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The Epic of the Digital Passenger Locator Form ("PLF") Ended Tragicly… by Decriminalization

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Abstract: Starting from December 20, 2021, everyone who entered in Romania shoud filled in the digital form for entry in Romania (namely the Digital Passenger Locator Form - PLF), according to Emergency Ordinance no. 129/2021.
According to Emergency Ordinance no.22/2022 on the abrogation of the implementation of the digital entry form in Romania, since 12 March 2022, the Passenger Locator Form (PLF) was not not required anymore before arrival in Romania.
Last but not least, having as research object, the comparative analysis of the particularities that characterize the Romanian contraventional law, we propose to fiind out some jurisprudential proposal for which the contraventional spectrum must be held to adapt to the accuracy imposed by decriminalization principle.

Keywords: *more favourable criminal or administrative law; supremacy of the Constitution; digital entry forms; contraventional law; decriminalization.*

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I. Short overview of the digital passenger locator form ("PLF")

1. On December 15, 2021, the Government of Romania adopted Emergency Ordinance no. 129/2021 which established a form that had to be completed by all persons entering Romania, a form popularly called "PLF", the legal name being Digital Entry Form in Romania.

The sanctions with a fine from 2,000 lei to 3,000 lei (subsequently with a fine from 500 lei to 3,000 lei) provided in this emergency ordinance came into force on December 24.

During the two and a half months of application, approximately 60,000 files were issued, which sanctioned citizens who either did not complete this form, or did not complete it in full, mainly as a result of errors in the PLF.GOV application .RO, managed by STS, and the citizens who had filled out the form completely and correctly were also sanctioned.

2. We reproduce the contradictory provisions of Emergency Ordinance no. 129/2021:

The obligation of any person to complete the FDIR is mentioned in art. 1 paragraph 1:

"Art. 1. -(1) In order to identify the contacts of a person infected with the SARS-CoV-2 virus and to prevent the exposure of persons to COVID-19, no later than 24 hours before entering the territory of Romania, persons have the obligation to complete the digital entry form in Romania, hereinafter referred to as the form.

The exception to the obligation established in art. 1 paragraph 1 is mentioned in art. 2 paragraph 4:

(4) The form is completed individually, in digital format, by each person who enters the territory of Romania under the conditions provided for in art. 1 paragraph (1), and for the persons who present themselves at the border crossing points without holding a form, they are obliged to complete the form within a maximum of 24 hours after entering the country.

(15/12/2021 - Exemption by Emergency Ordinance 129/2021.)"

3. The contravention was mentioned in art. 4 paragraph 1 of GEO no. 129/2021 (Romanian Government, 2021):

"Art. 4 (1) Non-compliance by the person entering the territory of Romania with the obligation to complete the Digital Entry Form in Romania within 24 hours of entering the country constitutes a contravention and is sanctioned with a fine from 2,000 to 3,000 lei lei.

(2) Finding contraventions and applying the sanctions provided for in para. (1) is carried out, based on the data and information provided by SII-FDIR, by the staff of the

county public health departments or of the Bucharest municipality, authorized to carry out state sanitary inspection activities.

(3) The contraventions provided for in para. (1) the provisions of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions." [1]

4. We reminder the operation procedure of the **plf.gov.ro** web application, currently removed from the virtual space:

"Art. 1. -

(1) In order to identify the contacts of a person infected with the SARS-CoV-2 virus and to prevent the exposure of people to COVID-19, no later than 24 hours before entering the territory of Romania, people are required to complete the Digital Entry Form in Romania, hereinafter referred to as form.

(2) In order to complete the form provided for in para. (1) the Integrated Information System Digital entry form in Romania, hereinafter referred to as SII-FDIR, is used.

(3) SII-FDIR is composed of:

a) the web application for completing/downloading the form, accessible from the web portal plf.gov.ro;

b) the web service for validating the form by reading the CNP/travel document number completed with the help of the web application provided for in letter a);

c) associated cyber security services.

(4) SII-FDIR is under the operational administration of the Ministry of Health, as the authority responsible for surveillance and early warning regarding the transmission of diseases, and is developed, implemented and technically administered by the Special Telecommunications Service, based on the requirements operational development and implementation provided by the Ministry of Health.

(5) The set of personal data and travel information requested by SII-FDIR are provided in the annex which is an integral part of this emergency ordinance.

