

# DIFFICULTY OF IMPLEMENTATION OF WORK SANCTION IN THE COMMUNITY

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## **Abstract**

*If determined persons are constantly and repeatedly disturbing public peace, the injured can appeal to the police and the local public administration authority to which they belong to signal the disagreeable issues. Such acts must lead to the punishment of those concerned in accordance with the provisions of Article 2, paragraph 26 of Law no. 61/1991. However, the legal measures taken are often ineffective and do not constitute a "threat" for the offenders, and they continue unhindered to disturb public peace.*

*In this study, we shall report these irregularities and try to find legal remedies in order to address legal shortcomings in the field and to ensure good governance by the competent institutions to take action.*

**Keywords:** *contravention, fine, community work, public authority.*

**JEL Classification:** [K39].

## **1. Introduction**

Several localities in rural areas are confronted with the situation in which their own locals manifest in the sense of despising the rules of social cohabitation. Generally, these people form themselves in groups, through the acts they commit, bringing disaffection to the entire community of that locality. The subject under consideration is not only specific to the rural area, but it can also be demonstrated in the urban environment.

However, the purpose of the study is to investigate, on a case-by-case basis in rural areas, the law applicable to all cases that would be in a similar situation, to identify whether there are deficiencies in the development of these rules - Ultimately, they are speculated by people with antisocial behavior and at the same time lead to the weakening of the citizen's trust in the competent institutions.

In Valea Crișului commune in Covasna County, about 30 Hungarian citizens complained to the People's Advocate Institution of Brașov Territorial Office (Muraru, 2004: 27-73; Reghini & Drăgan, 2013: 243-246) that some Roma people who moved to their neighborhood are disturbing their daily silence through the music broadcast at an unbearable intensity, and the measures taken by the notified public authorities did not interrupt the phenomenon.

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**2. If the rules prohibiting disruption of public peace are not respected, what can be done? Can the person or persons concerned be sanctioned in contravention?**

The injured persons addressed the Valea Crișului Police Station, which led to the punishment of the persons concerned according to the provisions of art. 2, para. 26 of Law no. 61/1991<sup>1</sup>.

Thus, in a reply sent to the People's Advocate Institution of Brașov Territorial Office, the County Police Inspectorate of Covasna County states that at the level of the Crișului Valley Police Station from 2016 until the middle of 2017, 10 (ten) sanctions were applied to the alleged aspect, being punished more than one person. Moreover, following the notifications received through SNUAU 112, representatives of Valea Crișului police went on the spot, even with the participation of the mayor of the locality. As a result, peace and public order was restored, and responsible persons were sanctioned in contravention. Also weekly they were involved in police actions and joint patrols, gendarmes within the Covasna County Gendarmerie Inspectorate. In spite of these concerted measures, the acts of public peace disorder were repeated.

According to art. 2, para. 26 of the Law no. 61/1991 on sanctioning the facts of violation of norms of social coexistence, public order and tranquility, republished, with the subsequent modifications and completions, "the disturbance of the peace of the tenants between 22.00- 8.00 and 13.00-14.00 by any person by producing noise, harm or by using any apparatus, object or musical instrument at high intensity in the premises or in the offices of legal persons, in the homes of individuals or in any other place from or near the dwelling premises "shall be sanctioned with a fine from 500 lei to 1,500 lei.

Art. 39 of Government Ordinance no. 2/2001 on the legal regime of contraventions, as amended and supplemented<sup>2</sup>, governs the manner in which the fine is executed. Thus, the body of which the investigating agent is a member will automatically report the report on the finding of the contravention and the application of the sanction, not filed within the legal deadline, within 30 days from the expiry of this term to the specialized bodies of the territorial-administrative units in whose territorial jurisdiction the infringing natural person or the specialized bodies of the units subordinated to the Ministry of Public Finance - the National Agency for Fiscal Administration, as the case may be.

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<sup>1</sup> Published in the Official Monitor of Romania no. 96 of 7 February (1991).

<sup>2</sup> Published in the Official Monitor of Romania no. 410 of 25 July (2001).

