LIABILITY OF THE NEW AND PREVIOUS OWNERS OF A VEHICLE FOR THE NON-PAYMENT OF ROAD TAXES

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Abstract

The present article aims to make a brief analysis of the applicable legal provisions, but also of the relevant judicial practice, regarding the application of the fine for non-payment of the necessary road taxes to the old owner by the competent authorities, despite the fact that the vehicle was already sold to the new owner. It is possible that the case presented will be considered as having a relatively simple solution, but in the context in which the new owner is in bad faith and does not fulfill its legal obligations and continues to accumulate fines for non-payment of the necessary road taxes, the previous owner will find himself in an unfair situation and which, at this point, could even be considered a legislative void.

Keywords: *sale-purchase contract, road tax, fine, contravention report, complaint, user.*

1. Introduction

The courts of justice have encountered in the recent practice numerous disputes in which the previous owner finds himself in the unfortunate situation of having to file a complaint against a contravention report, despite the fact that the vehicle already had a new owner, but the latter begins and even continues to accumulate fines for non-payment of road taxes.

Consequently, we will timidly try, using the methods of interpreting legal norms, to make the necessary distinctions, on the one hand, and on the other hand, we tend to draw attention to a situation that seems to fall under the umbrella of the concept of legislative void, regarding the following situation: when the new owner is acting in bad faith and refuses or simply unjustifiably postpones to fulfill the obligations that the legislation in force has established to be applied to him.

Thus, in addition to the interpretation of the related legal norms, we will also analyze the solutions available to the previous owner, but we will also take into account the relevant judicial practice, including but not limited to Decision no. 4/2018 pronounced by the High Court of Cassation and Justice, which gave a correct and rather interesting interpretation on the notions of transfer of ownership, user and owner, issues that we will analyze during this present article.

2. Summary of Decision no. 4/2018, pronounced by the High Court of Cassation and Justice

By Decision no. 4/2018, the High Court of Cassation and Justice admitted the appeal in the interest of the law formulated by the Board of the Court of Appeal Cluj and, consequently, establishes that, in the unitary interpretation and application of the provisions of art. 8 para. (1), referred to art. 7 and art. 1 para. (1) b) of the Government Ordinance no. 15/2002 regarding the application of the use tariff and of the road taxes on the national road network in Romania, approved with modifications and completions by Law no. 424/2002, with subsequent amendments and completions:

- in case of transfer of the ownership right over the vehicle, the former owner loses the quality of user and active subject of the contravention consisting in the fact of driving without a valid road tax;
- the proof of the transfer of the property right is made according to the common law.

Therefore, through the appeal in the interest of the admitted law, the High Court of Justice and Justice sought the unitary settlement of some issues that had different approaches from the jurisprudential point of view, interpretations of the courts that resulted in different solutions. Precisely in order to avoid a different application of the same legal issue, the appeal was allowed in the interest of the law and, on this occasion, a number of issues were clarified, such as that of the new holder being the one who needs to be fined for the lack of valid road tax, if the change of ownership is proved.

Even in the content of Decision no. 4/2018, it is clearly stipulated that, "if the ownership of the vehicle was transferred prior to the date of the contravention, by a document under private signature, the document proves until proven otherwise (...) and is opposable to other persons than those who drafted it, from the day when the date of the document became certain (...) ".

In other words, "the date of the documents under private signature becomes certain, according to the Code of Civil Procedure, as follows:

- from the day on which they were presented in order to be given a certain date by the notary public, the bailiff or another competent official in this respect;
- from the day when they were presented to a public authority or institution, this mention being made on documents;

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• from the day they were registered in a register or other public document;

• from the day of death or from the day when the physical inability to write of the person who drafted it or of one of those who subscribed it;

• from the day on which their contents are reproduced, even briefly, in authentic documents, such as conclusions, minutes for sealing or making an inventory;

• from the day on which another event of the same nature occurred which unequivocally proves the anteriority of the document"[1].

3. Analysis of the relevant provisions of the Government Emergency Ordinance no. 195/2002[2] and Government Ordinance no. 15/2002[3]

From the provisions of art. 7 and of art. 1 para. (1) b) of Government Ordinance no. 15/2002 results that the obligation to pay the road tax is incumbent on the owner or user of the vehicle that is mentioned in the registration certificate, respectively the user is the natural or legal person registered in the registration certificate, who owns or who, as the case may be, can use the vehicle under a legal right. By default, it appears that the fault of the previous owner cannot be retained in the situation when the new owner did not register in his name the vehicle already purchased at the time of the fine applied by the competent authorities.

