

Decision no. 11591/2022/ 07.11.2022/Court, Iasi/Misdemeanour Complaint

Nadia Cerasela ANIȚEI¹

¹ Professor, Faculty of Law and Administrative Sciences, Legal and Administrative Research Centre, University of Dunărea de Jos, Galati, Romania, ncerasela@yahoo.com, Nadia.Anitei@ugal.ro

Abstract: *Complainant X formulates a contravention complaint at the Suceava Court against the Official Report of Violations, Series ..., no... of 19.01.2022 and the Official Report of Violations Series ..., no of 19.01.2022, concluded at the headquarters of the Public Health Department of Iași County-Public Health Control Service and communicated on the date of concluded by the health inspector of the DSP Iași, whereby I was fined 3000 lei for "failure by the person entering the territory of Romania to complete the Digital Entry Form for Romania-SII-FDIR within 24 hours of entry into the country, according to art.2 paragraph (4) of GEO NR.129/2021, recorded in the report of the observation of sanitary and hygienic conditions no.106603 dated 19.01.2022, made on 10.01.2022, 12:55 PM... Within a maximum of 15 days from the date of delivery or communication of the official report of the finding and sanctioning of contraventions, he will be able to pay half of the minimum fine provided by the normative act, namely 1000 lei".*

Against these minutes, in accordance with the provisions of art. 31 para. 1 of OG. no. 2/2001, approved with amendments and completions by Law no. 180/2002, and art.118 para.1 of OUG 195-2002, the contravention complaint was formulated.

In the course of the trial, the petitioner X took note of the respondent's position and asked the court to find:

1. "the contravention of the contravention of the offence held against the complainant by the report of the contravention" as a result of the fact that the legal conditions for admitting the complaint are not met, the consequence being the annulment of the report of the contravention as stated by the respondent;

2. The restitution of the amount of 1000 lei paid as a fine that was applied and which was paid to the "Local Taxes and Duties Directorate, Iasi" by "Receipt for the collection of local budget debts", in the amount of 1000 lei (Exhibit 4) representing "half of the minimum fine provided for by the normative act, namely 1000 lei" established by the Official Report of the contravention.

Keywords: *contravention complaint, Official report of contravention, Receipt for the collection of local budget debts, Public Health Directorate of Iasi County - Public Health Control Service.*

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The reasons for the complaint:

In fact:

X (Exhibit 6) returned to the country on 10 January 2022 from Memmingen/Munchen West Airport (FMM) to "Stefan cel Mare" Suceava Airport (Exhibit 7).

1. On 6 January at 3.40 PM he entered as shown in the attached proof on the website "Link for authentication in the application Digital Entry Form for Romania" (Exhibit 8) and not receiving another answer he thought that I had filled in that form with the "European Digital Certificate COVID (Exhibit 9)" obtained as a result of infection as shown in the Decision dated: 29.10.2021 issued by DSP, Iasi (Exhibit 10).

2. Having "European COVID digital certificate (Exhibit 9)" and knowing the importance of this certificate and the fact that at the airport customs officials sent to quarantine travelers who did not have "atypical test/RT PCR test for COVID-19 dagnosis" and those who had this certificate had no restrictions of this kind, we did not consider that further investigations are necessary. I specify that the certificate was obtained as a result of infection. Also, the test carried out for the infection at the laboratory "Bioclinica" was paid in full by the plaintiff.

3. On 28 January 2022 she found in her mailbox at home (she had left the locality) an envelope with an arrival stamp dated 28 January 2022 containing two documents: a "Report of findings" dated 19 January 2022 and another "Report of findings and sanctions for contraventions Series.. no..". also dated 19.01.2022. Following receipt of these two documents, he went to the "Local Taxes and Duties Department" and paid the fine of 1000 lei by "Receipt for the collection of local budget debts" established by the "Report of findings and sanctioning of offences, Series .. SCSP no". even though he knew that he was going to challenge the report in court.

4. From 10 January 2022 to the date of 19 January 2022, when the two minutes were drawn up, and the date of the stamp on the envelope, 28 January 2022, there is a very large gap between the dates, i.e. arrival in the country on 10 January 2022, date of drawing up the minutes on 19 January 2022 (i.e. 9 days away), date of sending the minutes by post on 28 January 2022 (8 days away). We note that 18 days have passed between the date of arrival in the country on 10 January 2022 and the date of receipt of the minutes by post, i.e. submission by DSP, Iasi and the date of receipt by Romanian Post, 28 January 2022. It is found that the complainant did not represent a social danger for the authorities because 18 days have passed

since the date of arrival in the country. It is found that the complainant did not represent a social danger to the authorities because 18 days have passed since her arrival in the country. So, neither DSP, Iasi considered that there was public danger because the reports were sent 18 days after the entry into the country or the transmission of COVID is 2-3 days.

