

Considerations on the Quality of Offender as Stipulated by Art. 8, paragraph 1, GO 15/2002^{*}

Eugenia Iovanaş^{**}

Abstract:

The law topic exploited in the present paper is whether, according to the provisions of art. 1 paragraph 1 letter b) of the Government Ordinance no. 15/2002, on the application of usage tariff and tariff for crossing Romanian national road network, the contravention liability for the contravention provided by art. 8 par. 1 of the same normative act belongs to the natural or legal persons registered in registration certificate who fulfils, at the time of the offense, the condition of vehicle ownership or the contravention responsibility belongs to natural or legal persons inscribed in the certificate of ownership as owner, even if vehicle in question was alienated on basis of some translated property documents, bearing a certain date by presenting it to a public authority, but the vehicle was not registered on new owner's name.

Keywords: Contravention liability, offender, car user/customer, vehicle radiation, vignette, usage tariff

Legal provisions

Government Ordinance no. 15/2002 on the application of usage tariff and crossing tariff on Romaniannational road network:

Art. 1 par. (1) According to Ordinance content, the terms and expressions below are defined as follows:

b) users/customers – the natural or legal person registered in registration certificate, who owns or who, as the case may be, may use on the basis of a legal right vehicles registered in Romania, hereinafter referred to as Romanian users/customers, respectively the natural or legal person inscribed in the certificate who owns or, as the case may be may, use, on the basis of a legal right vehicles registered in other states, hereinafter referred to as foreign users/customers;

Article 7, paragraph (1) The responsibility for proper payment of usage tariff and the concession tariff rests exclusively with the Romanian customers, while, in case of foreign customers, it rests exclusively with vehicle driver.

* Paper presented at the International Symposium "Research and Education in Innovation Era", "Aurel Vlaicu" University of Arad, 8–10th of December 2016.

** Lecturer PhD, "Aurel Vlaicu" University of Arad, iovanaseugenia@yahoo.com



Article 8, paragraph (1) The act of driving without a valid vignette represents a continuous contravention and is sanctioned with fine.

Minister of Transport Order no. 611/2015 regarding the approval of Methodological Norms and their application by the Romanian National Company of Motorways and National Roads S.A.- the usage tariff and the passage rate /being in force since April, 28th, 2015.

ART 2 (1) According of these methodological rules, customers are:

a) Romanian users:

a1) natural or legal person registered in the vehicle registration certificate, which owns vehicles registered in Romania;

a2) natural or legal person enlisted in the vehicle registration certificate, which may use, on basis of a legal right, vehicles registered in Romania;

b) foreign users:

b1) natural or legal person registered in the vehicle registration certificate, who owns vehicles registered in other states;

b2) natural or legal person registered in the vehicle registration certificate, who may use vehicles registered in other states, under a legal right.

(2) The people referred to in paragraph (1) letter a) point a1) or letter b) point b.1) shall be considered users within the meaning of the present methodological norms only if the registration certificate does not include persons referred to in par. (1) letter a) point a2) or letter b) point b2).

Government Emergency Ordinance no. 195/2002, republished, on the public road traffic:

Art. 11 para. 4. In the case of vehicle ownership transfer, the data of the new owner shall be entered in the records of the competent authorities at the same time as the cessation of previous owner. In order to carry out this operation and to issue a new registration certificate, the new owner is required to request the competent authority to transcribe the transmission of his ownership right, within 30 days since the acquisition of the vehicle.

M.A.I order no. 1501 of November, 13th, 2006 on the procedure for matriculation registration, expunging and issuing of provisional driving plates or probe/test-drive plates.

Article 8 paragraph (1) The transcription of the transmission of ownership of a vehicle shall be made on basis of the following documents:

a) new owner application. In the case of recording in the registration certificate of other person, beside the owner, who can

use the vehicle by legal right basis the owner shall mention this explicit request in the application;

Article 24 (1) Owners of matriculated or registered vehicles may request radiation from circulation if they provide proof of vehicle storage in an appropriate space, held in accordance with law provisions.

(2) Owners of matriculated or registered vehicles are obliged to request the radiation from circulation within 30 days since:

a) the vehicle has been dismantled, crushed or handed over to a specialized unit for dismantling;

b) definitively removing the vehicle from Romania;

c) declaring vehicle theft;

d) alienation of the vehicle registered to another person.

3) The vehicle declared unclaimed or abandoned, by the local public administration authority, shall be radiated, *ex officio*, within 30 days from the receipt of the afore-mentioned order.

