

# ASPECTS REGARDING ECONOMICAL INFRACTIONS OR THOSE WITH CONSEQUENCES IN THE ECONOMICAL DOMAIN-FISCAL

Candidate to Ph. D lecturer **Diana Cîrmaciu**  
University of Oradea, Law Faculty  
diana.cirmaciu@rdslink.ro  
Judge Hall **Loreley Emese Mirea**

## **Abstract:**

*To delimit the economical infraction some necessary measures must be taken, complex measures which regarding organization and administration of the society, in its full state of mind even for the public power that must be put in the citizens hands.*

*The main tasks of the competent public organs regarding to the efficient fight against economical-financial infractions should aim:*

- realizing the most important directions in this matter;*
- the recognition of the new social-economical realities;*
- ranging and execution of the necessary measurements.*

**Key words:** economical infraction, fiscal evasion, manifestation form, punishments.

The economical infractions or those which have economical consequences represent harmful phenomena, with grand effect on our economical social lives; so that all these must be fought through efficient legal economical measures.

The legal practice sometimes offers explanations of the same law problems- this is a situation created even by the complexity of the presented phenomena (so can be considered an economical crime near fiscal evasion, washing money, even closing a bag deal or work negligence, etc.).

The economical infractions or the ones which have economical consequences are found in the Penal Code; (ex: energy theft<sup>131</sup> -art. 208

---

<sup>131</sup> C.A. Craiova, Penal domain, decision No. 930 from 07.07.2004 – energy theft – TV signal – economical value – the actions of the defendant to obtain TV signal with the help of an improvised installation constitutes elements of infractions mentioned by art. 208 paragraph 2 reported by art. 208 paragraph 1 Penal Code, because the video signal represents an electromagnetic energy which can be measured, the measure unity being MHz; this energy has a determined economical value, mainly determined by the cost of production, of preparation and transmitting of the signal.

Through penal judgment No. 6087/16 December 2003, Judge's Office Targu Jiu, based on art. 11 point 2, latter a) reported to art. 10 latter b) Penal procedure judged the defendant

---

B.A. for committing infractions foreseen by art. 208 paragraph(2) reported to art. 208 paragraph (1). Penal procedure applying art.41 paragraph (2). In essence, to decide, the first instance reminded the following situation: The representants of the civil part SC RCS SA Bucharest, work office in Targu Jiu, together with the representants of the police remarked at the address where the defendant lives an improvisational installation which made possible to obtain TV signs from the distributional box built in the block of flats. Precisely a thin table was identified, connected in the center of an adapter and which was connected to the apartment where the defendant lived, obtaining TV signal this way.

The injury caused to the civil part had a value of 6826400 ROL, representing the value of the obtained magnetic energy (TV signal), plus some cost because the interruption of the TV signal by the users, as the costs of the license for 36 months before the identification.

Taking into consideration the administrated proves, the judges established that the action of the defendant is not remarked by the penal law, adopting, as consequence an according solution, through motivating the fact that the TV signal is electromagnetic signal and that has no own economical value, resulting from the fact that its quantity can't be measured.

On the other hand, the judges established that the injury pretended by the civil part is the consequence of the service contract, being the result of the breaking of the rules from its dispositions.

Against the decision of this first judgment the Prosecuting Magistracy of Targu Jiu declared an appeal, criticizing it for non-equality and non-validity, in the matter that the situation and also the solution of judgment of the defendant are wrong, because the electromagnetic energy can be measured and so it can be the material object of an infraction described in art. 208 paragraph(2) of the Penal Code, energy which has its own economical value, possible to be determined.

The appeal declared by the Prosecuting Magistracy was rejected, being unfounded through decision No. 155 from 10 March 2004 of the Court of Gorj, judgment, which integrally sustained the decision of the first judgment, considering it legal and valid. Farther criticizing the anterior decisions, the Prosecuting Magistracy of Court Gorj invoked the case by art.385/9, part 16 of the Penal Procedural Code; that the judgment of the defendant was wrong according to art. 208 paragraph(2) reported to art. 208 paragraph(1) of the Penal Code, applying art. 41 paragraph (2) of the Penal Code, sustaining that in essence the TV signal constitutes energy with own economical value.