5. If it had been the right to fight the COVID pandemic and not just a way to extort large amounts of money from the population, Emergency Ordinance no. 129/2021 on the implementation of the digital entry form in Romania and considering that the DSP, Iasi has all the data related to the identity of the person in question (although he did not consent and did not sign an agreement in this regard with the DSP, Iasi) could send a warning message as we are "bombarded" in different situations such as RO-ALERT by which we are informed that we have not completed or that we have forgotten to complete the form. Again we note that it is not about a social danger by the entry into the country of the relamante having the "European digital certificate COVID" but actually about the way to squeeze in an abusive way important sums of money from the population Emergency Ordinance no. 129/2021 on the implementation of the digital entry form in Romania;

6. Upon landing at the airport, customs officials were informed of the quarantine period for those who did not have the "COVID European Digital Certificate" for the following situations: those who had the "atypical test/RT PCR test for COVID-19 dagnosis" were to be quarantined for 5 days and those who did not have the test were to be quarantined for 7 days if they were not EU citizens. We note that the citizens who had the "COVID European Digital Certificate" were not a public danger for the rest of the citizens in the country, because if they were a public danger they would have been quarantined. We note again the abusive way of squeezing important sums of money from the population through Emergency Ordinance no. 129/2021 on the implementation of the digital entry form in Romania;

7. From 10 January 2022 until the date of the stamp of the Romanian Post on the envelope, 28.01.2022, so 18 days have passed, no further information has been received from the DSP, Iasi that the passengers have become ill with COVID or have transmitted COVID to the passengers following the flight performed, a situation that would have led to the quarantine of all passengers who flew on the flight route: Memmingen/Munchen West (FMM) - "Stefan cel Mare" Suceava.

- In law,
1. Every day we are taught how important it is to have a "COVID European Digital Certificate" and how much we protect others by having it. Suddenly by the provisions established by the Emergency Ordinance no. 129/2021 on the implementation of the digital entry form in Romania established by art. 4 paragraph (1) which states: "Failure by the person entering the territory of Romania to complete the digital entry form in Romania within 24 hours of entry into the country constitutes a contravention and is punishable by a fine of 2,000 lei to 3,000 lei" we note that this green certificate is nothing and that it is very important to have the form completed and by the fine established and paid we are exempt from COVID-19. So, we note that these provisions are a way to get revenues from the population in the middle of a pandemic although the state should have foreseen in the state budget revenues for this pandemic situation especially as huge amounts have been allocated from the European Union budget to the Member States. I consider these provisions to be abusive and in bad faith and a way of obtaining, in the form of parafiscal taxes (taxes that are not provided for in the Tax Code and are used by the state without knowing where they are going), large sums of money from honest and fair citizens who have their gross salary deducted monthly by the CASS.
 2. We note by the abusive way of the Emergency Ordinance no. 129/2021 on the implementation of the digital entry form in Romania that we are all citizens considered offenders even though DECISION no. 2 of 07.01. 2022 on the procedure for the approval of the list of countries/territories classified as epidemiological risk areas, the criteria on the basis of which their classification is determined, the rules for the application of the quarantine measure on persons and the approval of the list of countries/territories classified as epidemiological risk areas stipulates in Art. 3 that "The quarantine measure provided for in Art. 1 persons arriving on the territory of Romania from Member States of the European Union, the European Economic Area or the Swiss Confederation, as follows: a) persons coming from countries classified in the green or yellow zone and presenting proof of vaccination, proof of confirmation of infection with SARS-CoV-2 virus within the last 180 days prior to entry into the country and for whom at least 10 days have elapsed from the date of confirmation to the date of entry into the country or proof of negative RT-PCR test for COVID-19 carried out no more than 72 hours before boarding