(6) The set of personal data and the information regarding the trip provided for in para. (5) are used by public authorities and public health institutions in Romania, to quickly identify people who have come into contact with a person infected with the SARS-CoV-2 virus, with the aim of protecting their health, as well as to prevent the further spread of COVID-19.

Art. 2. -

(1) The web application provided for in art. 1 paragraph (3) lit. to allow:

a) completing, in digital format, no later than 24 hours before entering the territory of Romania, the form by accessing the web address plf.gov.ro;

b) downloading, in digital format, the form generated after completion;

c) the collection and exchange of data between the Ministry of Health, the Ministry of Internal Affairs, the Special Telecommunications Service, the county or city public health departments, the National Institute of Public Health.

(2) The Ministry of Internal Affairs, through the Romanian Border Police, at the border crossing points verifies the existence of the form by reading the CNP/travel document number on the identity document/travel document presented by the person who wants to enter the territory of Romania , by integrating the service provided for in art. 1 paragraph (3) lit. b) in the computer system of the Romanian Border Police and the transmission to the SII-FDIR of the date and time of the person's entry into the territory of Romania.

(3) In order to implement the form, SII-FDIR interconnects with the service provided by the Directorate for the Records of Persons and the Administration of Databases within the Ministry of Internal Affairs, for the validation of the data entered in SII-FDIR, and with the computer application "Corona- forms", for correlating information on people infected with the SARS-CoV-2 virus" (Romanian Government, 2021).

II. Decriminalization of the Fact Provided for by ART. 4 Par. (1) from GEO No. 129/2021 was produced in two steps:

1. Partial decriminalization following the adoption of Emergency Ordinance no. 5/2022

We can talk about the deconventionalization of the detained deed under the aspect of applying a more favorable law, under the conditions of the modification of the amount of the fine sanction by the Emergency Ordinance no. 5/2022 for the amendment and completion of the Government Emergency Ordinance no. 129/2021 regarding the implementation of the digital entry form in Romania:

11. Article 4 is amended and will have the following content:

"Art. 4. -

(1) Non-compliance by the person entering the territory of Romania with the obligation to complete the form within 24 hours of entering the country constitutes a contravention and is sanctioned with a fine from 500 lei to 3,000 lei.

(2) Finding contraventions and applying the sanctions provided for in para. (1) is carried out, based on the data and information from SII-FDIR, by the staff of the county public health departments or of the Bucharest municipality, authorized to carry out state sanitary inspection activities. The record of finding and enforcement of the contravention bears the signature of the person who drew it up from within the county public health department or the Bucharest municipality.

(3) The contraventions provided for in para. (1) the provisions of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions, except for the provisions of art. 16 para. (1) regarding the mention in the minutes of the place where the act was committed.

(4) By derogation from the provisions of art. 32 para. (1) from Government Ordinance no. 2/2001, approved with amendments and additions by Law no. 180/2002, with the subsequent amendments and additions, the complaint against the record of the finding of the contravention and the application of the sanction is submitted to the court in whose district the public health department of the county or of the municipality of Bucharest issuing the record is based. "

12. After article 4, a new article is inserted, article 41, with the following content:

Art. 41. -

The call reception center provided for in art. 4 of the Government Emergency Ordinance no. 68/2021 on the adoption of measures for the implementation of the European framework for the issuance, verification and acceptance of the digital certificate of the European Union regarding COVID to facilitate free movement during the COVID-19 pandemic, with subsequent amendments and additions, provides support for users SII-FDIR at phone number 0214144425 or on the basis of the Form for reporting problems related to the completion/generation/verification/deletion of the digital entry form in Romania, available on the website of the Ministry of Health" (Romanian Government, 2022a).

According to the provisions GEO no. 5/2022 that entered into force on February 9, 2022, the minimum fine was reduced to 500 lei, as a response to the opinions that the fine between 2,000 and 3,000 lei was clearly disproportionate compared to the degree of social danger of the act. GEO 5/2022 stipulates that the record of finding and enforcement of the contravention must bear the signature of the person who drew it up, without indicating what the legal sanction is in the event that such a signature is not provided on the contested act - we can let's just assume that it would be the nullity of the misdemeanor report. Moreover, by expressly mentioning the fact that article 4 para. (1) of GEO 129/2001, the provisions of article 16 para. (1) of OG 2/2001 regarding the mention in the report of the place where the act was committed, it is understood that there are no other derogations from OG 2/2001, which is, per a contrario, fully applicable. (Romanian Government, 2001).

