . . Moreover, the old code provided that where the law requires the fine without showing its limits alternately with imprisonment not exceeding one year, special minimum

of fine is 300 and the maximum of 15,000, RON and when the fine provides alternative with imprisonment exceeding one year, the special minimum is 500 and the maximum of 30,000. RON

It should be noted that in the New Criminal Code it has not been maintained stipulation of Article 63 para. (5) of the old code according to which the establishment of criminal fine is given in relation with the general criteria for individualization of sentences without putting the offender in a position of not being able to perform duties relating to the support, growth, teaching and training of persons to whom it has legal obligations.

If the convicted person fails to perform all or part of the fine, in bad - faith, then the court may order that the number of days - fine which are not executed be replaced by a corresponding number of days in jail.[9] If unexecuted -fine accompanies prison sentence, the number of days - fine is replaced by a corresponding number of days in prison , which are added to imprisonment, their calculation being made by the equivalence of a day - fine with a day day in prison. This replacement of punishment is not the emergence of another prison punishment , so it is considered that the offender executes a single sentence.

III. Execution of criminal fine.

In accordance with Art. 22 of Law no. 253/20013 on execution of punishments and educational measures and other non-custodial measures ordered by the court in the course of criminal trial , the person sentenced to fine is compelled to pay the fine in full within three months since the final judgment of conviction and communicate appointed judge proof of payment, within 15 days of making it. The person sentenced to fine can require judge to divide payment into monthly installments for a period of two years, if he proves by documentary evidence that they are unable to fully pay the fine. Dividing into installments is decided by the ending , which will include the amount of the fine, the number of monthly payments and the payment deadline.

In case of failure of paying the fine, the court will require before deciding to replace the fine with imprisonment or community service, data regarding the financial situation of the convict from the local government authority at home, as well as other authorities or public institutions who may have information on the situation of the convict's patrimony situation .

Regarding the case when the convicted person does not pay the fine within three months, the judge appointed to execution or even the sentenced person notifies the execution or enforcement court, which will decide according to the following situations:[10]

- a) When it finds that the failure is not attributable to convict, enforces fine performance by unpaid community service unless the person can not perform this work due to health condition . The decision by which the court enforces fines by unpaid community work, a copy of the decision shall be sent to the competent Probation Service;

- b) When they detect that the failure is not attributable to convict, but he does not consent to the performance of community service work, they replace the fine with imprisonment;
- c) they detect failure to pay fine in bad faith, imprisonment replaces fine.

Besides the possibility of replacing the fine with community service or prison, according to good or bad faith of the convicted, the fine execution can be done by enforcement, according to the Fiscal Procedure Code, execution officers having in this respect , an obligation to communicate judge the execution date of the fully paid fine, and any incident that prevents the enforcement proceedings.

IV. Unpaid community service- a way of executing a penalty fine

Community service is regulated by Article 64 of the Criminal Code and is considered the easiest type of punishment that can be imposed on a natural person, but this penalty is not listed in the text of art. 53 of the Criminal Code among principal penalties, so it is only a substitute for the fine penalty.[11]

If the fine can not be carried out in whole or in part for reasons not attributable to the person convicted, with his consent the court replaces the obligation to pay the fine of unexecuted with the obligation to perform community service work, unless because of health, the person can not perform the work. A day - fine corresponds to a day of community service. Lack of consent of the sentenced to replace punishment and provision of community service, the non-executed fine is replaced by imprisonment.

Replacement of fine accompanying imprisonment with community service work involves the convict obligation to provide convict labor to be achieved after imprisonment. All activities of the one who is serving a sentence of community work are coordinated and monitored by the probation service. In the event that, although the fine was replaced with community service, the convict pays wholly the appropriate fine day - remaining unexecuted , then stops execution of community service.

If the convicted person does not perform community service required under the conditions set by the court or is convicted of committing a new crime discovered before the full performance of the obligation of community service, the court replaces the days-fine community service non performed by the corresponding number of days in prison. In the second case, the days-fine of community service non performed by the time of the new offense, replaced by imprisonment are added to the penalty for the new offense.

V. Performing unpaid community service work

According to art. 52 of Law no. 253/20013 on execution of punishments, educational measures and other non-custodial measures ordered by the court during trial, community service work is performed in a period not exceeding six months from the date of commencement of work, unless that person is no longer able to perform one or some of the activities set by probation officer or state of temporary disability ceased, situations where community service work can be done until the surveillance deadline expires.

We notice critically the fact that the equivalent work performed under sentence of community service work is disproportionate because, in accordance with the above

mentioned law, two hours of actual work performed is equivalent to a normal working day of 8 hours.

In the case of supervised individuals who perform a paid job or attend courses or vocational training, duration of work done during the same calendar day may not exceed two hours. But at the request of the person supervised, working hours may be extended by the probation officer within another two hours of work. However, those surveyed who have a paying job or are attending school or vocational training courses for public holidays or persons who are not engaged in a paid activity or not attending school or vocational training can carry out activities for up to 8 hours inclusively.

There are some restrictions imposed by law for the conduct of community service work, so this job does not run at night or on days off of religious confessions and the days which are declared holidays by law, only at the express request of the person condemned and as far as possible.

Even if the legal relationship is one of employment, since these benefits circumscribe to the legal concept of work, this penalty of community service work is performed in compliance with the legal provisions concerning the minimum safety and health at work, so that community service work cannot be performed in harmful, dangerous places or ones posing a risk to the health or integrity of the persons

After performing unpaid community service obligation, the institution in the community where the person has performed community service work is required to notify the probation service and the supervised person an act stating that community service work was performed.

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- [3]. I. Mircea, Basis for criminal liability in Romania, Scientific and Encyclopedic Publishing House Bucharest, 1978, p.168.
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- [5]. M.R.O.Curelar, *Juridical English - Romanian Dictionary*, Academy Publishing House Brancusi, Targu-Jiu, 2011, p. 194
- [6]. In New Criminal Code the concept of social threat is no longer included in the definition of the offense (art. 15 NCpen.), The old Penal Code. considering the social danger of the crime is an essential feature.
- [7]. According to the Law for the implementation no.187/2012 nr.286/2009 Law on the Criminal Code, published in the Official Gazette. 757 of 12/11/2012: *"Article 13 (1) 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 paragraph . (2) and (4) of the Criminal Code, by using a reference amount for a day - a fine of 150 (...)”RON*

- [8]. According to the Law for the implementation nr.187/2012 nr.286/2009 Law on the Criminal Code, published in the Official Gazette. 757 of 12/11/2012: "Art 11. *The 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.* "
- [9]. According to Law no. 187/2012 for the implementation of the Law nr.286/2009 the Criminal Code, published in the Official Gazette. 757 of 12/11/2012: "Article 14 (1) *Replacing the fine with imprisonment is as follows: a) if the fine was finally applied before the entry into force of the Criminal Code, the replacement is based on art. 63¹ 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, (...)* "
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