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REVIEW OF

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Abstract:

Contraventions appear all the time in everyday life and that is why we consider that a specialized analysis along an ample scientific research of monographic nature, which is remarkable by a thorough valorization of the entire documentation used on the contraventional penalties proves to be useful to both theoreticians and practitioners and to all those who may have to confront this matter at a certain point in their lives.

The originality of the work which we dedicate this summary presentation to consist mostly in the way it approaches the proposed subject, beginning with a detailed and thorough study of the origins of the idea of punishment, going back to the ancient times, of the evolution of the idea of punishment correlated with the applicable penalty and implicitly the legal liability involved by the perpetration of a doing that brings prejudice to certain social values protected by minor offence law.

Keywords:

Contraventions, punishment, penalty, willful violation, legal liability, monograph.

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The entire body of issues of the administrative – contraventional liability, as anchored to the large sphere of the fundamental institutions of administrative law or, on the contrary, regarded as part of a new branch of public law, the contraventional (pertaining to minor offences) law – an idea that is more and more frequently met during the last years – represents undoubtedly a subject of great interest due to its perpetual intervention in the dynamics of the Romanian society. As it is a frequent form of liability, and *contraventions* appear all the time in everyday life, a specialized analysis along an ample scientific research of monographic nature, which is remarkable by a thorough valorization of the entire documentation used on the *contraventional penalties* proves useful to both theoreticians and practitioners, to all those who may have to confront this matter at a certain point in their lives.

The lack of a unitary position of the doctrine, as directly determined by a scarce legislation, insufficient for the diversity of issues, often useless in terms of the materialization of the penalty applied, is underlined from the very first pages of this work that intends and manages to find the common elements even at the level of the European body of laws.

The originality of the work which we dedicate this summary presentation to consist mostly in the way it approaches the proposed subject, beginning with a detailed and thorough study of the *origins of the idea of punishment*, going back to the ancient times, of the *evolution of the idea of punishment* correlated with the *applicable penalty* and implicitly the *legal liability* involved by the perpetration of a doing that brings prejudice to certain social values protected by minor offence law.

Special attention is given to the *forms of contraventional punishment*, which are largely researched, by turning to good account the Romanian legislation and doctrine in the matter along with certain interesting elements of comparative law. The perspective on case law of the European Court of Human Rights in matters concerning Romania, starting from the famous ruling in the case of Anghel vs. Romania makes the author endorse, with solid grounds, based on irrefutable arguments the returning of contraventional liability to its traditional course, the criminal one, naturally keeping certain exceptions that are soundly justified.

All these stand at the base of the *interdisciplinary* character of the entire scientific process resulting from the combination of certain *elements of administrative law* specific to the institution of contraventional liability and thus to contraventional punishment, starting from the post-war period, with *elements of criminal law*; there are still many common points in the matter, were

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we to refer to just one of the conditions of its existence, the *willful violation* or the causes that remove it, taken directly from the Penal code, still containing elements of the *general theory of the law*, the institution of *legal liability* finding its origins in this branch of the law that supported the life of other fundamental institutions of the law.

One deserving reference point of the work is the special attention given to the extremely vast and diverse documentation used, including treaties, courses, monographs, studies, and articles from home and abroad, some less known to even the expert public. The elements of foreign law are not approached distinctly but, on the contrary, by pertinence to the Romanian law, and thus a true *comparative approach* is achieved, which mirrors *resemblances and differences* between the legal systems analyzed.

The way the author goes deep into the (already mentioned) chosen subject is systematic and rigorous, allowing to track a guiding course of the entire research. One first part dedicated to the historic perspective, referring to the *penalties and punishments* applicable along the evolution of society, to *legal liability* regarded naturally, as a consequence of penalties applied and therefore to the *liability – contraventional penalty correlation*, with its defining elements, the second part of the work, a thicker one, focuses on the determining factor of the entire scientific process, the *forms of contraventional penalties*, in the light of a comparative approach from multiple revealing points of view.

It is about the *main contraventional penalties, the complementary contraventional penalties*, but also the *penalties applicable to certain fields of activity, the legal controversies occurring in applying certain contraventional penalties* but also *the application of contraventional penalties in terms of the case law of the European Court of Human Rights* and, implicitly, the influence it should have on national law.

The *application of penalties* should unquestionably be based on the *illicit conduct* of the offender, thoroughly studied from multiple points of view. The presentation of each form of main penalty, starting with the *warning*, the lightest penalty – which in our opinion may as well disappear from the law – is accompanied by various and eloquent elements of case law, which are abundant in the matter and are turned to good account in the most adequate context. As far as the *fine* is concerned, the analysis is more vast, according to its significance, as the *typical contraventional penalty* I dealt with here, and the history of legislation in terms of how its quantum evolved spectacularly for a longtime after 1990.

Another chapter deals in detail with the *complementary contraventional penalties* starting with the *seizure*, the best known but not necessarily the most

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usual one, the aspects of a legislative and doctrinal nature being minutely complemented and argued with examples of case law, with positions of the Constitutional Court relevant in the matter, as well as with the point of view of the European Court of Human Rights in some cases. The presentation of the penalties specific to certain fields of activity is too usefully complemented by elements from the legislation of other states, such as the case of the penalties so often applied in the case of *traffic contraventions*.

The work ends with a series of *conclusions and proposals of lex ferenda*, which review the most important legislative proposals argued in detail along the entire analysis – comparative law elements included -, the author joining the position expressed by the administrative doctrine, which is to adopt a *Code of contraventions (minor offences)*.

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