According to GEO no. 5/2022, the disputes before the courts on February 9, 2022 were subject to the legal provisions in force at the time of the commission of the contravention. Therefore, we hope to encounter as

few situations as possible related to a possible erroneous application of the law over time.

Another possible practical problem could be given by the fact that in the original form of GEO 129/2001, complaints were submitted to the court in whose district the contravention was committed, and GEO 5/2022 introduces a new paragraph to art. 4 of GEO 129/2021, according to which the complaint against the record of finding the contravention and the application of the sanction is submitted to the court in whose jurisdiction the county public health directorate or of the municipality of Bucharest issuing the record is based (Pricop, 2022).

2. Decriminalization following the adoption of Emergency Ordinance no. 22/2022

Currently, in the cases pending before the courts, with contraventional complaints as their object, the litigants must request the court to find the decontraventionalization of the act provided for by art. 4, para. (1) from GEO no. 129/2021 (regarding the implementation of the digital entry form in Romania) (Romanian Government, 2022b), for which the minutes of ascertainment and sanctioning of the said contravention were drawn up, considering the following arguments:

By art. I of GEO no. 22/2022 (for the repeal of the Government's Emergency Ordinance no. 129/2021 regarding the implementation of the digital entry form in Romania), the normative act that provides for both the sanctioned conduct and the applicable contraventional sanction was repealed.

In accordance with Art. 15, para. (1) of the Romanian Constitution (republished in 2003), the more favorable contraventional law also produces effects for the past ("retroactive"), and according to art. 12 para. (1) from OG no. 2/2001 (regarding the legal regime of contraventions), if by a normative act the contraventional act is no longer considered a contravention, it is no longer sanctioned, even if it was committed before the date of entry into force of the new normative act.

After several decisions of the Constitutional Court rejecting the exception of unconstitutionality of art. 12 of Government Ordinance no. 2/2001, by Decision 228/2007 (generally binding, published in MO no. 283/27.04.2007) (Romanian Government, 2007), adopted as a result of the Court's reassessment of its own jurisprudence, the text of Government Ordinance no. 2/2001 was "interpreted" in the sense that the deconventionalization law or the more favorable law must be applied

including in the phases of contesting and, respectively, of executing the contraventional sanctions.

Thus, art. 12 para. (1) from Government Ordinance no. 2/2001 is constitutional only to the extent that we understand that it also refers to the enforcement phase of the contravention, not only to the detection and enforcement phase.

According to the Constitution, the more favorable contraventional law is retroactive, and the committed acts are considered to have never existed, the aspects being detailed in the legislation and in binding decisions of the Constitutional Court.

We remind you that the contraventional law, along with the criminal law, are the only exceptions to the principle of non-retroactivity of the law provided by art. 15 para. (2) from the Constitution of Romania. If in criminal matters there is a rich literature and consistent jurisprudence in the matter of decriminalization and the application of the more favorable criminal law, in contraventional matters, the retroactive effects of the more favorable law, in a broad sense, are briefly dealt with by doctrine and practice, an understandable aspect, for that the legal provision requiring the completion of material contraventional law with criminal law, art. 47 of Government Ordinance no. 2/2001, is in force only since 2013.

A more favorable contraventional law, from the perspective of art. 15 para. (2) of the Romanian Constitution, requires the intervention of a normative act after the commission of the contravention, a normative act which either no longer provides for the social conduct contravened by the old law, a situation in which we speak of decontravention, or imposes a milder sanctioning treatment, hypothesis in which we are in the presence of a more favorable contravention "law" in the narrow sense.

The more favorable normative act is represented by that normative provision that mitigates the conditions of contraventional liability for a concretely determined contravention, regardless of whether it concerns the main sanction or the complementary sanctions and which will be applied in all situations where the procedural contravention report is not finalized.

In accordance with the above, art. 12 of Government Ordinance no. 2/2001 regulates two aspects: a) the intervention of a normative deconvention act; b) the intervention of a more favorable normative act. As is the case in cases brought to trial, the (broadly speaking) more favorable contraventional law can be presented in the form of a law repealing the normative act that provides for the sanctioned conduct - a situation known in practice and doctrine as "decontraventionalization".

