

## PENAL FINE UNDER NEW RULES IN L. NO. 286/2009. NOVELTY TO THE CURRENT REGULATIONS OF THE CRIMINAL CODE

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### ABSTRACT

*Implementation of the new Criminal Code will bring essential changes in terms of criminal penalties that apply to individuals.*

*Criminal penalty fine has changed significantly with the introduction of criminal fine in form of „days of fine”, in order to harmonize our legislation with the legislation of EU member states, where this form of criminal fine is used for a long time.*

*The application of this type of penalty shall eliminate the cases where a person sentenced to fine, for a slight offense, should be imprisoned if does not have tributable to them, no amount of money available to pay the fine (no income, no pension or salary are sufficient to pay the fine, is dependent persons, etc ...), it will perform unpaid work for the community.*

*Key words: Criminal Code, criminal penalties, criminal fine, slight offense.*

The new Criminal Code provided for in Law. 286/2009, Law published in Official Gazette No. 510 of 24. 07. 2009, the fine is criminal punishment last main. This means that the fine is the easiest criminal punishment of the principal punishment.

This is reflected in the current Criminal Code, where the fine is also the last and the easiest main criminal punishment. Under the new Criminal Code is regulated fine art. 61 and is in the amount of money that the prisoner is required to pay state. According to these regulations shall be fine day-fine system. The amount corresponding to a day-fine, between 10 and 500 lei multiplies with the number of the days-fine which is between 30 days and 400 days.

The court will determine the number of days-fine under the criteria of individualization of punishment under the Criminal Code.

Special limits penalty fine under the new Criminal Code is quite different from the current regulations of the Penal Code and are:

- 60 to 180 days-fine, the law provides for penalty fine only offense - 120 and 240 days -fine, the law provides imprisonment penalty alternative fine of not more than two years - 180 and 300 days-fine.

The law provides imprisonment penalty fine alternative over two years, if the offense was intended to obtain a patrimony and the penalty provided by law is just fine, or court chooses to apply day-fine may be increased by one third.

If the offense was intended to obtain a patrimony, in addition to imprisonment and penalty may apply fine. In this case under the new rules within the special day-fine is determined in relation to the duration of imprisonment set by the court and can not be reduced or increased the effect of mitigating or aggravating causes of penalty. In determining the appropriate amount of a day-fine amounts will reflect the value patrimony sought or obtained.

In this case the legislature has considered that in determining an appropriate amount of a day-fine when determining an amount between 10 and 500 lei to necessarily

take account of the assets sought or obtained, that the specific mode of commission of offense damage caused by the offender to the injured party or by the value of property destroyed, either by amount or property stolen. When the injury is more than normal amount of an appropriate amount as a one day fine to be greater.

The rules are quite different from current reeglementări of the Criminal Code. He was made one significant change introduced penalty fine by day-fines and removing minimum and maximum limits, general and special.

The legislation also introduced new, namely that the obligation to perform unpaid work by the person convicted, for the community, if it can not pay the fine in whole or part of its fault.

By introducing this legislation believe that the premises were created not to be imposed punishment by fine and then processed in prison because the persons convicted for offenses light to be imprisoned for not have the necessary income to repay it.

If the convicted person, in bad faith, not punishment running fine in whole or in part, fine-day-executed is replaced with an appropriate number of days in jail.

If executed fine accompanied imprisonment, the number of days-executed penalty is replaced with a corresponding number of days in jail plus prison punishment, such punishment is considered a single sentence resulting. The replacement penalty fine by imprisonment, a fine day-one days in jail is matched.

When penalty fine may be enforced in whole or in part for reasons not attributable to the convicted person with his consent, the court replaced the obligation to pay the fine executed with the obligation to perform unpaid community service work, except if, because of health, the person can not perform this work. A day-fine corresponds to one days work for the community.

If the fine replaced came with imprisonment, community work must be executed after the execution of prison sentence. Enforcement of community service work cease on payment of appropriate fine-fine days remaining unsettled.

The court replaced the days-fine community work executed by the requisite number of days in jail if :

- the convicted person does not do community work requirement established by the court
- convicted person commits a further infringement discovered before execution full obligation of community work. Day-fine executed through community work on committing new crimes replaced by imprisonment, plus the penalty for new offense.

A fundamental change is that the convicted person who fails to pay the fine reasons not attributable to unpaid work they can perform community service, only with consent. Failing agreement convicted person becomes fine in prison, taking into account the part of the fine was enforced, even if not paying the fine comes from causes not attributable to its.