(4) The vehicle for which the traffic police ordered radiation from circulation, according to the law, shall be expunged since the date of communicated measure.

(5) The radiation shall be communicated within 30 days by the authority that performed it to local competent fiscal authority.

Article 25, the radiation shall be done by presenting the registration/matriculation certificate and the plates bearing matriculation/ registration number or, as the case may be, the vehicle identity card (only for vehicles registered after July 1st, 1993), the registration form with visa of the competent fiscal authority of the local public administration, stated according to law provisions, or according to tax attestation certificate, as well as documents proving the fact that one of the situations stipulated in art. 24 par. (1) – (4) occurred.

Decisions of Constitutional Court

The Constitutional Court ruled on the constitutionality of the provisions of art. 1 paragraph 2 letter b, art. 7 and art. 8 O.G no. 15/2002 (Decision No 459 / June 16th, 2015, Decision No 250 / May, 21th, 2013, Decision No 371 / September 24th, 2013, Decision No 303 / June, 13th, 2013, Decision No 217 / March, 9th, 2013, Decision No No 993 / November, 22th, 2012), dismissing unconstitutionality exceptions invoked.

The Constitutional Court of Appeal considered insubstantial the criticism that the sanction for non-compliance with the obligation of holding a Romanian national road vignette, applied to the natural or legal person (registered in vehicle registration certificate as owner or

legal customer), and not directly to vehicle driver, would be unconstitutional.

The Constitutional Court noted (paragraph 16 of Decision no. 459 / June, 16th, 2015) that although the term “user/customer” in the common language can refer to someone who drives the vehicle at some point, the legislator provided a legal definition, circumscribed to specific field.

Thus, the legislator opted to establish the payment obligation in charge of person registered in the registration certificate, considering that theoretically the same vehicle can be used temporarily and successively by several persons

However, there would have been a relativisation of rate payment obligation, if the legislator had established the payment obligation for person who was the driver of motor vehicle at the time of finding him in traffic without having paid the rate.

The purpose of introducing such a tariff was to improve the quality of national road network, which is also expected to be achieved through the contribution of each legal motor vehicle owner (owner of vehicle or owner of a leasing contract).

The chosen legislative solution is optimal for achieving the stated objectives and, at the same time, is not likely to contradict the provisions of art. 135 paragraph (2) letter b) of Constitution. In fact, it represents one of the way in which the state fulfils the obligation established in the afore-mentioned constitutional text.

All these, because the existence of a functional national road network is capable of ensuring the freedom trade. At the same time, this is a feature that circumscribes the state's obligation to create a favourable framework for all factors of production capitalization.

The jurisprudential exam of law question to debate reveals different interpretations as follows:

One opinion, which has been a long period of time, a relatively constant practice at Arad Tribunal level, is that the contravening liability belongs to the person registered as owner in the vehicle registration certificate, regardless if the vehicle was alienated or not, as long as the radiation from M.A.I – Directorate of Driving and Vehicle Registration Regime records was not registered.

In the argumentation of this opinion, it was noted that although the alienation was operated at the level of the tax authorities, according to the DRPCÍV records, the car is, however, the property of the petitioners.

According to art. 24 par. 2 letter d) of MIRA Order no. 1501/2006, the owners of registered vehicles are obliged to request the radiation within 30 days from the date of alienating the registered vehicle.

As the petitioners in question have not complied with this legal obligation, the alienation invoked has effects only between the contracting parties and cannot be opposed to respondent, until the completion of the transcription formalities, in the absence of radiation formalities completion the petitioners assume the risks arising from vehicle ownership.

Therefore, for as long as, at the time of traffic control, the petitioners were the owners and, implicitly, the presumed users of the vehicle running without a valid vignette, they also have the quality of the active subject of the contravention provided by art. 8 of O.G no. 15/2002.

Generally speaking, in such cases, the court detained the offense and replaced fine sanction with the warning (File No. 14629/55/2013, file No 9111/55/2013, file No 6477/55/2013)

The other opinion is that, according to art. 1 paragraph 1 letter b) from O.G no. 15/2002, in order for a person to be a customer, two cumulative conditions must be fulfilled: to be registered in the registration certificate and to own or be able to use the vehicle based on a legal right.

Given that sale-purchase contract (document under private signature that has acquired a certain date, in accordance with the provisions of art.278 Code of Civil Procedure, by being presented to the Tax Service,prior to the fact being committed), and the vehicle was expunged from tax records under the purchase contract, the fault in committing the offense does not belong to person registered as owner in the registration certificate.

