
THE SOCIAL IMPACT OF CONTRAVENTIONS AND ITS ACTIVE SUBJECT – THE INDIVIDUAL – IN THE REPUBLIC OF MOLDOVA

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***Abstract:** The protection of social values is a priority mission of the state, by virtue of which the legislator elaborates a set of legal norms meant to defend the social and legal order. The social danger of contraventions expresses the violation of the most important social values that are protected by the contravention law, causing damages to individuals and legal entities. This fact justifies the interest of the legislator to sanction this type of illicit acts in order to restore the injured social and legal order. The correct legal qualification of the antisocial deed through the prism of the constitutive elements of contravention has a great importance in order to ensure a legal and an appropriate application of the institution of contravention liability. This scientific work particularly highlights one of the basic elements of contravention – the subject. The first part of this study reveals the notion and general conditions of the subject of contravention in correlation with the contravention legislation, pointing out the varieties of subjects, while the second part is meant for the special subject and the passive subject of contravention.*

***Keywords:** contravention; active subject; passive subject; constitutive element; individual; contravener; victim*

1. Introduction

The existence and evolution of any society is based on a set of rules that form a legal system with the mission of regulating the social relations born between individuals. Within this system of norms, an important role is reserved for the rules that impose a certain behavior and establish the consequences of disobedience to them. The individuals and their deeds must be guided by well-established precepts which defend the most important social values. Without these rules, the state and society are inconceivable.

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The protection of social values is a priority mission of the state, by virtue of which the legislator elaborates a set of legal norms meant to defend the social and legal order, which cannot be achieved without the contribution of the contravention law. The applicability of the contraventions norms enjoys a great upsurge, taking into account the diversity of antisocial deeds that we encounter daily, the degree of danger generated by their commission, the way the state authorities react to these violations, as well as the development of solutions to prevent and combat the contraventions, as the most common antisocial deeds.

Contravention is a negative, mass socio-legal phenomenon. Its social character emphasizes that the individuals are the ones who directly commit contraventions, by virtue of some internal or external factors that determine them to deviate from the imperatives of the law and, accordingly, the ones who are held liable for the contraventions committed. Its nature as a legal phenomenon embodies the express regulation of the deeds that are qualified by the legislator as contraventions and also the appropriate sanctioning measures for their commission.

The illicit character is an important feature of the contraventions. They are prohibited by the Contravention Code of the Republic of Moldova, because the contravention acts disorganize the system of social relations, having a harmful effect. The European Court of Human Rights appreciates that the commission of a contravention infringes on the values of the whole community, as long as the provision that is violated by the commission of the contravention has a general nature and is not addressed to a specific group of people, but to all citizens; this provision establishes a certain behavior, and the sanctions established in case of its disobedience is intended both to prevent and to repress (Pantea & Antoci, 2020).

Contraventions are characterized by their antisocial character. This is the real basis for engaging the contravention liability. A contravention deed is the external manifestation of the behavior of an individual that takes the form of a socially dangerous action or inaction. The social danger of contraventions expresses the violation of the most important social values that are protected by the contravention law, causing damages to individuals and legal entities. This fact justifies the interest of the legislator to sanction this type of illicit acts in order to restore the injured social and legal order.

The character and the degree of social danger of a contravention represents its material element and reveals its social essence to cause a damage to the values protected by the contravention law. The material element of contravention is the main criterion for distinguishing the contravention from other antisocial acts, such as: crime, administrative or disciplinary misconduct, and determining its degree of social danger. The legislator points out that social danger is determined by the social values it harms, as well as the danger of active subject to society and its attitude towards the illicit action or inaction. In these terms, contravention is located immediately after crime, but at the same time it is situated above the administrative and disciplinary misconduct.

