

THE JURIDICAL REGIME OF SANCTIONING THE PERFORMANCE OF AN ACTIVITY FOR THE BENEFIT OF THE COMMUNITY

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Abstract

The sanctioning of performing an activity for the benefit of the community is always established alternately with the fine or penalty and certain deeds that constitute contraventions are sanctioned. This sanction may be applied only by the court.

The activity for the benefit of the community is performed in the field of public services, for maintaining the places of recreation, parks and roads, for maintaining the cleanliness and hygiene of the localities, for conducting activities for the benefit of hostels for the elderly and children, for the orphanages, nurseries, kindergartens, schools, hospitals and other social-cultural establishments.

It is prohibited to oblige the child to perform an activity involving risks or is likely to affect his/her education or to harm his/her health or his/her physical, mental, spiritual, moral or social development.

Keywords: *offense, community service activities, irrevocable, supervising the execution, contravention, working programme.*

Introduction

Contravention imprisonment was introduced into the Romanian legislation by Decree no.329/1966 on sanctioning some deeds that constituted contraventions to the rules of travelling by train.¹

It has first appeared as an exception to the common law, but then more regulations regarding the law stipulated the punishment of certain deeds with contravention imprisonment, although Law no.32/1968, which was the framework law on the contraventions regime, this sanction was not taken in the system of contravention sanctions.

Among the concerns of finding some alternatives to the sanctions involving deprivation of liberty on short term, which could protect the offender from imprisonment was Law no.82/1999 on the replacement of contravention imprisonment with the sanction of obliging the offender to perform some activities for the benefit of the community.

By GO no.2/2001 on the juridical regime of contraventions, both contravention imprisonment and performing some activities for the benefit of the community were stipulated as the main sanctions.²

Due to the dysfunctions reported in the practice of the courts of law on the application and enforcement of these sanctions, this area was covered by special law, GO no.55/2002.³

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¹ Decree no.329/1966 on sanctioning some contraventions regarding the rules for travelling by train, published in Of.B. (Official Bulletin) no. 21/03.05.1966, repealed by Law no.158/2004 concerning the declaring of certain normative acts as repealed, published in the Of.G. (Official Gazette) no. 467/25.05.2004.

² GO no. 2/2001 on the regime of contraventions, published in Of.G. no. 410/2001, Law no. 180/2002 published in Of.G. no. 268/2002, amended through GEO no. 108/2003 published in Of.G. no. 747/26.10.2003, Law no. 526/2004 published in Of.G. no. 1149/06.12.2004, Law no. 182/2006 published in Of.G. no. 443/23.05.2006, Law no. 352/2006 published in Of.G. no. 640/25.07.2006, GO no. 8/2006 published in Of.G. no. 78/27.01.2006, Law no. 353/2006 published in Of.G. no. 640/25.07.2006, Law no.293/2009 published in Of.G. no.645/01.10.2009, Law no.202/2010 published in Of.G. no.714/26.10.2010.

In the ordinance it is stipulated that the sanction of the performance of an activity for the benefit of the community can be provided only in laws or ordinances of the Government, through which certain deeds constituting contraventions shall be established and sanctioned.⁴

The sanctioning of performing an activity for the benefit of the community is always established alternately with the fine or penalty and certain deeds that constitute contraventions are sanctioned. This sanction may be applied only by the court.

The activity for the benefit of the community is performed in the field of public services, for maintaining the places of recreation, parks and roads, for maintaining the cleanliness and hygiene of the localities, for conducting activities for the benefit of hostels for the elderly and children, for the orphanages, nurseries, kindergartens, schools, hospitals and other social-cultural establishments.

The local council establishes through a decision the fields of the public services and the areas where the offenders will perform activities for the benefit of the community.

The mayor is required to carry out the mandate of execution.

The sanctioning of performing an activity for the benefit of the community is carried out after the working programme, or, according to each case, the school programme of the offender, for a period between 50 hours and 300 hours, maximum of 3 hours a day, and during the non-working days of 6-8 hours per day.

If the offender has the opportunity to execute the penalty every day of the week, and local public authorities, through the persons empowered, are able to supervise the offender's activities, the maximum duration of the working time cannot exceed 8 hours per day.

The sanctioning of performing an activity for the benefit of the community can also be applied to minors, if the crime was committed at the time they reached the age of 16 years. The activity is performed on a period between 25 hours and 150 hours.