This appeal was appreciated as founded, the Court establishing that in this case it is applicable the case described by art. 385/9, part 16 of the Penal Code, because the first judgment and also the second one, after validating the proves, adopted wrong solutions in case of the defendant, remarking that his fact was not mentioned in the penal law.

In reality, the Court established, that the complex color video signal SUCC represents an electromagnetic energy which can be measured, the measurement unit being MHz; this energy has a determined economical value, mainly by the cost to keep, to treat and transmit this signal. The fact that this kind of electromagnetic energy can't be stored has no importance upon its nature, this being essentially a productive energy which has some production costs with materials and employees, etc.

To have an access to some programs and to obtain the right for transmission through cables, optical cables or even with satellite, the civil part SC RCS SA Bucharest pays the rights for authorship, some taxes, in other words, a sum of money which must be reflected by the price of the licenses which must be paid by every user.

As a conclusion, considering all these arguments, after the admission of this appeal, conform art.385/15, part 2, latter d) of the Penal Code and after the annulment of the anterior decisions, it was decided that the infraction described by art. 208 paragraph(2) reported to art. 208 paragraph(1) of the Penal Code must be art. 41 paragraph(2) of the Penal Code applied.

align. 2-Penal Code; fake declaration, money forgery and value forgery- art. 282 from the Penal Code) even in special laws (ex: fiscal evasion -art. 3-9 from the Law nr. 241/2005 to prevent and to fight fiscal evasion<sup>132</sup>).

Across time the complex phenomena of fiscal evasion<sup>133</sup> had took ample in our country - a phenomena with social, economical, political, moral implications.

Fiscal evasion has an evolution determined by the action of some factors like: real economy dynamics, the quantity dimension and the quality dimension of the law, institutional frame, the level of fiscality, other intern and extern factors. The phenomena is complex, it must always be followed to be able to fight it. The prevention and fighting of the fiscal evasion was and will remain a priority for the Romanian legislator, as we remember the Law nr.87/1994<sup>134</sup> through Law nr.241/2005.

The new law regarding prevention and fighting fiscal evasion contains harsh legal norms - a harsher punishment for this phenomenon (ex: the crime that was found in the 3rd article from Law nr. 241/2005 has no equal in the old law. Anterior regulation considers that is a contravention “not bringing on time of the given dispositions given through the control act closes by the financial organ - giving her a fine from 50 Ron to 3000 Ron, for the physical persons and between 500 and 10000 Ron for the judicial person. We are confronting with the generic punishment of every kind of behavior not respecting the law.”<sup>135</sup>

Other examples foreseen by the Law nr.241/2005 are :

- the unjustified denial to show legal documents and patrimonial belongings, etc;<sup>136</sup>

---

Though it was stated that the action committed by the defendant, through minimal touching of the values protected by the law, as through its concrete content (the injury caused being relative small, 6826400 ROL/ 682,64 lei), it is without importance, not representing a social danger, being remarked in this case art. 18 of the Penal Code, regarding to which, from the point of view of the defendant, it was adopted an appeal of the solution conform art. 11 part 2 latter a) reported to art.10 latter b) of the Procedural Penal Code.

<sup>132</sup> Law No. 241 from 15.07.2005 to prevent and fight fiscal evasion published in the Official Monitor of Romania No. 672/27.07.2005.

<sup>133</sup> In the opinion of C. I. Gliga “ fiscal evasion is pilfering of the tax-payer, when he doesn’t pay his financial-bugetary obligations, totally or partially, through any method mentioned by the law” – C. I. Gliga “Tax dodging – Regulation. Doctrine. Jurisprudence. Bucharest, C. H. Beck Editor, 2007, page 34.

<sup>134</sup> Law No. 87 from 18.10.1994 to fight against fiscal evasion published in the Official Monitor of Romania No. 299/24.10.1994, republished in the Official Monitor of Romania No. 545/29.07.2003.

<sup>135</sup> Financial Code art.3 of Law No. 241/2005 “ it is considered infraction and it is punished with a surcharge from 5000 lei to 30000 lei the action of the tax-payer, who intentionally doesn’t renew the earlier destroyed book-keeping documents in the term specified by the control documents, in case he is able to”.