### **3. What happens when the person who repeatedly makes a noise, for example, in a condominium where more than one family lives, does not have personal income or property?**

Article 9 para. (3) of the Government Ordinance no. 2/2001 on the legal regime of contraventions, as subsequently amended and supplemented, if the offender did not pay the fine within 30 days from the stay the institution of which the determining agent is in whose territorial jurisdiction the infringer is domiciled will refer the case to the court in whose jurisdiction he resides with a view to replacing the fine with the sanction of the offender's obligation to perform an activity for the benefit of the offender community.

Consequently, according to the legislation in force, the Valea Crişului Police Station submitted the minutes of finding the contravention to Valea Crişului City Hall, within the time limit set by the law, in order to execute them.

As a result of the information provided, the mayoralty found that the fines were neither disputed nor paid by the offenders, the minutes were subsequently communicated and registered to the Taxes and Taxes Department within the specialized apparatus of the Mayor of Valea Crişului, for forced execution.

In this context, the Valea Crişului City Hall hired a civil servant to carry out the main task of ordering forced execution measures, namely measures regarding the replacement of the fine with the sanction of obliging the offender to perform a community service. This measure is necessary due to the fact that the offenders do not have assets and have no income that can be enforced, so that for all the contravention fines the measure of drawing up the documentation is necessary for their submission to the competent court. Until the end of 2017, Valea Crişului commune had 400 unpaid minutes.

However, although the legislator provided by Government Ordinance no. 2/2001 the possibility of replacing these fines with community work, no sanction is provided for the refusal to perform such activities.

Considering the precarious material situation of these persons, most of them being applicants for the minimum guaranteed income provided by Law no. 416/2001, there have been countless situations when - in order to obtain the financial aid - these persons systematically refused to provide any community service, considering that this right is without any correlative obligation.

Therefore, the situation is created in which the offenders for committing acts of disturbance of the public peace are, at the same time, belonging to the category of so-called social assisted - beneficiaries of the minimum guaranteed income. In such a situation, the offender cannot be subjected to forced execution by the measure of the right to social assistance, such a measure being prohibited by Article 728 para.7 of the Civil Procedure Code, as subsequently amended and supplemented.

But do not create confusion between the two categories of situations that may lead to the obligation to perform community work. The first situation

is the one regulated by art. 6 para.2 of the Law no. 416/2001 on Minimum Guaranteed Income, with the subsequent amendments and completions<sup>3</sup>, and refers to the correlated obligation which belongs to one of the major and fitter members of the beneficiary family of the social assistance, to provide, at the mayor's request, actions or works of local interest.

The second situation refers to the issues already dealt with and regulated by the Government Ordinance no. 2/2001, in which case the community work is a sanction and the one who provides it is an offender, based on a court decision which permits the conversion of the contravention fine into this activity.

In the first case, namely the one regulating the right to social assistance, the Valea Crișului Town Hall suspended the granting of the money sums, provided that the correlated obligation to provide community service was not executed, not motivated.

In the second case, however, the City Hall could not decide on any sanction, for two reasons: the legislation does not provide for any sanction; the only sanction would be the one stipulated by art.21 of the Government Ordinance no. 55/2002<sup>4</sup> on the legal regime of sanctioning the provision of community service, with subsequent amendments and completions.

According to art.21 of the Government Ordinance no. 55 / 2002, if the offender does not appear in the mayor's office in order to take evidence and execute the sanction, he / she escapes the execution of the sanction after starting the activity or does not performs duties at the workplace, the court may, at the request of the mayor, the police unit or the unit management to which the offender has an obligation to present himself and provide community service, may substitute this sanction for the sanction of the fine.

Indeed, through a brief analysis of this normative act, it is established that an aberrant solution is regulated, uncorrelated with other regulatory acts and community work. This situation results from the amendment of the normative act by repealing all the legal provisions that provided for the contravention jail, without other legal, homogeneous provisions to be adopted instead. As a result, the hilarious solution to the situation, namely, the change (again!) of the sanction for community service in the original sanction is reached.