It is prohibited to oblige the child to perform an activity involving risks or is likely to affect his/her education or to harm his/her health or his/her physical, mental, spiritual, moral or social development.

The procedure of applying the sanctions

In the case of contraventions for which the law provides for sanctioning with the fine alternately with sanctioning the performance of an activity for the benefit of the community, if the fact-finding agent considers that sanctioning with the fine is sufficient, he/she applies the fine in accordance with the provisions of the GO no.2/2001 on the contraventions regime.⁵ If, in relation to the seriousness of the crime, it is considered that the fine is not sufficient, the fact-finding agent shall write a fact-finding report on the contravention and shall submit it, within 48 hours, to the court of justice.

The jurisdiction belongs to the court in whose district the offence was committed.

The president of court fixes an emergency term, citing the offender and the fact-finding agent.

³ GO no. 55 of 16/08/2002 on the juridical regime of sanctioning the performance of an activity for the benefit of the community and contravention imprisonment, published in the Official Gazette no. 642 of 30/08/2002, approved by Law no. 641/2002 published in the Of.G. no. 900/11.12.2002, amended by GEO no. 108/2003 published in Of.G. no. 747/26.10.2003, Law no. 42/2007 published in Of.G. no. 163/07.03.2007, GEO no. 78/2008 published in Of.G. no. 465/23.06.2008.

The dispositions of the ordinance is supplemented by the provisions of the Code of Civil Procedure.

⁴ Example - Law no. 61/1991 to sanction the acts of violation of some rules of social coexistence, of the order and public order, republished in Of.G. no. 387/18.08.2000, with subsequent amendments.

⁵ GO no. 2/2001 on the contraventions regime, published in Of.G. no. 410/2001, Law no. 180/2002 published in Of.G. no. 268/2002, amended by the GEO no. 108/2003 published in Of.G. no. 747/26.10.2003, Law no. 526/2004 published in Of.G. no. 1149/06.12.2004, Law no. 182/2006 published in Of.G. no. 443/23.05.2006, Law no. 352/2006 published in Of.G. no. 640/25.07.2006, GO no. 8/2006 published in Of.G. no. 78/27.01.2006, Law no. 353/2006 published in Of.G. no. 640/25.07.2006, Law no.293/2009 published in Of.G no.645/01.10.2009, Law no.202/2010 published in Of.Gno.714/26.10.2010.

The bench is composed of a single judge.

The offender can be assisted by the defender.

If the offender is a minor, legal assistance is required. The court calls for the summoning of the parents or of the legal representative of the minor.

Participation of the prosecutor is required.

The court considers the legality and reliability of the reports or minutes and delivers one of the following solutions:

a) applies the sanctioning with the fine;

b) applies the sanctioning of performing an activity for the benefit of the community, if it considers that the application of the contravention fine is not sufficient or the offender does not have material and financial means to pay it;

c) cancels the minutes or the report.

If a person has committed multiple offences, found through the same report or minutes, in case for all the facts or only for some of them it has been stipulated the sanctioning of performing an activity for the benefit of the community, the sanctions added without being able to exceed the overall maximum established by the law.

These provisions shall apply as appropriately and in the situation in which the concurrent contraventions were found through different minutes or reports.

The decision through which the sanction was applied for the performance of an activity for the benefit of the community is irrevocable.

In all cases, the court may, by resolution, determine the nature of the activities to be performed by the offender for the benefit of the community, based on data provided by the mayor of the locality where he/she has his/her domicile or residence, taking into account his/her physical and mental skills, as well as the level of professional training.

The enforcement of the sanctions

The sanctioning of performing an activity for the benefit of the community is placed into execution by the court of law by issuing a writ of execution.

A copy of the decision, with the writ of execution, shall be communicated to the mayor of the territorial-administrative unit and to the police station in whose territorial range the offender is domiciled or resident, as well as to the offender.

The writ of execution shall be made in 4 copies and include:

- the court which issued it;

- the date of the issue;

- number and date of the decision that is being executed;

- the personal data on the offender: name, date and place of birth, domicile and residence, if necessary, and the personal code number; - the length and nature of the work to be performed by the offender.

The sanctioning of performing an activity for the benefit of the community is executed within the range of the administrative-territorial unit in which the offender resides or has his/her domicile.