- (for those travelling by public transport) or entering the national territory (for those travelling by their own means); b) persons arriving from countries classified in the red zone and presenting proof of vaccination, proof of confirmation of SARS-CoV-2 infection within the last 180 days prior to entry into the country and for whom at least 10 days have elapsed between the date of confirmation and the date of entry into the country." From these articles in different normative acts we see that there are contradictions so, by the Ordinance we are sanctioned if we do not register and by the Decision we see that people arriving in the country from EU Member States are exempted from quarantine, the European Economic Area or the Swiss Confederation, including "persons arriving from states classified in the red zone and presenting proof of vaccination, proof of confirmation of infection with SARS-CoV-2 virus within the last 180 days prior to entry into the country and for whom at least 10 days have passed from the date of confirmation to the date of entry into the country. "
3. On 6 January at 3.40 PM, the applicant entered the application as shown in the proof attached to the website "Link for authentication in the application Digital Entry Form for Romania" (Exhibit 8) and not receiving any other answer, she thought she had filled in that form with the "European Digital Certificate COVID (Exhibit 9)" obtained as a result of the infection on 29.10.2021 as shown in Decision no: ... of date: issued by DSP, Iasi (Exhibit 10). So, he went paying from his own salary to the "Bioclinca" Centre to get tested when he felt that something was wrong and not to transmit this virus further. So, it can be seen that he is a responsible and bona fide person. Per a contrario, we observe that the principle of good faith stipulated in article 14 of the Civil Code does not work, which states: "Any natural or legal person must exercise his rights and perform his civil obligations in good faith, in accordance with public order and good morals. (para. 1) Good faith is presumed until proven otherwise (para. 2)".
 4. According to Art. 21 para. 3 of the OG no. 2/2001, as amended "the sanction shall be applied within the limits provided for by the normative act and shall be proportional to the degree of social danger of the offence committed, taking into account the circumstances in which the offence was committed, the manner and means of committing it, the purpose pursued, the consequence produced, as well as the personal circumstances of the offender and the degree of concrete social danger of the offence and the personal

circumstances of the offender. Any legal sanction, including a fine, is not an end in itself, but a means of regulating social relations, of forming a spirit of responsibility, and for this it is not necessary to apply the sanction of a fine in all cases. Legal sanctions are not a means of revenge against society, but of preventing the commission of unlawful acts and educating the guilty. Consequently, in the case of offences with a low degree of social danger, the purpose of the penalties can also be achieved by applying a measure of caution to the offender, without the application of the fine, as a sanction related to offences with a higher degree of social danger. Or, art. 5 para. (5) of the OG no. 2/2001 on the legal regime of contraventions, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions, which complements the provisions of the sanctioning act, provides that "the sanction established must be proportionate to the degree of social danger of the act committed". The fine is unjustified because even the authorities implicitly acknowledge the non-existence of social danger by sending the documents 18 days later. The journey took place on 10 January 2022 and the date of the stamp of the Romanian Post on the envelope was 28.01.2022, so 18 days have passed, without the first letter being sent, without receiving any further information from the DSP, Iasi that they would have fallen ill with COVID, the mild variant Omicron passengers or would have transmitted COVID to the passengers following the flight performed situation that would have resulted in quarantine of all passengers who flew on that route.

5. On 6 January at 3.40 PM the applicant entered as shown in the attached proof on the website "Link for authentication in the application "Digital Entry Form for Romania" (Exhibit 8) and not receiving another answer she thought she had filled in that form with the "European Digital Certificate COVID (Exhibit 8)" obtained as a result of the infected Decision No: ...dated: ... issued by DSP, Iasi (Exhibit 9). A very relevant aspect is that there is no mention in the mentioned Ordinance of what happens when you still sent data but fail to fill in the form, implicitly, if no reply is received after sending the data filling in the form, the sanction applied is the same, although the legislator does not mention that the offence is also committed in this way, but only by not filling in the form. Moreover, it should be taken into account that the form should be filled in only by those who do not have their domicile or residence on the territory of Romania because the purpose of filling in the form is to locate persons who

might be infected with the SARS-Cov-2 virus. The "Digital Entry Form for Romania" does not combat the pandemic, does not save travellers from infection with the SARS-Cov-2 virus and does not help to detect those infected. The authorities have the data of the infected travellers from the moment they became infected by informing the competent authorities, i.e. the DSP where they travelled, who they were in contact with, etc... For example, in Germany there is this form and if you have not filled it in when you arrived at the customs officials you are given a form to fill it in where you will give the address where you will live. If you have not filled in the form online, you can fill it in in front of an official on the spot. Note that the aim of the German state is to keep the pandemic under control and not to punish citizens, not to impose fines. We note that we have an Emergency Ordinance No. 129/2021 on the implementation of the abusive digital entry form with the aim of squeezing money from the population by any means and not to prevent infection.