Establishing the degree of social danger of contraventions is very important for both, the legislator and the state authority empowered to apply the sanctions. In order to find it out, the deed is subjected to an evaluation in terms of the constitutive elements and

the circumstances in which it was committed: action or inaction, consequences, object, subject, guilt, the time and place of commission, the manner and means used, etc. Judging by these elements, the legislator generally qualifies these deeds as crimes or contraventions. In turn, the official within the state authority empowered to solve the contravention cases will use the same criteria for detecting the degree of social danger in order to ensure an individualization of the liability and to establish an appropriate sanction to the contravener.

Another representative feature of contravention is the guilt. The mere regulation of the socially dangerous act in the contravention law is not enough to qualify it as a contravention. Such a qualification can be given only to the deed that was committed with guilt. Both, the social-dangerous action and inaction provided by law must be a conscious and volitional manifestation of the person. According to art. 14 CC, the individuals can be held liable only for the contraventions committed with guilt. As an act contrary to the rule of law, contravention is the social manifestation of human behavior, which means a human action executed under the control of will and reason. The contravener had the possibility to choose between obeying the law and breaking the social and legal order, that's why the existence of this freedom of choice underlines the guilt of the subject who commits the contravention.

The applicative value of contravention liability consists in ensuring the efficiency of legal norms, stimulating the attitude of respect for the law, establishing and maintaining social and legal order. In fact, all human actions are prone to generate a form of liability, because the rules of human behavior are regulatory requirements by which society defends its general interest. These rules also set the limits of the state intervention through coercive measures in cases of violation of this general interest.

In this regard, the contravention law achieves its purpose only through establishing the appropriate sanctions for the contraventions that are committed. These are meant to protect the personality, the rights and legitimate interests of individuals and legal entities, property, public, social and legal order. Moreover, among the main functions of the contravention liability are the detection and prevention of contraventions, removing their consequences and restoring the damaged social order, as well as educating the citizens in the spirit of respect for the law.

The multitude and frequency of contraventions committed annually on the territory of the Republic of Moldova determine the need for the intervention of the competent state authorities with measures of coercion, which are meant to ensure the re-education and correction of the contraveners. The contravention law, in general, and the contravention liability, in particular, has the extended mission of preventing socially dangerous acts committed by individuals. In order to avoid the transition to more serious violations of law, such as crimes, the state must focus on preventing contraventions, discouraging the contravener from becoming a potential criminal.

Prevention must be a continuous social process that supposes the application of social, cultural, economic, political, administrative and legal measures intended to prevent the antisocial deeds by identification, neutralization and elimination of the causes and factors favoring the contravention phenomenon. The sanctions applied for the

commission of contraventions must provide a negative example for the whole society, in order to raise the general awareness that each violation of the law will be followed by a measure of state coercion.

In addition, analyzing the comparative evolution of crimes and contraventions, the quantitative indicators show the indisputable predominance of contraventions in relation to the number of crimes that are committed annually. Consequently, judging by the fact that contraventions are committed more frequently, the competent state authorities have to concentrate to prevent and stop this phenomenon in order to exert, at an early stage, a positive influence on the behavior and the conscience of the individuals that are prone to breaking the law, obstructing their “advancement” to the area of criminal law.

The subject of contravention, as the person who conceived and committed the socially dangerous deed, is a compulsory element for the existence of contravention. The importance and necessity of its analysis is determined by the impact it has on the determination of the illegal deed within the activity of prevention, establishing and sanctioning of contraventions, which is meant to combat this phenomenon.

The notion of “*subjects of contravention*” reveals the persons involved in committing the contravention, either as active subjects (those who commit the contravention – contraveners), or as passive subjects (those who are subjected to the contravention – victims). Thus, as subjects of contravention appear the individuals who did not honor their obligation within the contravention legal relation of compliance and committed the prohibited deed, and the individuals or legal entities who are the beneficiaries of the protection guaranteed by the contravention norms, being the ones who bear the consequences of the contravention deed.

In the specialized doctrine we identify other points of view, which are less supported, regarding the division between the active and passive subject of contravention. According to these, the active subject of contravention is the one who establishes the contravention and applies the sanction, while the passive subject is the one who bears the punishment applied by the active subject (Cilibiu, 2020).

