
ANALIZA JURIDICĂ A CONTRAVENȚIILOR CE ATENTEAZĂ LA
ORDINEA ȘI SECURITATEA PUBLICĂ ÎN LEGISLAȚIA
REPUBLICII MOLDOVA*

LEGAL ANALYSIS OF THE 'CONTRAVENTIONS THAT ATTEMPT TO
THE PUBLIC ORDER AND PUBLIC SECURITY' IN THE REGULATION
OF THE REPUBLIC OF MOLDOVA LEGISLATION

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Summary

The published material presents a complex analysis of the contraventions provided in Chapter XIX of the contraventional Code, which affects the public order and the public security. It is noted that the generic object of the given contraventions is formed by two large groups of social relations: social relations regarding public order assurance and social relations regarding public security assurance. It was pointed out the material object, which is present in some analyzed contraventions. Last but not least, it is established the subject of the contraventions, the natural person and the legal person, but also the quality of a special subject - the person with responsible positions. This paper is a useful tool for specialized training and application in the practical activity, being available to the law faculty students and to the professionals of the legal world as well.

Keywords: *public order, public security, contraventional component, contraventional sanctions, contraventional facts, legislation.*

**Studiu realizat în baza Proiectului „Modernizarea mecanismelor de guvernare axate pe protecția drepturilor omului” (20.80009.1606.15), în cadrul Laboratorului de Cercetare Științifică „Drept Public Comparat și e-Guvernare”, Facultatea de Drept, USM.*

The order is that which generally creates the necessary cohesion between individuals and which at the same time, gives birth, supports and ensures the development of the society. The necessity of establishing order implies the necessity of establishing clear rules of conduct, rules that indicate to each person what he is allowed to do and what is not allowed to him, as well as what behavior each citizen must have within the social life. The order also involves measures to maintain, ensure and restore order, aimed at ensuring the restoration of social balance when the rules of conduct have been violated. Under these conditions,

it must be very clear to all, that: „the general internal order of the state implies a balance and harmony between the organization and functioning of the state institutions and citizens’ needs and aspirations, because only a balanced inner life state ensures the possibility of the progress and prosperity of the society”. [4, p. 133] When the order is absent, there is a risk of chaos occurring, which manifests itself in different branches of the state, in the economy, industry, justice, and increases the number of unlawful acts, thus stopping the normal evolution of life in society. For this, the state must develop a set of norms of conduct, measures of conviction and constraint, legal rights and obligations, to impose them for the achievement of the members of the society.

Public order represents a state of law and of fact which allows achieving and maintaining the balance of the society, based on the necessary consensus for the optimal functioning of the social assembly, in compliance with the legal regulations in force, the respect of the fundamental rights and freedoms of the citizens, of public and private assets, as well as the other supreme values in order to promote and affirm social progress in a democratic society. During the social evolution, it was reached the specific assurance of the public order within each state, accomplishment to which we competed „along the centuries, customs, customary order and traditions, religious, moral precepts (ethical or moral order) and the ordinances of law imposed by the state that are the legal norms ”. [7, p. 151, quoted by Mariana Robea, PhD student]

Public security represents the assurance of normal living conditions in society, by maintaining public order, the safety of people, their personal interests, the safety of objects, community tranquility, the protection of the legitimate rights and interests of citizens.

At national level, the Government of the Republic of Moldova has approved the National Strategy for Public Order and Security for the 2017-2020 years (31.05.2017) and the Action Plan on its implementation. The strategy envisages increasing the quality of public order assurance services and the security of citizens by involving civil society in combating the criminal and contraventional phenomenon. By implementing the Strategy, the aim is to develop the professional training system for the employees of the law enforcement agencies and to establish a modern system of public order and public security, capable of increasing the confidence of the population and strengthening the social protection. [2, p. 133] The delimitation between offenses against public security and public order (Chapter XIII of the Criminal Code) and contraventions that violate public order and public security is done taking into account the seriousness of the violations

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which are determined by the circumstances of the case, including the place and methods of committing the deed, intensity, duration, etc.