6. However, according to Article 16(1) of the Constitution, "Citizens are equal before the law and public authorities, without privileges or discrimination" and Article 16(2) states that "No one is above the law". The shortcomings of Emergency Ordinance no. 129/2021 on the implementation of the digital entry form in Romania shows that we are not equal before the law and that public authorities can sanction us at any time and that REGULATION (EU) 2021/953 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2021 on the framework for issuing, verifying and accepting interoperable certificates of vaccination, COVID-19 (EU digital certificate on COVID) to facilitate free movement during the COVID-19 pandemic does not apply even though it is a rule of immediate application although the authorities themselves by the way they determine who enters quarantine upon entry into the country admit that they do not quarantine people who have such a certificate but sanction them if they do not complete the form. Therefore, the provisions of REGULATION (EU) 2021/953 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2021 on the framework for issuing, verifying and accepting interoperable certificates of vaccination, testing and curing of COVID-19 (EU digital certificate on COVID) to facilitate free movement become inapplicable through Emergency Ordinance No 129/2021 on the implementation of the digital form for entry into Romania.

7. And according to Article 16 of the Constitution paragraph (1) stipulates that "Citizens are equal before the law and public authorities, without privileges and without discrimination" and paragraph (2) provides that "No one is above the law" we note that even through this Emergency Ordinance No. 129/2021 on the implementation of the digital entry form in Romania we are not equal before the law and that its adoption did not take into account the minimum wage, inflation since the beginning of the pandemic to date. Disproportionality between the amount of the fine and the degree of social danger which is non-existent because the authorities had all our data upon arrival in the country and if a passenger on the plane had been infected with the SARS-Cov-2 virus, the Omicron vet should have notified the DSP. This ordinance only aimed to obtain money in the form of parafiscal taxes (these fines are collected as revenue to the local budget)... So, the Emergency Ordinance no. 129/2021 on the implementation of the digital entry form in Romania does not prevent or combat SARS-Cov-2, Omicron variant, but only penalizes citizens for a non-existent danger.
8. The degree of non-existent social danger also results from the fact that the authorities tacitly acknowledged its non-existence by sending the documents 18 days after the arrival on the territory of Romania or SARS-Cov-2, the Omicron variant is transmitted much sooner and already exists since 23 December 2021 as shown on this site: <https://www.reginamaria.ro/articole-medicale/omicron-o-noua-varianta-dominanta-virusului-sars-cov-2>
9. Analyzing from the point of view of the Romanian Fiscal Code the name of the receipt by which the fine was paid "Receipt for the collection of local budget debts" we observe that art. 1 of the Fiscal Procedure Code defines in pct. (7) "budgetary claim - the right to collect any amount due to the general consolidated budget, representing the main budgetary claim and the accessory budgetary claim" and paragraph (8) defines main budgetary claim - the right to collect any amount due to the general consolidated budget, other than ancillary budget claims and in point (9) defines "ancillary budget claim - the right to receive interest, penalties or other such amounts, under the law, relating to principal budget claims" the question would be where do we include the fine established by Emergency Ordinance no. 129/2021 on the implementation of the digital entry form in Romania does not prevent and combat SARS-Cov-2, Omicron variant, but only sanctions citizens for a non-existent danger?

