

# Legal Characteristics of the Contravention Arrest in the Republic of Moldova

[Caracterele juridice ale  
arestului contravențional în  
Republica Moldova]

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**Abstract:** The material published contains information about the application of the contravention sanctions by the court - the arrest, as an exceptional punishment. The proposed study reveals the definition, particularities and conditions of the arrest application in terms of the principle of freedom, expressed both in national and international norms. At the same time, the cases and categories of persons are highlighted to whom the contravention arrest cannot be applied, as well as the exception of unconstitutionality for some causes. An important part of the work is the procedure and the conditions set by the legislator for the execution of the arrest sanction, as well as the national statistics on the number of the contraveners for whom the arrest was applied.

**Keywords:** *contravention; arrest; contravention sanctions; individuals; the principle of freedom; detention; penitentiary; ascertaining agent.*

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## **Introduction**

Generally, an arrest is no more than a form of deprivation of liberty of persons who violated the law, a means of constraint (a form of „lex coercionis”), of a social-psychological and physical influence exercised by the state authorities. By arrest, a man is constrained, deprived of freedom, unaffected by one of the most precious social values that exist in a country. Likewise, we recall the renowned classical triangle: equality, liberty and righteousness, as essential valences which at the same time give appreciation to the political life and directly affect the national and international legal system. A reflection, in this sense, we meet in the stipulations of the art.5 of the European Convention on Human Rights Protection, dedicated to the protection of physical liberty of any person against the arrest / arbitrary or abusive detention. However, some exceptions from this norm can exist, provided by the law and executed in accordance with the law. In some cases, especially related to the protection of public order, the deprivation of liberty is permitted. Still, this deprivation should be applied only then and in the moment when it is really necessary. In fact, the subject proposed in this paper, is an „opposite” part of liberty – „contravention arrest” for committing the social-dangerous acts, for which the law provides such a sanction.

## **Results and discussions**

Contravention arrest is considered to be the most severe punitive measure used by the state authorities and is applied only in cases when contravention is really jeopardizing the health and body integrity of a person. Even if it threatens the supreme values of a person, this sanction is not applied for all contravention cases. Contravention arrest is applied to the physical persons and for a determined period.

The contravention sanction of the arrest should not be confused with the detention of a person, as a procedural constraint measure (art.art.433-436 Contravention Code). The detention consists in the short-term liberty limitation of a physical person (up to 3 hours, and in some cases up to 24 hours, but no more) and is applied by the ascertaining agent (police, border police, customs service). Contravention arrest is a sanction and is applied in accordance with art.395 al. (1) let. „c” Contravention Code is applied exclusively by the court in the contravention cases for which such sanctions are provided (Contravention Code of the RM, 2008), as well as

when the contravener has not executed intentionally the other contravention sanctions.

Duration of the contraventional arrest is from 4 to 15 days, but for the contest of contraventions or cumulation of arrest decisions, the court may apply up to 30 days. (Contravention Code of the RM, 2008)

Despite the fact that the lawmaker provided for the contraventions for which the contravention arrest as a punishment is applied, still there exist the categories of people to whom this cannot be applied:

- people with severe and pronounced disabilities;
- militaries in term;
- militaries and employees with special status of the Ministry of Internal Affairs, engaged on a contractual basis;
- juveniles;
- pregnant women;
- women which have the children up to 8 years of age;
- person who is the sole career of a child aged up to 16 years of age;
- persons who have reached the general retirement age (Contravention Code of the RM, 2008).

With regard to the latter category (pensioners), the Constitutional Court has recently pronounced on the application of arrest for the committing the contraventions stipulated in the art. 78<sup>1</sup> CC (violence in family), by way of exception of unconstitutionality: „*In case of committing the contravention stipulated by the art. 78<sup>1</sup> CC, the courts can apply the contravention arrest to persons which have reached the general retirement age, if their health state permits this fact*”. The court have concluded that the absolute ban on the application of the contravention arrest warrant for persons who have reached the general retirement age is disproportionate with regards to the procedural obligation of state authorities to establish an effective system of sanctioning of all forms of domestic violence. (General Report NAP, 2018, p.12-16)

In the same context, an important compartment is the application of the arrest for badly evasive payment of a fine, calculating a day of arrest for 2 conventional units, the duration of the arrest being no more than 30 days, or, for evading the unpaid work for the benefit of community, calculating a day of arrest for 2 hours of work. Practically, the court does not very often apply this substitution, because holding of a person in the custody would cost today the state institutions about 198 lei per day (expenses for communal services, eating, salaries of the supervising and guarding officers), i.e. it is more expensive than the value of the conventional units it replaces,

and, respectively, it makes no sense to hold a person in custody for 100 lei a day, the state spending nearly double sums for that.