Thus GEO no. 22/2022 has the effect of a deconvention law, applying retroactively to all contraventions sanctioned under GEO no. 129/2021, both those not applied and those not executed. In practice, it is considered that the act sanctioned was never a contravention, in the legal sense.

In conclusion, we share the opinion of Prof. Dr. Mircea Ursuța (2020), in the sense that in contraventional matters there is no need to file a contraventional complaint in order to establish decontravention.

How the repeal of GEO no.129/2021 immediately "deletes" all fines applied, regardless of whether they were contested or not. As a result, all complaints already filed in court must be admitted, and the respective minutes must be annulled.

In the case of those who did not dispute the sanction minutes, the fines will no longer be enforceable.

If, however, the state will try to enforce them, the litigants will be able to challenge the enforcement citing the decontravention, respectively the repeal of the legal provisions on the basis of which they were sanctioned, a repeal that produces retroactive effects.

In this situation, a request based on the provisions of art. 32 para. (2) from Government Ordinance no. 2/2001, by which to request the finding of de-contravention, with the consequence of the impossibility of continuing execution for the sanction or the difference in the sanction that remained unexecuted on the date of the intervention of the de-contravention law. At the same time, a request for a presidential ordinance can be promoted in order to suspend the execution of the sanction until the resolution of the main dispute.

And on another occasion I appreciated that the only procedural solution that can work is represented by a summons request based on the provisions of art. 32 para. (2) from Government Ordinance no. 2/2001, by which the court is requested to determine the incidence of the normative act of deconventionalization, with the consequence of canceling the forms of forced execution, the court having the power to order concretely and with regard to the possible complementary sanctions not executed on the date of the intervention of the deconventionalization law.

III. The Situation of Those Who Have not Formulated an Infringement Complaint against the Verbal Infringement Process

The people who have not filed a criminal complaint are put in a rather complicated situation from a legal point of view. The applied fine is

on their tax roll, and the tax authorities can only cancel it based on a court decision or a law.

Currently, there is no law to cancel these fines, so there is only the possibility of a court decision, quite difficult to obtain, in these situations. This is because the rules of contraventional law do not explicitly provide for the effects of a deconventionalization law with regard to the fines already applied or with regard to the effects of the sanctioning minutes concluded on the basis of the old law. In principle, deconventionalization was not even provided for in OG 2/2001 when this act was issued, being introduced later as an effect of jurisprudence (Podaru & Chirita, 2011).

So there are no special procedural grounds - in OG 2/2001 - to initiate a court case after the expiration of the 15 days in which a contraventional complaint could be filed, after the new deconventionalization law appeared. We believe that in the future it is necessary to regulate this situation, in order to protect the rights and interests of litigants.

If there are no special procedural grounds, general procedural grounds are used. In such a situation, the only procedural option would be to file a contravention complaint within 15 days from the entry into force of the law on decontravention, namely GEO no. 22/2022, i.e. starting from 11.03.2021, with a complementary request for reinstatement term. It follows from this that, starting with 11.03.2022 and until 26.03.2022, contravention complaints can be filed against minutes not attacked within the deadline (Ilie, 2022).

IV. Instead of conclusions

Reinstating the term to file a contravention complaint is a legal instrument that would reinstate the procedural rights of violators who did not file complaints in time because they had no grounds. Upon the emergence of the new legal basis, i.e. upon the entry into force of the deconventionalization law, they have a new interest in filing a complaint and have a new right (just born by the new law) to file a complaint, considering the consequences of the criminal law/ decriminalization contraventions and the principle of more favorable criminal/contravention law.

If in the criminal field, a definitive punishment can change radically after the intervention of a decriminalization, the same should be the effect of a definitive contraventional sanction (by not challenging the minutes within 15 days). This is also because a misdemeanor is a chargeable offense in criminal matters, according to national and European jurisprudence, and therefore must enjoy the same legal treatment.

The Code of Civil Procedure stipulates that the party that missed a procedural deadline will only be reinstated if it proves that the delay is due to thoroughly justified reasons. For this purpose, the party shall fulfill the procedural act within 15 days at the latest from the termination of the obstruction, also requesting its reinstatement within the deadline. Based on this rule, we consider that the deconventionalization law can be counted among the justified reasons and therefore the persons are entitled to be reinstated within the term. It is recommended that in such situations the complaint and the rescheduling be made through a lawyer in order to be properly motivated. We do not know to what extent the courts will do justice through this reasoning, but at this point it is the only tool for the offender.

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