The mayor is required to carry out the writ of execution.

In carrying out the writ of execution, the mayor establishes a once the type of activity to be performed by the offender, the conditions under which he/she executes the sanction, as well as the working hours, making the unit where the activity shall be performed aware of the measures taken.

When establishing the type of activity to be performed by the offender, the mayor will take into consideration the professional training and the offender's health, evidenced by documents issued according to the law.

It is forbidden to establish for the offender the performance of work underground, in mines, in the subway or in other such places with a high risk in performing activities, as well as in dangerous

places or which by their nature can cause physical suffering or can produce damages to the person's health.

The sanctioning of performing an activity for the benefit of the community is executed in accordance with the rules of labour protection.

If the public service within which the offender performs work was granted to a company entirely owned or partly private, the counter value of the performed activities is paid at the territorial-administrative unit's budget in whose range the sanction is being executed.

The mayor, in carrying out the obligation to bring out the writ of execution, establishes the type of activities, the conditions under which it is done and the working programme of the minor.

The supervision of the enforcement of the sanctioning the performance of an activity for the benefit of the community is ensured by the mayor of the locality or by the mayors of the sectors of Bucharest, through authorized people, helped by the police stations, in whose territorial range the sanction is being performed.

The division of tasks and the coordination of the actions undertaken by the persons authorized by the mayor, as well as the ways of granting support by the police units in order to enforce the surveillance of the execution of performing an activity for the benefit of the community is done with the help of a program of supervision and control established by the mayor, with the agreement of the police unit in whose territorial range the offender is domiciled or resident. A copy of the program remains in the local authority's evidence and in that of the police unit with territorial competence.

Providing work for the benefit of the community is executed on the basis of guiding rules on work established by the mayor, making it possible to exercise control, at different time intervals, by those authorized with supervising the execution of the sanction.

The unit from the public service field in which the offender is executing the sanction is forced, at the mayor's request, to communicate the data and information required on the execution of the sanction.

The offender shall go immediately, but no later than 3 days after receiving the writ of execution, to the mayor of the administrative-territorial unit in whose range the offender is domiciled or resident, for being registered and for executing the sanction.

The beginning of executing the sanction consisting in performing an activity for the benefit of the community is made no later than 5 days after receiving the writ of execution.

The mayor has the obligation to provide records of the sanctions applied to the offenders and of the execution of the sanctions to enforce the sanctions, under this ordinance.

If the offender, malevolently, does not go to the mayor for being registered and for executing the sanction, avoids the execution of the sanction after the beginning of the activity or fails to fulfil the duties incumbent upon him/her at the workplace, the court, upon the mayor's notification, of the police units or of the unit's management at which the offender was required to go and provide community service activities, may replace this sanction with the sanction of the fine.

The execution of the sanction of performing an activity for the benefit of the community is prescribed within 2 years from the date of the remaining irrevocable of the court's decision that applied the sanction.

If until the enforcement of the writ of execution of the sanctioning of performing an activity for the benefit of the community or if during the execution of the sanction of performing an activity for the benefit of the community an irrevocable conviction decision has occurred concerning a freedom-privative, with execution, the contravention sanction shall not be executed anymore.

The fine is executed under the provisions on the enforcement of budget claims.⁶

⁶ GO no. 92/2003 on Tax Procedure Code published in Of.G. no. 941/29.12.2003, approved by Law no. 174/2004 published in Of.G. no. 465/25.05.2004, republished in Of.G. no. 560/24.06.2004, as amended by GO no. 47/2007 published in Of.G. no. 603 of 31/08/2007, GEO no. 19/2008 published in Of.G. no. 163 of 03/03/2008, GEO no. 192/2008 published in Of.G. no. 815 of 04/12/2008.

Against the measures taken on the content of the activities, on the conditions under which it is being performed, as well as to the way in which the supervision is carried out, the offender may make a complaint, which is submitted to the mayor or, according to each case, to the police station to whom belongs the police officer who is in charge with the surveillance of the activity.

The complaint together with the verification of the issues appraised are submitted, within 5 days of registration date, to the court in whose district or range the sanction is being executed.

The complaint shall be settled within 10 days of its receipt.

If the court finds that the complaint is based, it provides, if necessary, the modification of the activity or of the surveillance measures.