The new Criminal Code is not provided properly consented to perform unpaid community service work (in writing or orally), for which I think before the court, it is sufficient that the sentenced person is not required to pay cash sources criminal fine that was condemned in cases not attributable to them, give their consent to perform unpaid community service work.

This agreement shall be recorded by the registrar and then signed by the person concerned.

If the penalty fine has been established and during its execution is established that the convicted person does not have the necessary monies to pay for it, I think to convert part of the fine remaining outstanding, unpaid work for the community is imperative that the

convicted person give their consent in writing before the court, not enough just minutes of its agreement.

According to regulations of the new Criminal Code, the coordination of the penalty of community work is done by the Probation Department.

Coordination of the penalty of community work by the Probation Department, which is attached to the court, is a guarantee that it will run and that the convicted person can not avoid enforcement of the sentence.

I think that for this measure to achieve its educational purpose and also impunity, it is necessary to prepare the enforcement of a regulation that sentence, in which to determine specifically how it executes punishment, the running times, days of the week run, which is running and not least what kind of work will execute the convicted person for the community.

This regulation is absolutely necessary for the convicted person is not required to perform work considered shameful or demeaning.

That Regulation will be provided and how the persons sentenced to criminal fine in fine days are unable to pay and I agree to perform unpaid work for the community, the age of 18 years. I refer to aged persons sentenced to this punishment, personae who are aged between 16 and 18 years.

The person will give consent to perform unpaid community service work, think before you have so this agreement will be înștiințată what work will take place.

I appreciate that although the work of making work for the community, and punishment will be coordinated by the Probation Department, effective this activity will be organized within each town hall, the convicted person must carry out this work only at home.

It notes that the obligation to perform unpaid work for the community although it may replace the penalty fine, set in days-fine, if its nonpayment of fault convicted person is not regulated as a criminal penalty in the new Criminal Code and therefore not be recorded in the criminal record of person convicted.

The record in the criminal record of the convicted person only penalty fine.

The new Criminal Code provides that the additional penalty of prohibition of rights may also apply if the principal penalty imposed is a fine, a matter not covered in the current Criminal Code.

I appreciate that as regulated criminal fine in the new Criminal Code, the specific features the same punishment as the criminal fine in the current Criminal Code, namely:

- criminal fine is the result of criminal liability of the perpetrator to commit a criminal acts;
- criminal fine form today-fine only applies to a court decision given in a criminal trial
- the latter fail in bad faith, criminal fine may be replaced with imprisonment
- criminal fine, is part of the criminal record of the convicted person, being a criminal antecedents.

The rules of the new Criminal Code, the criminal fine, some conclusions can be drawn:

-criminal fine in the current Criminal Code is as in the new Criminal Code, in an amount of money that the prisoner is required to pay state as the penalty for criminal offense that has committed;

-by applying criminal fine-fine form today will remove the cases where a person sentenced to fine, for a slight offense, will be imprisoned if reasons not attributable they do not have money to pay the fine (no income, pension or salary is insufficient to pay the fine,

is dependent persons, etc ...)

-should be noted that the convicted person must give his consent to performing unpaid community work, otherwise the unexecuted fine, is replaced by imprisonment;

-entirely or partially fine conversion into constraint performance of unpaid community service work does not represent a guarantee that the person who consented to community service work will actually perform it, so there is the chance that the fine punishment, which was converted into unpaid community service work, not to achieve its coercive and reeducation goal.

-unlike the present Criminal Code the new Criminal Code, stipulates that the complementary punishment of interdiction of some rights, may be enforced even when is the main punishment and the court finds that giving the crime nature and seriousness, such a punishment is necessary.

-we may observe that in the new Criminal Code the fine punishment may be enforced as an exclusive punishment, but also as a punishment in participation with imprisonment and in case of fine conversion into unpaid community service work, the work will be performed after serving the imprisonment sentence.

-the new Criminal Code extends the penal fine to other criminal offences, offences punished only with imprisonment by the present Criminal Code.

-in case the fined person, bad faith refuses to pay the entire or part of the fine, in both present and new Criminal Codes, it is stipulated the conversion of this punishment in imprisonment.

-stipulation of penal fine in the likeness of fine-days, is meant to harmonize our legislation with that of the European Union member states, where fine is applied in the likeness of fine-days. Romania is one of the few European Union member states where the penal fine is stipulated between minimal or maximal, particular or general limits.

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