Obviously, in such a situation the City Hall rightly considered that the legal solution provided by the Government Ordinance no. 2 /2001 is effective only to relieve local budgets of outstanding and unpaid claims but has no efficiency in the establishment of the rule of law, the state of affairs remaining unchanged.

By the end of 2017, the Valea Crișului commune had submitted 136 actions to the competent court with the purpose of transforming the sanction of the contravention penalty into community service, pursuant to Article 9 para.3 of the Government Ordinance no. 2 / 2001 on the legal regime of contraventions.

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<sup>3</sup> Published in the Official Monitor of Romania no. 401 of 20 July (2001).

<sup>4</sup> Published in the Official Monitor of Romania no. 642 of 30 August (2002).

#### 4. Possible remedies

A possible remedy would be the one regulated by the Criminal Code, if the sanctioned person does not submit for the execution of the mandate issued by the court, it would fall under the provisions of art. no. 288 of the Criminal Code, regarding the non-observance of the judgments. In the latter case, according to art.63-64 of the Criminal Code, if the convicted person does not execute the punishment of the fine, in whole or in part, the number of non-executed fine days shall be replaced by an appropriate number of days imprisonment. Of course, the legislator considers the criminal fine to which he would have sentenced the sanctioned contravention, for the eventual non-observance of the provisions of art. 287 of the Criminal Code, and not the contravention fine ordered under art.9 para.3 of the Government Ordinance no. 2 / 2001 on the legal regime of contraventions, as subsequently amended and supplemented.

However, these legal provisions also have limited applicability, since the deed can be detained as falling within the provisions of art. 288 of the Criminal Code if it was committed by opposition to enforcement, by opposing the enforcement body. The hypothetical application of the Criminal Code also has other disadvantages: the lack of the social danger required to meet the constitutive elements of the offense of non-observance of the court decision ordering the conversion of the contravention fine into community service; the cumbersome procedure, eventually concluded with a different court judgment - this time, pronounced by the criminal court - regarding the criminal conviction of the person to a criminal fine. And afterwards, following a new action under articles 63-64 of the Criminal Code, the unexecuted penalty of the criminal fine would be changed into prison days (Ionaș D. G. & Ionaș C., 2008:387-389).

In the case exposed, for example, offenders are not violent, they do not use offensive expressions, which is even confirmed by their complainants.

The act described does not fall under the provisions of art. 371 of the Criminal Code, which regulates the crime of disorder of public order and peace, according to which "the act of a person in public through violence committed against persons or goods or through threats or serious injuries to dignity persons, disturbs order and public peace "is punished by imprisonment from 3 months to 2 years or by fine.

As a result, it is necessary to amend the legislation in force, in order to regulate the possibility of suspending the right to social aid or any other indemnities or monetary benefits available to the infringer. Also, another amendment might concern the obligation to present the executing body represented by the agent of the police station or the local police at the domicile of the offender within 30 days from the date of his notification in writing to be presented at the headquarters of the town hall in order to establish its program of community work. If the offender opposes the executing body, the mayor's office has the obligation within 30 days from the date when the offense was committed, to file a criminal complaint with the competent body.

The amendment of the legislation in the field on these considerations was also proposed in the specialized doctrine, but without any legal resonance (Predescu & Safta, 2011).

Recently, the Senate of Romania adopted a draft law amending Law no. 61/1991, which will go through the legislative procedure at the level of the Chamber of Deputies and, after the promulgation, will enter into force.

Unfortunately, the legislative initiative makes no reference to issues concerning the difficulty in enforcing court decisions to amend contravention sanctions for acts of disturbing public peace in the performance of community work. The project proposes the possibility of sanctioning the persons who disturb the public peace in the time intervals of 7.00-14.00, respectively 16.00-23.00, conditioned by the measurement of the level of acoustic pressure by the police agent.

Therefore, the legislative proposal submitted to the chambers of the Parliament of Romania may have circumscribed a certain purpose but, like other cases, it demonstrates that there are politicians totally detached from the real institutional and civic problems that would impose more urgent legislative changes.

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