The decision of the court shall be irrevocable and shall be communicated to the mayor or to the police unit to which the offender has lodged the complaint, as well as to the offender.

Conclusion

Under the provisions of Article 9 paragraph 5 from GO no. 2/2001, the contravention fine could have been replaced in case of non-payment, with a sanction for performing an activity for the benefit of the community, but this measure being subject to the consent of the offender⁷ was never applied because no one ever gave their consent in this sense, they did not have incomes and were expecting for the prescription to intervene.

If the offender does not pay the fine within 30 days, the court shall replace the fine with the mandatory sanction to provide a community service activity, with his/her consent.

The replacement of the contravention fine with a sanction to perform an activity for the benefit of the community was subject to the consent of the offender, which lead to his/her exoneration of any other sanction, assuming that he/she did not have enough income that could be pursued, and closely connected to, under the conditions shown, the annulment of the contravention imprisonment is likely to deprive the state of the power of coercion to ensure the compliance with law.

This conditioning on the offender's consent is liable to deprive of efficiency the penalty imposed for committing an antisocial deed, with the consequence of violating the stipulations of Article 1. (5) from the Romanian Constitution, according to which "In Romania, the observance of the Constitution, of its supremacy and of its laws is mandatory."

In this respect there are also the similar provisions requiring the offender's consent to performing an activity for the benefit of the community which are found in Article 1 (3), Article 8 Paragraph (5) letter b) and Article 13 of Government Ordinance no. 55/2002 regarding the juridical regime of the sanction on performing an activity for the benefit of the community.⁸

These texts have the following content:

Article 1 paragraph (3): "The sanction on performing an activity for the benefit of the community can be applied only if there is consent of the offender."

⁷ GO no. 2/2001 on the contravention regime, published in Of.G. no. 410/2001, Law no. 180/2002 published in Of.G. no. 268/2002, as published by the GEO no. 108/2003 published in Of.G. no. 747/26.10.2003, Law no. 526/2004 published in Of.G. no. 1149/06.12.2004, Law no. 182/2006 published in Of.G. no. 443/23.05.2006, Law no. 352/2006 published in Of.G. no. 640/25.07.2006, GO no. 8/2006 published in Of.G. no. 78/27.01.2006, Law no. 353/2006 published in Of.G. no. 640/25.07.2006, Law no.293/2009 published in Of.G. no.645/01.10.2009, Law no.202/2010 published in Of.G. no.714/26.10.2010.

⁸ GO no. 55 of 16/08/2002 on the juridical regime of sanctions for the performance of an activity for the benefit of the community and on the contravention imprisonment, published in the Official Gazette no. 642 of 30/08/2002, approved by Law no. 641/2002 published in the Of.G. no. 900/11.12.2002, amended by GEO no. 108/2003 published in Of.G. no. 747/26.10.2003, Law no. 42/2007 published in Of.G. no. 163/07.03.2007, GEO no. 78/2008 published in Of.G. no. 465/23.06.2008.

Article 8 paragraph (5) letter b): “(5) The court considers the legality and reliability of the minutes or report and delivers one of the following solutions:

b) the application of the sanction on performing an activity for the benefit of the community, with the consent of the offender, if it considers that the application of the contravention fine is not sufficient or that the offender does not have the material and financial means to pay it;

Article 13: “In all cases, after taking the consent of the offender, the court of justice, by resolution, determines the nature of the activities that will be performed for the benefit of the community, based on data provided by the mayor of the city where the offender has his/her domicile or residence, taking into account his/her physical and mental skills, as well as his/her professional training level.”

In this regard the Constitutional Court through Decision no. 1354/2008⁹ found that the phrases “*with his/her consent*” in Article 9 of the Government Ordinance no. 2 / 2001 on the juridical regime of contraventions, as well as the phrases “*only if there is the consent of the offender*,” “*with the consent of the offender*” and “*the taking the offender’s consent*” of Article 1 paragraph (3), Article 8 paragraph (5) letter b) and, respectively, Article 13 of Government Ordinance no. 55/2002 regarding the juridical regime of the sanction on performing an activity for the benefit of the community, as amended by Government Emergency Ordinance no. 108/2003 on the abolition of contravention prison are unconstitutional.

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⁹ Decision no. 1354/2008 of the Constitutional Court, published in the Official Gazette no. 887 of 29/12/2008.