The authorities have proposed recently the amendments to the Contravention Code. The novel element is related to the punishment tightening *for the intentional non-execution or eschewing from the enforcement of the court decision* provided by the art. 318 of the Code and it is proposed to apply the contravention arrest for the duration from 7 to 15 days). Respectively, the sanctioning measures completed could also be applied for non-execution of enforceable documents mentioned in the article 11 letter c) and d) of the execution Code, namely:

- contravention decisions (judgements), inclusively those issued by the ascertaining agents within the competency limits attributed to them by the law, and sentences on criminal cases for fine collection, for special confiscation, as well as for the civil action compartment;
- the ordinances regarding the release of criminal liability with contravention in the form of a fine (Execution Code of the RM, 2004).

Currently, the Contravention Code provides for these infringements the sanction of fine from 30 to 60 of conventional units.

In essence, we are of the opinion that the above proposal is less successful and the excessive use of arrest is by no means a solution to ensure, in a way, the enforcement of judgments. The current tendencies of the civilized world are oriented towards the widespread application of the punishments alternative to detention. But what are we doing? We create the constraining mechanisms from the part of the state and overcrowd at the maximum the penitentiaries in the country (see below the conditions for executing the contravention arrest).

### ***Concerning the execution of the contraventional arrest sanction***

Executing of the contraventional arrest sanction is provided by the penitentiary institutions, under the conditions established for the initial regime in the semi-closed penitentiary (Execution Code of the RM, 2004). The specifics of this initial regime consist in the detention of detainees in the isolated rooms (cell system), each 4 people in the cell. The arrest regime ensures the specific rights of offenders during the detention, such as right for food, sanitary assistance, right for the visits, correspondence, they can receive parcels or packages with food. Contraventional detainees are detained separately from persons held in criminal cases, in separate rooms / blocks, excluding any form of contact, even if they are transported from one institution to another.

Also, the obligations of contravention detainees are included in their regime contents, related to the order and discipline, work, as well as the other aspects.

Within the penitentiary administration system of the Republic of Moldova, the contraventional arrest sanctioning is executed in the Penitentiaries Nr.5-Cahul, Nr.11-Balti, Nr.13-Chisinau, Nr.17-Rezina, where the relevant detention conditions were created. According to the statistical reports of detainees records, published on the official page of the National Administration of Penitentiaries, in the year 2018 the contraventional arrest sanction was applied for a total of 172 persons (Constitutional Court Decision of the RM Nr. 28, 2018). The average detention time was 10 - 15 days.

As regards to the court judgements concerning the application of the contravention arrest sanction to the people which are not under the arrest or have not been detained, they are sent to the internal affairs body within the territorial jurisdiction of the offender's domicile to escort him to the nearest detention center (Execution Code of the RM, 2004).

In accordance with the policies promoted by the recommendations of the Council of Europe, the Member States of the Council are advised to develop and implement the alternative sanctions for the deprivation of liberty. In the context of these tendencies and taking into account the moral character of the contravention sanctions application, a new opinion has emerged, quite arguable to my opinion, that arrest in general should be excluded from the list of contravention sanctions applied to individuals or replaced by a new contravention sanction "home arrest" with the supervision of the Central Probation Office. Or, the imprisonment of a person, even for the short term, must nevertheless be regulated in the area of criminal law rather than contravention.

## **Conclusions**

Contravention sanction is a fundamental institution in the prevention and fighting against the acts which contravene the social cohabitation. The state authorities must be aware of their role in the prevention and fighting against these acts with low degree of social danger, and, respectively, in finding the appropriate levers to efficiently achieve the preventive and repressive scope for which they have been applied. It is considered as one of the most important stages of contravention process, which practically, we have to recognize, has low efficiency, either because of the social-economic and political problems in the country, or due to the lack

of the enforcement mechanisms of their execution. It is not sufficient for the determining agent to establish the offense and to draw up the report, then the court to give the judgement, there is also need that the offenders to be subjected to responsibility by the state authorities, not necessarily with contravention arrest, so that he no longer commits such acts. Unfortunately, even although the sanctions for some acts have been tightened, there has been an increase in contraventions on all levels lately, especially among the young people.

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