10. Analyzing from the point of view of the Romanian Tax Procedure Code, the notion of tax body is defined in Article 1, paragraph (30) which states: "tax body - the central tax body, the local tax body, as well as other public institutions that administer tax claims" and by the notion according to paragraph (31) of central tax body we mean "the Ministry of Public Finance and the National Agency for Tax Administration, hereinafter referred to as the N.A.A.F., by the specialized structures with tax claims administration tasks, including the subordinate units of the Ministry of Public Finance or A.N.A.F." and by the notion of "local tax body" according to point (32) we mean "the specialized structures within the local public administration authorities with tax claims administration tasks". Intrebarea qui se pune este: de quando este DSP, Iasi organ fiscal si poate da amende? We note that this Emergency Ordinance no. 129/2021 on the implementation of the digital entry form violates the principles of the rule of law, as it has powers over the law, the Constitution. It is an Ordinance that cannot sanction and set fines by violating the legal terms of the Tax Procedure Code adopted by Law no. 207/2015 on the Tax Procedure Code. We understand to invoke the absolute nullity of the minutes reported on the fact that the representatives of the respondent violated their competence. According to the DSP Statute and the DSP inspectors' attributions, they are not authorized to apply fines. Exceeding their duties and competences creates an abuse that must be sanctioned with absolute nullity.
11. DSP, Iasi how do you set the minimum or maximum fine? Under which provisions do they determine the seriousness of the offence? According to the DSP Statute and the DSP inspectors' attributions, they are not authorised to apply fines. Exceeding their duties and competences creates an abuse that must be sanctioned with absolute nullity.
12. Emergency Ordinance No. 129/2021 on the implementation of the digital entry form in Romania violates the Romanian Constitution by having legal power over the law, the Constitution. We consider that this ordinance is subject to absolute nullity. If we also look at European level on the official website of the EU https://e-justice.europa.eu/6/RO/national_legislation?ROMANIA&member=1 we can see the order of legal acts according to their importance.
13. Emergency Ordinance No 129/2021 on the implementation of the digital entry form for Romania stipulates in Article 3(5) that: "The personal data set out in the Annex shall be stored for a period of 15

days from the date of completion of the form. Access to these data shall be granted to the entities referred to in Article 3(3). (2). During the storage period, personal data may not be deleted. At the end of the 15-day period, the personal data relating to each form shall be destroyed using irreversible procedures" and paragraph (2) states: "The Ministry of Health, the Ministry of Internal Affairs and the Special Telecommunications Service shall process personal data, as associated operators, through the SII-FDIR, in accordance with the responsibilities established by this Emergency Ordinance." From my point of view if the personal data related to each form are destroyed at the expiry of the 15 days deadline by using irreversible procedures and the data taken by DSP, Iasi and not transmitted to the undersigned at the expiry of the 15 days deadline should have been destroyed and not transmitted after 18 days from the trip since I do not exist in the database of the mentioned entities. Moreover, the sanction should be applied within a maximum of 14 days, given the purpose of the completion (locating the person who might be infected with the SARS-Cov-2 virus, Omicron variant).

14. Disproportionality between the amount of the fine and the minimum and average salary, given that inflation has risen steadily since the start of the pandemic in March 2020 (food, gas and energy prices), the adoption of Emergency Ordinance No. 129/2021 on the implementation of the digital entry form in Romania has only led to an impoverishment of the population and not to prevent and combat SARS-Cov-2.
15. The state budget is obliged to take into account such situations as the pandemic, all the more so as the Law on Public Finance No 500/2002 with subsequent additions and amendments, Article 30, states: "The state budget shall include the Budgetary Reserve Fund at the disposal of the Government and the Intervention Fund at the disposal of the Government (paragraph 1). The Budgetary Reserve Fund at the disposal of the Government shall be allocated to the main authorising officers of the state budget and local budgets, on the basis of Government decisions, to finance urgent or unforeseen expenditure arising during the budget year*). (para. 2) The intervention fund available to the Government shall be allocated to the main authorising officers of the state and local budgets, on the basis of Government decisions, for the financing of urgent actions for the elimination of the effects of natural disasters and for the support of disaster-stricken individuals.) In the course of the budgetary year, the intervention fund

- available to the Government may be increased by the Government. (paragraph 4) During the budget year, the intervention fund available to the Government may be increased by the Government from the budgetary reserve fund available to the Government, depending on the needs for providing sums for the removal of the effects of natural disasters." (Romania has received significant amounts of money from the EU budget, and the media has reported on the large amounts distributed to our country.
16. We note that the fine is charged as "local budget receivables" although no damage has been caused to the local budget to be fined. On the plane the travellers were from different cities, maybe different countries. What is the damage caused as a citizen and traveller? At the local level local taxes and charges are regulated in ORDINANCE No. 36/2002 on local taxes and charges with subsequent amendments.
 17. In the situation where it is considered a social danger for travellers to enter the country, there should have been listed forms, notices should have been put up regarding the seriousness of not filling in the PLF form, the law was made just to collect money from these fines. We note that in the concrete situation, the Emergency Ordinance No. 129/2021 on the implementation of the digital entry form into Romania abusively establishes in the form of a fine amounts of money to be paid by citizens for not completing a form and not for not protecting the right to health. We note the uselessness of the "European COVID digital certificate (Exhibit 8)" foreseen by REGULATION (EU) 2021/953 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2021 on the framework for issuing, verifying and accepting interoperable COVID-19 vaccination, testing and cure certificates (EU digital certificate on COVID) to facilitate free movement during the COVID-19 pandemic in front of the Romanian authorities.
 18. A mandatory element is missing, as established by GEO 2/2001, in Art. 21 para. (3), i.e., the body does not make specific details on the place, the circumstances in which the act was committed, the manner and means of its commission, the purpose pursued, the result produced. At the same time, there is no doubt that the offender was unable to make the required statements on the official report, given that the penalty was imposed in the absence of the complainant-offender, in accordance with Article 16(1)(b) of the Regulation. (7) of GEO 2/2001. The legal procedure for the individualisation of the