According to the information presented by the National Bureau of Statistics of the Republic of Moldova, public order and security are most often affected by acts of hooliganism and alcohol consumption in public places. The contraventions found that violate public order and security constitute 38.7 thousand cases, including 38.3 thousand cases penalties that were applied. Compared to the previous year, this category of offenses decreased by 26.7%. For these violations the fine is applied, but 11 cases of unpaid work have been registered for the benefit of the community.

The penalties are the most often applied for not too serious hooliganism (58.4%), for alcoholic beverages and drunkenness in public places (19.0%), disturbance of peace (18.1%), violation of rules possession, port, transport, use or application of the individual weapon and its related ammunition (1.5%) and violation of the term of registration of the weapon or extension of its possession permit (1.4%), etc. [9, accessed on 06.04.2020]

Starting from general to particular, we find that, the legislator has united in a single chapter of the contraventional Code (hereinafter CC), XIX, the contraventions against public order and public security, because between these two categories of social relations there is a close cohesion. The specific feature of contraventions against public security and public order, unlike other categories, is that they are harmful to a wider circle of social values (social security, the normal activity of organizations). Committing contraventions against public order and public security, the damage is most often caused not to a specific person, but to important social interests, such as social security in general. Although there are exceptions, when the fact is addressed specifically to the „natural person”, as for example in art. 354 CC where „Hooliganism is not too serious, when insulting a person in a public place ...”

The basic purpose of this group of contraventional material norms is to establish the behaviour rules in public places and public safety and to protect them through the application of state constraint measures. [1]

The *generic object* of the analyzed contraventions consists of two large groups of social relations:

- social relations regarding the maintenance of the public order;
- social relations regarding ensuring the public security.

The *direct object* of each contravention is determined by the character of the protected values by the concrete legal norm and constitutes the social relations (which can be violated): the honor, dignity or honor of the individual who is in a public place (art.354 CC); human dignity and social morality (art. 355 CC); silence in public places at night (art.357 CC) etc. [5, p. 201] The social danger of these groups of contraventions is that: 1). they are committed in public places and 2). they are paying attention to public security.

Some contraventions against public order and public security have *material object*. For example, at art. 364 p. (1) CC „The placement of the means of external advertising without the permission of the authority of the local public administration and without granting a display space, in the established way „, the material object constitutes the means of advertising.

The *objective side* of contraventions that violate the public order and the public security, is usually achieved through actions, and in some cases through inactions.

For example, they can only be committed only by action - art. 354 CC „Hooliganism not too serious”; art. 355 CC „Consumption of alcoholic beverages in public places and occurrence in such places in a state of intoxication produced by alcohol”; art. 357 CC „Public Disorder”; art. 364 CC „Violation of the legislation on advertising”, etc., at the same time, they can be committed both by action and inaction - art. 358 CC „Violation of the rules of defense against fires”; art. 365² CC „Unfounded secrecy / declassification of information”; art. 362 CC „Violation of the term of registration, re-registration of the individual weapon or the extension of the gun and fire-arm possession permit”, art. 360 p. (3) CC „Dodging from the commercialization of the individual weapon and related ammunition in case of cancellation of their possession permit”, etc. [1]

The detrimental consequences of the contraventions against public order and public security consist of creating the state of danger for the public security or the public order, people’s life and health, the possession of their goods, etc. or in causing specific damages to these social values.

The *subject* of contraventions that violate the public order and public security are the natural persons and legal entities. For some categories of offenses the quality of subject can be attributed only to natural persons, and for others, both to natural and legal persons. In the hypostasis of the subject of contraventions the persons with responsibilities also appear in certain contraventions (the special subject).