The legal framework of the Republic of Moldova does not provide the notion of “subject of contravention”, nor the pair notions of “active subject” and “passive subject”. Instead, the law uses the notions of: “liability of an individual for a contravention” (art. 16 CC), “liability of a legal entity for a contravention” (art. 17 CC), “victim” (art. 387 CC), “the person against whom a proceeding for a contravention is started” (art. 384 CC). In our interpretation, the notions of “active subject” and “passive subject” of contravention are component parts of the generic notion used in our analysis – “the subject of contravention”, which covers all the categories mentioned above.

The quality of *subject of contravention* must not be identified with that of *subject of law*, who are both the holders of the rights and obligations arising directly from the law, and the holders of the rights and obligations resulting from legal relations or from the commission of legal facts. The subject of contravention can be only a subject of law, but not all subjects of law are also subjects of contravention. Such a quality is acquired only by those who commit illicit deeds, meaning the individual or legal entity against

whom the state coercion is exercised by applying legal sanctions. The subject of the contravention law includes all the persons involved in the contravention legal relations, respectively the active and passive subjects of the contravention legal relations of compliance and conflict.

Any person can be involved in committing a contravention, except that not all the people are liable for a contravention, but only those who embody certain requirements of the law.

To be an active subject, the person must fulfill the general conditions required for any contravener, and some special conditions in case of certain contraventions.

Thus, basing on art. 16 al. (1) and (2) of the Contravention Code of the Republic of Moldova (hereinafter CC), “An individual with legal capacity who is 18 years old upon the commission of a contravention can be subject to liability for it. An individual aged between 16 and 18 years old can be subject to liability for committing the acts stipulated in art. 69 al. (1), art. 78, 85, 87, art. 88 al. (1), art. 89, art. 91 al. (1), art. 104, 105, 203, art. 204 al. (1), (2) and (3), art. 228–245, 336, 342, 352–357, 363, 365, art. 366 al. (1), art. 367, 368, 370, art. 372 al. (2)” (The Contravention Code of the Republic of Moldova, 2008).

From the provisions of the current legal regulation in the matter of contravention, we identify the compulsory conditions for the individual – subject of contravention:

An individual. It is important to mention that the contravention liability belongs to any individual who committed a contravention on the territory of our country, regardless of whether he is a citizen of the Republic of Moldova, a foreign citizen or a stateless person. Exceptions to this rule are the diplomatic representatives of foreign states or other persons who, in accordance with the international treaties to which the Republic of Moldova is a party or in accordance with the laws of the Republic of Moldova, do not fall under the jurisdiction of the Republic of Moldova or are simply removed from contravention liability.

The established age. The individual will be liable for a contravention only if he has reached the age of 18 years old, with the exceptions provided in art. 16 CC. This condition is required because the man acquires at a certain age the psychic faculties to realize his actions and to be able to execute and manage them consciously.

According to some opinions in doctrine, the possibility of reducing the age limit from which to presume the psycho-intellectual and volitional capacity of the person to direct in a certain way, legally or illegally, his own deeds should be examined (Preda, 2006). The limit established by law (18 years old) must be correlated with the evolution of social life and especially with the “contravention casuistry, which demonstrates that the whole complex of educational-informative problems of understanding the moral and legal norms regarding the individual and social behavior currently presents other coordinates” (Poenaru, 2002).

Regarding the appropriate age to engage the contravention liability, the idea of reducing it to 12 years old was launched at the level of several European states, a proposal under the strong impression created at social level by various deeds committed by authors at

alarmingly young ages (Poenaru, 2002: 46). In Romania, for example, the individual is liable for a contravention from the age of 16 years old, in Spain - from the age of 18 years old, being partially liable for certain deeds from the age of 14 years old, etc. In 1998, the Office of Juvenile Justice and Juvenile Delinquency Prevention performed a study about the so-called “very young offenders and contraveners”, and the conclusion reached was that, during the last years, most illicit acts had been committed by minors at a very young age, so that those aged between 7 and 12 years old could be also labeled as juvenile delinquents (Poenaru, 2002: 46).