- penalty to be imposed on the offender is inherent in ensuring compliance with the principle of the individuality and personality of the penalty imposed, principles specific to criminal matters, to which the matter of contraventions is assimilated according to the constant case-law of the ECHR and the Romanian courts.
19. We intend to invoke the absolute nullity of the report on the grounds that the representatives of the respondent violated their jurisdiction. According to the DSP Statute and the DSP inspectors' attributions, they are not investigators and do not have the right to apply contravention sanctions. Exceeding their duties and competences creates an abuse which must be sanctioned with absolute nullity. In order for an act to constitute an offence, it must be committed with intent and must cause damage or endanger one of the social values protected by law. Or, as far as the act committed is concerned, it does not fulfil the constitutive elements of an offence.
 20. The report of the offence sent after the entry into force of GEO 129/2021 does not contain: the place where the offence was committed or the circumstances in which the offence was committed; important clarifications - the amount of the fine or the application of the warning could not be established because the above-mentioned aspects were not included; information on the Court where a possible appeal can be lodged. Therefore, we consider that the report of a fine for so-called non-completion of the PLF form is null and void.
 21. Emergency Ordinance No 129/2021 on the implementation of the digital entry form in Romania does not prevent or combat SARS-Cov-2, Omicron variant, but violates the right to freedom of movement or the right to confidentiality of personal data, since it establishes the obligation to provide these data to a digital system and not to a clearly identified official.
 22. The European Court of Human Rights has held that the doubt benefits the accused person (E.D.O. Commission, case of Austria v. Italy, *Annuarie de la Convențion*, vol. VI, : 783). This principle also respects the right to individual certainty, which would be undermined if a person were to be convicted on the basis of uncertain, inconclusive evidence, from which the element of certainty is completely lacking, and which is not such as to substantiate the factual and legal merits of the criminal charge.
 23. The official statement of offence and fine cannot in itself prove the existence of the offence, its perpetrator and guilt, as this decision is merely the act by which a person is accused of committing the offence.

24. Both the presumption of the legality of the administrative offence report and the presumption of innocence as a guarantee and an essential element of human rights and the right to a fair trial are in possible contradiction with regard to the misdemeanours, this issue having been brought to the attention of the ECtHR in the case of *Anghel v. Romania*, by decision of 4 October 2007.
25. In the light of ECHR case-law, contraventions fall within the scope of 'criminal charges' referred to in the first paragraph of Article 6 ECHR. As a consequence of the application of the provisions of Article 6 of the Convention to this case, the present dispute must also afford the procedural guarantees recognised and guaranteed by that article. Consequently, the specific guarantees in criminal matters in Article 6 of the Convention, including the presumption of innocence, must also be recognised. The provisions of Article 6 of the European Convention on Human Rights are also applicable in the present case, with all the guarantees conferred by it, since the complainant enjoys the presumption of innocence (*Anghel v. Romania* case) and the burden of proof rests with the investigating body, thus respecting the principle of equality of arms, a guarantee also established by the aforementioned article. Both the presumption of the legality of the administrative offence report and the presumption of innocence as a guarantee and an essential element of human rights and the right to a fair trial are in possible contradiction with regard to the misdemeanours, this issue having been brought to the attention of the ECtHR in the *Anghel v. Romania* case, by decision of 4 October 2007.
26. Moreover, both the deadlines and the sanctions applicable in the case of the PLF form were recently changed: the period in which the form can be completed was increased from 2 days to 4 days; the minimum fine for not completing the form was reduced from 2000 lei to 500 lei.
27. However, the SARS-Cov-2 virus, the Omicron variant, was not very serious yesterday, serious today and less serious tomorrow to play with Emergency Ordinance no. 129/2021 regarding the implementation of the digital entry form in Romania which should not contain actions but the form should be distributed both physically and by completing it to be completed by travelers who do not have their residence or domicile on the territory of Romania in order to be located in the case of infection with the SARS-Cov-2 virus, the Omicron version. Everything seems to be a game of "cat and mouse" and not the