We thus understand to discuss the provisions of art. 11 of the O.U.G. no. 195/2002 on traffic on public roads, in the sense that:

Para. (1): the owners of vehicles or their mandated holders are obliged to register them, before putting them into circulation, according to the legal provisions.

Para. (2): The registration of vehicles is continuous, from the admission to circulation until the definitive decommissioning of a vehicle from the category of those subject to this condition, according to the provisions of this emergency ordinance, and involves the following operations:

a) registration in the records of competent authorities, according to the law, of the acquisition of the property right over a vehicle by the first owner;

b) the transcription in the records of the competent authorities, according to the law, of all subsequent transfers of the ownership right over a vehicle.

Para. (3): The operations provided in para. (2) shall be made on the basis of the identification data of the vehicle and the owner and condition the issuance by the competent authorities, according to law, of a registration certificate, as well as the plates with the assigned registration number and the necessary transcripts in the registration certificate and in ID card of the vehicle.

Para. (4): In case of transfer of ownership over a vehicle, the data of the new owner shall be entered in the National Register of driving licenses and registered vehicles established by the Directorate of Driving Permits and Vehicle Registration simultaneously with the mention of termination of ownership of the registration of the former owner. In order to carry out this operation, the new owner is obliged to request from the competent registration authority the transcription of the transfer of ownership, within 90 days from the date of acquiring the ownership of the vehicle.

According to the provisions of art. 17 of the same normative act, the deregistration of vehicles is made by the authority that carried out the registration only in case of their final removal from circulation, at the request of the owner, in the following cases:

a) the owner wants and requires the final withdrawal of the vehicle and proves its storage in a suitable space, kept in accordance with the law;

b) the owner proves the dismantling, scrapping or handing over the vehicle to specialized units for dismantling;

c) upon the final removal from Romania of the respective vehicle;

d) in case of vehicle theft. Thus, it was not necessary to carry out the deregistration operation, given the express and limiting cases provided for by the legal framework in force.

Consequently, from the analysis of the mentioned legal provisions, it results that all the obligations regarding the communication to the competent authorities regarding the change of the holder of the ownership right over the vehicle belong exclusively to the new owner. Thus, the previous cannot be held liable for slippage from the legal rules of the new owner of the vehicle.

Considering the aforementioned provisions, we appreciate that the previous owner no longer had the quality of user of the car starting with the date of the sale-purchase contract, since at the moment when the fine has been applied he no longer had the quality of being the owner of the latter good. Therefore, in relation to these aspects, the previous owners cannot have the quality of offender for deeds committed after the alienation of the car, as a result of the new owner acting in bad faith and refusing or simply unjustifiably postponing the fulfillment of the obligations that the

[1] See in this respect Alexandru Boiciuc, „*Noul proprietar al mașinii trebuie amendat pentru lipsa rovinietei, nu vechiul proprietar. Decizia ICCJ, obligatorie de azi*", article published on the 7th of May 2018, on the following website: https://www.avocatnet.ro/articol_47787/Noul-proprietar-al-ma%C8%99inii-trebuie-amendat-pentru-lipsa-rovinietei-nu-vechiul-proprietar-Decizia-ICCJ-obligatorie-de-azi.html, accessed on the 17th of February 2021.

[2] Regarding traffic on public roads, published in the Official Journal of Romania no. 670 of August 3rd, 2006, with subsequent amendments and completions.

[3] Regarding the application of the use tariff and the road tax on the Romanian national road network, published in the Official Journal of Romania no. 82 of February 1st, 2002, with subsequent amendments and completions.

legislation in force has established to be applied to latter.

The contravention liability can be incurred only in the charge of a person who has committed an act provided by the contraventional law. Although, in criminal matters, no principle of personal liability has been expressly provided, as in criminal matters, however, this principle can be easily deduced both from the fact that according to ECHR case law, contraventions belong to the sphere of criminal law, as well as and for the purpose of applying a contraventional sanction.

As long as the contraventional sanctions have a punitive and preventive role and in no case reparative, it would be useless to impose a sanction on a person other than the one actually responsible for committing the illicit action or inaction.