In case of committing a contravention by a minor, the materials are sent inclusively to the local public administration, and at the same time the court may impose coercive measures of an educational character (for example, warning, placing juveniles under the strict supervision of parents, persons replacing parents or specialized state bodies, requiring juveniles to repair the damage caused, requiring to follow a course of psychological rehabilitation, a course of compulsory education, to participate in a probationary program). These measures can be applied only until reaching the age of 18 years old.

Responsibility. Art. 17¹ defines responsibility as “the psychological state of a person who has the capacity to acknowledge the prejudicial nature of the act as well as the capacity to express his own will and to control his own actions. Responsibility is a normal state of a man who has reached a certain age” (The Contravention Code of the Republic of Moldova, 2008).

Responsibility, as a mandatory condition of the active subject of contravention, cannot be confused with legal responsibility or legal liability. Therefore, responsibility is a psychological category regarding the psychophysical capacity of a man to realize the meaning, while legal responsibility and legal liability are legal categories (Hotcă, 2003).

If the contravener has no responsibility, he cannot be subject of contravention. In state of irresponsibility is the person who commits a prejudicial act being unable to understand or control his actions because of a chronic mental disease, a temporary mental disorder, a mental alienation or some other pathological mental conditions. A person who committed an act in state of responsibility is not liable for a contravention if he got a mental disease until the pronouncement of the sanctioning decision, being deprived of the possibility to realize and control his own actions (art. 27¹ al. (1) and (2) CC) (The Contravention Code of the Republic of Moldova, 2008).

Bringing into discussion this issue in the field of criminal law, we have to agree with the autochthonous researcher Sorin Timofei, “responsibility is presumed by the legislator as a normal state for any person who has reached the minimum age of criminal liability. However, this presumption has a relative character and it can be overturned by evidence to the contrary: when the contravener could not realize his actions or inactions or could not control them (in case of irresponsibility), or when the contravener could not fully realize the character and legality of his deeds or he could not fully control them (in case of reduced responsibility)” (Timofei, 2011).

Freedom of will and action. This supposes the possibility of the person to act and decide on the commission of a contravention deed, without an external constraint. Freedom of action means the possibility of the person to act according to his will, without any

physical or moral (mental) constraint. Constraint is a form of coercion and consists in forcing a person to do a certain thing that he would not do on his own initiative. Therefore, the person who commits a contravention, being forced by another person, cannot be found guilty because he did not freely dispose of his will, but acted under the pressure of an external factor. The illicit act committed as a result of coercion is not a contravention because it lacks a defining element, the guilt. The illicit act having a contravention character cannot be followed by the contravention liability of the perpetrator. The legislator establishes in art. 23 CC al. (1) and (2) that, “An act provided by this Code that was committed due to physical coercion on a person who could not resist it and that could not be otherwise eliminated shall not constitute a contravention. An act provided by this Code that was committed due to mental coercion exercised through a threat of imminent danger for oneself or for another person that could not be otherwise eliminated shall not constitute a contravention” (The Contravention Code of the Republic of Moldova, 2008). So, physical or mental coercion is considered to be one of the causes eliminating the contravention character of an act.

The legal status of the active subject of contravention is provided in art. 384 CC, and of the passive subject in art. 387 CC.

Sometimes, in order to be the subject of contravention, an individual must have a certain quality, such as that of civil servant, holder of a special right (driver’s license), etc.

The contravention law (art. 19 al. (6) and (7) CC) stipulates that a responsible person (a person who is granted permanently or temporarily by law, by appointment or by virtue of a task certain rights and obligations in view of exercising the functions of a public authority, of an administrative nature, organizational or economic actions in a company, institution, state organization, central or local public authority) shall be liable for accountability for committing a contravention stipulated by this Code if he:

- a) intentionally used his authority contrary to his work duties;
- b) clearly exceeded the rights and powers granted by law;
- c) failed to fulfill or unduly fulfilled his work duties.