application of art 34 paragraph (1) of the Romanian Constitution which states: "The right to health protection is guaranteed and neither is the application of the provisions of the international regulations as established in the international law of rights to man, namely: "the right to health is called the right to the highest standard of physical and mental health and is defined by the following international treaties:

- art. 25 (1) of the Universal Declaration;
- art. 12 (1) of the Covenant for Economic, Social and Cultural

Rights;

- art. 5 (e), (iv) of the Convention on the Elimination of All Forms of Racial Discrimination;

- art. 11 (1) f), art. 12, 14 of the Convention on the elimination of all forms of discrimination against women;

- art. 24 of the Convention on the Rights of the Child;

- art. 25 of the Convention on the Rights of Persons with Disabilities.

(<http://sanatemintala.md/ro/legislatie/drepturile-omului/despre-drepturile-omului-in-demiul-sanatatii>).

We consider that Emergency Ordinance no. 129/2021 regarding the implementation of the digital entry form in Romania is unconstitutional, as is the localization form. From those presented in the given situation, we note that by Emergency Ordinance no. 129/2021 regarding the implementation of the digital entry form in Romania does not prevent, does not reduce the social danger, does not help citizens not to get sick, on the contrary:

1. it is a flagrant violation of the legislation in force as I specified in the above, regardless of whether it is the Constitution, the Civil Code, the Fiscal Procedure Code, the Administrative Code which were adopted by laws and not by GEO;

2. there are inadvertences between Emergency Ordinance no. 129/2021 regarding the implementation of the digital entry form in Romania and DECISION no. 2 of 07.01.2022 regarding the procedure for approving the list of countries/territories in epidemiological risk areas, the criteria on the basis of which their classification is established, the rules for applying the quarantine measure on people, as well as the approval of the list of countries/territories in epidemiological risk areas entered into force on the same subjects and signed by the same decision-maker; violates ECtHR jurisprudence; limits free movement without taking into account REGULATION (EU) 2021/953 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2021 on the framework for the issuance, verification and acceptance of interoperable certificates of vaccination, testing and cure of COVID-19 (the digital certificate of EU on

COVID) to facilitate free movement during the COVID-19 pandemic; huge sums of money are collected from the population under the cover of the guilt of not completing this form without there being any social danger. These sums of money are collected as "local budget claims" even though it did not cause any damage to the local budget, to be fined.

In these conditions, considering that our rights stipulated by the mentioned normative acts are being violated both at the national level, as well as at the European and international level and that there is no legal basis to justify the social danger in the event that the form has not been completed being the personal data already known by the legal officials from the Airport and transmitted to the DSP, Iasi and being a Romanian citizen with domicile in Romania and also taking into account the very large number of appeals made to the minutes issued by the DSP through the Emergency Ordinance no. 129/2021 regarding the implementation of the digital entry form in Romania, we opine the absolute nullity of this ordinance and that thus the exception of unconstitutionality can be invoked, considering that notification of the CCR with this exception of unconstitutionality is required.

Based on the aforementioned, the Suceava Court on 3.06.2022 declines its jurisdiction by Decision 1792/2022 03.06.2022 and states that: "Admits the exception of the territorial incompetence of the Suceava Court, invoked ex officio. It declines the competence to settle the case with the object of the contraventional complaint formulated by the petitioner NCA in opposition to the respondent DSP Iasi in favor of the Iasi Court, Iasi county."

The Court of Iasi admits the settlement of the case having as its object a contravention complaint filed by the petitioner NCA in opposition to the respondent DSP Iasi.