4. Regarding the possibility of calling for a guarantee, we appreciate that a series of clarifications are needed

Currently, we can without many doubts mention that the safest solution that the previous owner has at hand, as a seller of the vehicle, is to appeal to the courts the fines received.

However, this approach can bring a number of risks and inconveniences, among which it is important to specify the mechanism of the calling for a guarantee, a concept available to the defendant, in this case, as the buyer of the vehicle.

The guarantee mechanism is one of the forms of forced intervention used on countless occasions in judicial practice, regardless of whether we consider disputes between professionals or individuals, precisely because it presents a number of advantages, the most important being that it has real and powerful potential to avoid contradictory judgments.

Thus, we understand to bring into discussion a decision recently pronounced by the Constitutional Court of Romania, namely Decision no. 854 of December 17th 2019[4], referring to the exception of unconstitutionality of the provisions of art. 73 para. (3) of the Code of Civil Procedure[5]. The latter act ruled in principle on the following:

„As regards the contention that, if, in the reply to the statement of defense, the applicant presents the true evidence on which his claims are based, the defendant would no longer be able to make a claim for guarantee, the Court finds that it cannot be retained, since, according to the rules established by art. 254 of the Code of Civil Procedure, the evidence is proposed, under the sanction of revocation, by the plaintiff by the request for summons, and by the defendant, by the counterclaim. Evidence that has not been proposed in these circumstances may no longer be required and approved during the trial, except in certain cases expressly specified by law, namely, when the need for evidence results from the changes made to the initial application, when the need for evidence arises from the judicial investigation and the party could not foresee it, when the party sees the court that, for duly justified reasons, he could not propose the required evidence in time, when the administration of the evidence does not lead to the postponement of the trial or when there is the express agreement of all parties. Therefore, the defendant will know the plaintiff's claims and the evidence on which they are based since the communication of the summons, there is, usually, no other procedural moment in which to allow the plaintiff to propose new evidence. In reply to the statement of defense, the applicant will not be able to bring evidence other than that which he has already considered necessary to prove his claims in the summons. It is true that, until the first term at which he is legally summoned, the plaintiff can modify his request for a trial, according to art. 204 para. (1) of the Code of Civil Procedure, proposing, accordingly, new evidence but this does not impede the right of the defendant to resort to the guarantee mechanism. This is because, according to the aforementioned text, in such a situation, the court will order the postponement of the case and the communication of the modified request to the defendant, in order to formulate the objections, being analogously applicable the provisions criticized in the present article, which allow him to formulate up to this new procedural moment the request for guarantee. Therefore, the criticism of the alleged infringement of the right to a fair trial cannot be upheld either, from the point of view of the defenses available to the parties during the proceedings.”[6].

In the light of the argumentation of the Constitutional Court, however, we understand to bring into discussion the provisions of art. 72 of the Code of Civil Procedure, namely: „(1) The interested party may call on a third party under guarantee, against whom he may file a separate claim for guarantee or compensation. (2) Under the same conditions, the person called under guarantee may call another person under bail”.

Consequently, regardless of whether the seller does not submit all the evidence he has, let's assume, at hand, in the hope that the defendant, as the buyer, will not use the guarantee mechanism, this will not be possible to achieve, in relation to the legal provisions retained even by the Constitutional Court of Romania in the aforementioned decision.

However, we consider that the defendant, as a buyer, will be able to call the person who subsequently purchased the same car as collateral, which results from the provisions already revealed, but the latter person

[4] Published in the Official Journal of Romania no. 219 of March 18th, 2020.

[5] Law no. 134/2010 regarding the Civil Procedure Code, published in the Official Journal of Romania no. 247 of April 10th, 2015, with subsequent amendments and completions.

[6] See in this respect the Constitutional Court of Romania, namely Decision no. 854 of December 17th 2010, para. 17.

will no longer have the same procedural mechanism at hand. Otherwise, it would follow that, in order to circumvent any decision of the courts, therefore in order to block an entire system, it would only be necessary to fulfill two conditions, namely: the successive alienation of the vehicle in question, respectively the non-fulfillment of the obligations imposed by the legislation on the buyers.