In the absence of these conditions, a responsible person who is guilty of a contravention shall be held accountable in accordance with the general provisions.

For the commission of certain categories of contraventions, the legislation establishes, as a rule, a sanction for general subjects and another sanction for special subjects (for example, art. 313³ CC al. (2), “The request to hold and/or issuing a permissive act that is not included in the Nomenclature of Permissive Acts, establishing and/or imposing a payment for issuing a permissive act in a greater amount than the payment provided by the Nomenclature of Permissive Acts, unjustified refusal to issue the permissive act, invoking and applying certain requirements and procedures for issuing permissive acts that do not correspond to the law, as well as unjustified withdrawal of the permissive act shall be sanctioned by a fine of 60 to 90 conventional units for individuals, a fine of 90 to 120 conventional units for responsible persons, with or without the deprivation of the right to carry out certain activities for a period of 3 months to 1 year” (The Contravention Code of the Republic of Moldova, 2008).

In the doctrine of the contravention law we also meet the notion of *passive subject* of contravention, which means the individual or legal entity holding the social values harmed by the contravention. The passive subject of contravention has not to fulfill as many general and special conditions as the active subject.

In principle, the passive subject of contravention can be any individual regardless of age, even the irresponsible person, but we have to mention that a passive subject can be only a living person. In order to be a passive subject of contravention, the individual must be the holder of the social value protected by the contravention law (for example, the passive subject in art. 310¹ CC is the retired, the employee). It should be noted that the notion of passive subject is not recognized and supported by all the specialists in the field of law.

Judging by the criterion of holding the social value protected by law, we can make a distinction between the *main* passive subject and the *secondary* passive subject.

The main passive subject is the state, as the principal holder of the social value protected by law, respectively the right to do justice, which is threatened in its normal realization, and *the secondary passive subject* is the person who bears the material consequence or the state of danger created by the illicit act.

A contravention can be committed not only by one person, but also by a *group of persons*. The national legislation uses this notion in art. 43 CC as an aggravating circumstance, and at the same time, in some contravention components the actions of a group of persons are expressly provided (for example, art. 241¹ CC al. (2), “The actions specified in al. (1) committed by a group of persons or committed repeatedly during the same calendar year by a person who has already been sanctioned for this contravention or who generated the risk of a traffic accident...”).

It is important to emphasize that, due to the reduced social danger of contraventions, the instigators and accomplices are not liable for committing them and cannot be sanctioned. In this way, only the co-authors are considered to be participants.

At the same time, the contravention law provides in art. 44 CC the “plurality of contraventions” (The Contravention Code of the Republic of Moldova, 2008). If the same person commits two or more contraventions, a sanction shall be imposed for each contravention in part. If a person is declared guilty by the court of committing two or more contraventions, a sanction shall be imposed for each contravention in part, and the final sanction will be a cumulation of contraventions by absorbing the milder sanction by the more severe one or by cumulating the imposed sanctions within the limits of the article providing the more severe sanction.

Making a synthesis after the examination of the aspects related to the investigated problem, we conclude that the individual becomes subject of contravention only if he commits the illicit act that is qualified by law as a contravention and fulfills the general qualities provided by law. Also, in certain cases, in addition to the general qualities, the person must also possess the special qualities required by the norm from the Special Part of the Contravention Code, in which the liability for that contravention is established. Due to this fact, the individual becomes liable for the committed contravention.

In the end, contraventions are the most common antisocial deeds that break the rule of law and have a harmful effect on the social and legal order. For this reason, the competent authorities of the state have to focus on preventing this phenomenon and influencing in a positive way the behavior and the conscience of the individuals susceptible to break the law, obstructing their “advancement” from contraveners to criminals.

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