<sup>136</sup> Financial Code art.4 of Law No. 241/2005 “it is considered infraction and it is punished with prison from 6 months to 3 years or with surcharge the unjustified refuse of a person to present in front of the competent institutions, in case he was 3 times announced, the legal

- not allowing the access of the superior law representatives<sup>137</sup> – these representatives can be part of the National Agency for Fiscal Administration, which controls financial actions, the Financial Gourd, etc;
- retaining or not paying the taxes and contributions;<sup>138</sup>
- creating and printing of markings and papers in special order;<sup>139</sup>
- obtaining fiscal benefits in an illegal way;<sup>140</sup>
- hiding taxable goods;
- hiding totally or partially or not telling your financial transactions;<sup>141</sup>
- to introduce in the bookkeeping documents or in other legal documents of some costs or operations which have no real base or to introduce other fictive operations;<sup>142</sup>
- damaging, hiding, destroying of the accountancy papers.
- double bookkeeping;

---

documents and patrimonial belongings, with the aim to restrain the financial, fiscal or custom controls.”.

<sup>137</sup> Financial Code art.5 of Law No. 241/2005 “it is considered infraction and it is punished with prison from 6 months to 3 years or with surcharge to restrain with any method the representatives of the competent institutions to enter, in the conditions foreseen by the law, offices, spaces or terrains, with the aim to do a financial, fiscal or custom controls.”.

<sup>138</sup> Financial Code art.6 of Law No.241/2005 “ it is considered infraction an is punished with prison from 3 years or with surcharge to restrain or no to pay intentionally, in more than 30 days of sum of money representing taxes and fees”.

<sup>139</sup> Financial Code art.7 paragraph 1 of Law No.241/2005 “ it is considered infraction and it is punished with prison from 2 to 7 years and with the refuse of some rights, to create stamps, banderoles or standards forms without any right, used in the fiscal domain for special goals”; Financial Code art 7 paragraph 2 of Law No. 241/2005 “ it is considered infraction and it is punished with prison from 3 to 12 years and with the refuse of some rights, to create fake stamps, banderoles or standards forms, used in the fiscal domain for special goals”.

<sup>140</sup> Financial Code art.8 paragraph 1 of Law No. 241/2005 “it is considered infraction and it is punished with prison from 3 to 10 years and with the refuse of some rights the establishment, with bad intentions, by the tax-payer of taxes, fees or obligations, having as a result the attainment, without rights of some sum of money as reimbursement or refund from the general budget or compensations of the general budget”; Financial Code art. 8 paragraph 2 of Law No. 241/2005 “ it is considered infraction and it is punished with prison from 5 to 15 years and with the refuse of some rights the association with the aim to commit the infraction mentioned in paragraph (1)”.

<sup>141</sup> This infraction was already mentioned by Law No. 87/1994 – being the most frequent form of fiscal evasion – art. 11 paragraph 1 latter c of Law No. 87/1994 (“the hiding, totally or partially in the book-keeping documents or in other legal documents of some commercial actions or of some profits realized or to register some unreal operations or costs, with the aim not to pay or to diminish taxes, fees or contributions”). This incrimination was kept by the new law too.

<sup>142</sup> This infraction we can find – in a similar form – also in Law No. 87/1994 republished – in art. 11 paragraph 1, latter c.

- avoidance from the financial checking, fiscal or custom control by not declaring all or forger declaring, or inexact declaring regarding the main residence of the checked beings.

- substitution, degradation, alienation of the debtor or of the 3<sup>rd</sup> party of the sequestrated goods in conformity to the Penal Code and the Fiscal Code.

To foresee and to fight the fiscal evasion the actual legislation must better up, must be completed and put in order with the communitarian norms, adopted in matter and not at least must be taken care of the real practice. The finalization of these measurements targets the controlling of the evasion phenomena and not only of the infractions in the financial-economical domain.

### **BIBLIOGRAPHY:**

1. Gliga, Tax dodging – Regulation. Doctrine. Jurisprudence, C. H. Beck Publishing House, 2007.
2. Law no.C 241 from 15.07.2005 for preventing and controlling of the tax dodging.