- The natural person may be subject to contraventions - art. 354 CC

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„Hooliganism not too serious”; art. 355 p. (1) CC „The consumption of alcoholic beverages on streets, stadiums, squares, parks, all the types of public transport and other public places where the consumption of alcoholic beverages is not permitted by the local public administration authorities”; art. 356 CC „Gambling. Guessing in the public places ”, etc.

- The natural and legal person may be subject to contraventions - art. 357 CC „Disorder of tranquility”; art. 358 CC „The violation of rules of defense against fires”; art. 360 CC „Infringement of the method of marketing and / or the alienation of individual weapons and related ammunition”, etc.

- The person with responsibility functions appears as a subject of contraventions - art. 364 p. (2) CC „The placement of the means of outdoor advertising on trees or in the protection areas of architectural monuments ... shall be sanctioned with a fine ... from 24 to 120 conventional units applied to the person in charge”; art. 365¹ CC „The violation of the rules of access to state secrecy is sanctioned with a fine ... from 30 to 120 conventional units applied to the person in charge ...”

The *subjective side* in most cases is expressed by guilt as an intention. For example, at the art. 354 CC „Hooliganism not too serious”, where the offender has the purpose of intimidating a person or the population, the actions are manifested only by intention.

Considering that, some of the contraventions against the public order and public security are facts that are committed, largely through inactions, the guilt can also take the form of recklessness. For example, at the art. 358 CC „The violation of the rules of defense against fires”; in art. 362 CC „The infringement of the term of registration, re-registration of the individual weapon or the extension of the permit to hold the weapon and the firearm”. In these contraventions, the psychic attitude of the perpetrator towards the criminal actions or inactions can also be expressed by intention.

Finally, we reiterate that the public order and public safety are ensured through a set of legal names, which taken as a whole are the basis of the organization and functioning of the rule of law. As long as human behaviour does not affect these two categories of social relations, there is no need of the state intervention in this regard through the empowered authorities. In a reflection from the Declaration of Human Rights and Citizenship of 1789 (in the art. 10), a fundamental document of the French Revolution, it is written: „*No one can be disturbed by their opinions, even by their religious ones, as long as their*

manifestation does not change the public order established by the law.” [11, accessed on 08.04.2020]

Referințe bibliografice:

1. The Contraventional Code of the Republic of Moldova of 24.10.2008. In: The Official Monitor of the Republic of Moldova no.3-6 / 15 from 16.01.2009, republished in the Official Monitor no. 78-84 from 17.03.2017.
2. Government Decision of the Republic of Moldova no. 354 from 31.05.2017 regarding the approval of the National Strategy for the public order and security for the years 2017-2020 and of the Action Plan regarding its implementation. In: The Official Monitor of the Republic of Moldova no. 171-180 from 02.06.2016.
3. The National Strategy of Romania of Public Order for the years 2010-2013. In: The Official Monitor of Romania no. 721 from 28.10.2010.
4. Bianu E. The public order. Professional lawyer in police science. Bucharest, 1938.
5. Guțuleac V. Treaty of Contraventional Law. Chisinau: Central Typography, 2009.
6. Robea M. The correlation between the notions of legal order, law order and public order. In: University Legal Studies. No 1-2, IUFM, 2015, p. 146-154.
7. Șerb S., Drăghici C. et al. Police and Contraventional Law, Triton Publishing House, Bucharest, 2003.
8. Hotca M. Adrian. Contraventional Law. The general part. Bucharest: Editas Ed., 2003.

Consulted web pages:

9. www.statistica.md, accessed on 06.04.2020.
10. <http://www.monitoruljuridic.ro/act/strategia-din-13-octombrie-2010-nationala-de-ordine-publica-2010-2013-emitent-guvernul-publicat-n-123096.html>, accessed on 06.04.2020.
11. <https://dreptuladrepturi.weebly.com/1789-declara355ia-drepturilor-omului-351i-ale-cet259355eanului-franta.html>, accessed on 08.04.2020.