During the trial, the NCA petitioner took note of the respondent's position and asked the court to state:

1. "de-contraventionalization of the contraventional deed held against the petitioner by the report establishing the contravention" as a result of the fact that the legal conditions for admitting the complaint are not met, the consequence being the annulment of the contravention report as specified by the respondent;

2. The refund of the amount of 1000 lei paid as the contravention fine that was applied, which was paid to the "Directorate of Local Taxes and Taxes, Iasi" through the "Receipt for the collection of debts of local budgets", in amounts of 1000 lei (sample no. 4) representing "half of the minimum fine provided for by the normative act, respectively 1000 lei" established by the Minutes of finding the contraventions, (exhibit no. 2)

3. The respondent acknowledges by requesting the application of the provisions of art 454 of the Civil Code, which in the first part orders "The defendant who admitted, at the first court term at which the parties are legally summoned, the claims..." the claims supported respectively, the restitution of the sum of 1000 lei paid as the contravention fine that was applied through the report of the contravention".

In addition to the legal provisions already maintained in the complaint, the following legal provisions (also presented by the respondent) were added:

1. GEO no. 22 of March 11, 2022 for the repeal of GEO No. 129/2021 regarding the implementation of the digital entry form in Romania;

2. Decision of the Constitutional Court no. 228/2007 regarding the exception of unconstitutionality of the provisions of art. 12 paragraph (1) of GEO no. 2/2001.

During the trial on September 12, 2022, by the Decision on the restitution of the amounts from the local budget no..., it was granted pursuant to art. 168 of Law no. 207/2015 on the Fiscal Procedure Code, with subsequent amendments and additions, the restitution of the amount of 1,000 lei (the amount that was the subject of this litigation) through the General Economic and Public Finance Directorate of Iasi, Revenue Accounting Service, Municipality of Iasi. In this context according to the provisions of art. 243 C prciv as a plaintiff waived the trial of the summons request in order to (intervention summoning the parties necessary to debate the merits in the council chamber or in public session).

The Court of Iasi took note of the waiver of the trial and stipulates Decision no. 11591/2022/ 07.11.2022 "According to the provisions of art. 406 of the Civil Procedure Code, states the abandonment of the trial of the application having as its object a contraventional complaint and parties on the petitioner NCA and the respondent DSP Iași. With the right of appeal within 30 days from the communication, the appeal request to be submitted to the Iasi Court."

References

Decision no. 11591/2022/ 07.11.2022.

Decision 1792/2022/ 03.06.2022.

C.E.D.O., in the case of Anghel against Romania, by Decision of October 4, 2007.

E.D.O. Commission, case Austria v. Italy, Yearbook of the Convention, vol. VI.

Legislation

GEO NO. 129/2021, recorded in the record of ascertaining the hygienic-sanitary conditions no. 106603 of 19.01.2022.

The decision to return the amounts from the local budget.

GEO no. 22 of March 11, 2022.

Decision of the Constitutional Court no. 228/2007.

DECISION no. 2 of 07.01.2022 regarding the procedure for approving the list of countries/territories in epidemiological risk areas, the criteria on the basis of which their classification is established, the rules for applying the quarantine measure on people, as well as the approval of the list of countries/territories in epidemiological risk areas

REGULATION (EU) 2021/953 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2021 on the framework for the issue, verification and acceptance of interoperable certificates of vaccination, testing and cure for COVID-19 (EU digital certificate on COVID) to facilitate free movement during the COVID-19 pandemic.

The Universal Declaration of Human Rights.

Public finance law no. 500/2002 with subsequent additions and amendments

Convention on the Elimination of All Forms of Racial Discrimination;

Convention on the elimination of all forms of discrimination against women;

Convention on the Rights of the Child.

Convention on the Rights of Persons with Disabilities.

(<http://sanatamintala.md/ro/legislatie/drepturile-omului/despre-drepturile-omului-in-demiul-sanatatii>)

GEO 2/2001 approved with changes and additions by Law no. 180/2002.

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ORDINANCE no. 36/2002 on local taxes and fees with subsequent amendments.

Law no. 207/2015 regarding the Fiscal Procedure Code.

Civil Procedure Code

Constitution

Civil Code

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Fiscal Code

Administrative code

Web pages

official EU website [https://e-](https://e-justice.europa.eu/6/RO/national_legislation?ROMANIA&member=1)

[justice.europa.eu/6/RO/national_legislation?ROMANIA&member=1](https://e-justice.europa.eu/6/RO/national_legislation?ROMANIA&member=1)

website: <https://www.reginamaria.ro/articole-medicale/omicron-o-noua-varianta-dominanta-virusului-sars-cov-2>

the website "Link for authentication in the application "Digital entry form in Romania"