However, given the well-known situation at the level of the judiciary system, we can only conclude that the sale of a vehicle, in the above conditions, will be made much more quickly than a court will ever have at hand to rule on that dispute. Therefore, a whole series of calls for guarantees would be born, without reaching an effective or practical finality in any way, including violating the right to a fair trial.

On the other hand, it is important to note that, in accordance with Civil Decision no. 66 / 23.06.2016, pronounced by the Bucharest Court of Appeal, Section VIII Administrative and Fiscal Litigation, "it is inadmissible the request for guarantee made by the plaintiff against third parties, in order to capitalize their claims, in the event of its rejection of the claims made in contradiction with the defendant public authority, which appears as a party to the legal report submitted to the court.

The call for guarantee thus represents that request for forced intervention by which one of the litigants requests the introduction in the litigation of a third party against whom he/she could file a separate action in guarantee or in compensations, claiming its settlement in the pending dispute.

This procedural instrument, not being regulated as a form of modification / completion of the summons by the will of the plaintiff or the defendant, is not intended to make it possible to attract a new defendant in the litigation, but, in principle, to create a new legal relationship of procedural law between the holder of the request for forced intervention and the one called in guarantee.

A characteristic element of the guarantee application is the existence of a dependency and subordination link between the main application and the guarantee application, the solution of the first application essentially influencing the solution of the guarantee application.

In other words, so far as there is a rejection of the action brought by the applicant, the legal reality is not altered as a result of the judgment given, so as to allow the conclusion that at that time the claim for damages or guarantee claimed could ne born. At the same time, an admission of the request for the initial application will result in the rejection of the request for guarantee as being without object or without interest[7]".

That is the reason why we understand to refer to the call for guarantee made by the defendant, of interest to this article and we conclude that, currently, the caller on guarantee no longer has the possibility to call, in return, another person on guarantee.

The above conclusion is supported, for example, by the arguments consulted in the content of Decision no. 3908/21 October 2014, pronounced by the High Court of Cassation and Justice, Administrative and Fiscal Litigation Section[8], by which the following were retained: "In law, according to the provisions of art. 72 para. (1) the interested party may call on a third party under guarantee, against whom he could go with a separate claim for bail or compensation.

The High Court of Cassation and Justice, in accordance with the solution of the first instance, finds that the mentioned provisions expressly provide that "a third party" may be summoned as a guarantee, the doctrine accepting the possibility of formulating a request for guarantee between the parties in the trial only in the situation of passive procedural co-participation, by the summoning of a defendant by another defendant, and not between the plaintiff and the defendant, the former being able to capitalize his claims through the request for summons, modified according to the provisions of art. 204 Civil Procedure Code, until the first term at which he was legally summoned.

It is also noted that if in the previous regulation was provided the notion of calling another person to guarantee, the legislator through the New Code of Civil Procedure restricted this possibility".

5. Conclusions

In the case of a vehicle that has changed ownership, the new owner must be fined for driving on public roads without a valid road tax, not the previous owner. In the event that the previous user will be fined, he can appeal to the courts of justice, in compliance with the mandatory deadlines, through a complaint.

However, a really useful and fair step would be for the obligations to notify the competent authorities of the alienation of a vehicle, in this case through a contract of sales, to be found also at the disposal of the former owner, in this case having the status of seller.

An even more useful step would be to modernize and correct the databases of all the competent authorities involved, especially the databases of the Romanian police and town halls, for a much easier and correct identification of the reality of the person that can be regarded as the present owner or even user of a vehicle at a certain timeframe.

[7] Extract available at the following web address: https://www.legal-land.ro/chemarea-garantie-conditii-de-admisibilitate/, accessed on the 19th of February, 2021.

[8] Available at the following web address: http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery[0].Key=id&customQuery[0].Value=122823, accessed on the 19th of February, 2021.

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Case-law:

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- Civil Decision no. 66 of June 23rd, 2016 of the Bucharest Court of Appeal, Section VIII Administrative and Fiscal Litigation;
- Decision no. 3908 of October 21st, 2014 of the High Court of Cassation and Justice, Administrative and Fiscal Litigation Section.

Legislation:

- Law no. 134/2010 on the Civil Procedure Code;
- Government Emergency Ordinance no. 195/2002 regarding traffic on public roads;
- Government Ordinance no. 15/2002 regarding the application of the use tariff and the road tax on the Romanian national road network.

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