This second opinion was shared in the recent case law of Arad Court.

Thus, for example, it is worth noting the Civil Decision no. 741 A / June, 29th, 2016 of Arad Court - Administrative and Fiscal Contentious Division, delivered in file no. 1438/210/2015, which established:

In accordance with art. 8 from O.G. no. 15/2002 the act of driving along without having a valid vignette is a contravention and is sanctioned with fine.

At the same time, art. 1 paragraph 1 letter b) from the same normative act, defines the user as the natural or legal person registered in the registration certificate, which owns or which, as the case may be, can use vehicles registered in Romania,based on a legal right.

Therefore, at the time of committing the contravention, the applicant was no longer the owner of the car and, as a consequence, no longer had the obligation to pay the rate for the use of the national road network, being indifferent, according to this point of view, the fact that the car registration certificate continues to mention the property of the applicant, while under the legal provisions of O.U.G. no. 195/2002, the

legal obligation to register the vehicle, in case of sale-purchase, belongs to the new owner, so that no fault can be attributed to the petitioner.

Thus, the petitioner no longer fulfils the condition of being the car user that circulated without a valid vignette, because, first of all, he is no longer the owner of the car and secondly, he has not used the car.

The conditions that come out of the provisions of art.1 letter b) of O.G. no. 15/2002 for being the car customer, is that the person to be registered in vehicle registration certificate, which he owns or, as the case may be, the person that can use vehicle registered in Romania, on the basis of a legal right.

These conditions must be met cumulatively because they are rehearsed, while, the conjunction “or” is used for the owner or for the lawful user of the vehicle, as alternative regulations.

Consequently, the cumulative conditions are: to be entered in the registration certificate and to be owner (or lawful user).So, it is necessary to fulfil two conditions, firstly to be entered in the registration certificate, and secondly, to own or legally use a car.

As the petitioner no longer owns the car, also, he is no longer the car user, even if he is registered in the registration certificate.

Regarding the nature of contravention, in the case of contravention provided by art. 8 paragraph 1 of O.G 15/2002, we consider that, in this respect, the liability is always subjective.

According to the provisions of art. 1 paragraph 2 of Ordinance no. 15/2002 on the application of the usage tariff and the driving along Romanian national road network, starting with July 1st, 2002, was introduced the afore-mentioned tariff, applied to all Romanian customers, for all registered vehicles, which use the Romaniannational road network and was structured according to travel and stationary period, the maximum emissions class (EURO), the maximum permissible laden mass (MTMA) and the number of axles, as the case may be.

In accordance with the provisions of art. 8 par. 1 from O.G. 15/2002, the act of driving out without a valid vignette is a contravention, sanctioned with ransom.

From the analysis of art. 7 and 8 provisions, in conjunction with those contained in art. 1 paragraph 1, point b) of O.G. no.15 / 2002, it is clear that the responsibility for vignette paying belongs to the person registered in the car's identity card as the owner or the legal user of the car, regardless of the person who actually drives out the car, at the moment of finding the contravention.

The act concluded between the parties is not opposable to third parties, being an act under private signature. Also, its date is not

opposable to third parties, any change of owner / user being opposable to third parties only after registration of the ownership right in the records of the competent public service.

As long as the petitioner appears as the owner and no other person is mentioned as a user, the petitioner has the status of active subject according to art.8 and art.1 letter b) of O.G no.15 / 2002.

Regarding the legal conditions to be met for vehicle right to ownership transmission, the intimate party invoked the provisions of article 24, paragraph 2, letter d) of the Order 1501/2006 on the procedure of registration, matriculation and the issue of provisional driving license or evidence of motor vehicles, according to which "Owners of matriculated or registered vehicles are obliged to request expunging from circulation, within 30 days from the date of vehicle alienation, to another person".

The complainant did not prove that the alienated vehicle would have been radiated, from the police records at the date of the contravention and the mere notification of the petitioner by which he notifies the transfer of ownership to MAI-DRPCVI as provided by art. 24 paragraph 2 point d) of the Order no.1501 / November, 13th, 2006 no longer permits the latter to be sanctioned.

A diligent seller has at his disposal sufficient legal means to complete all opposing formalities provided by law, even in the case of a buyer of bad faith, such as: a fact-finding action, followed by steps to be taken in relation to competent institutions, respectively, a court proceeding action against the buyer.

Concluding on the interpretation of user/customer notion, as defined by the legislator in art. 1 paragraph 1 of OUG 15/2002, we consider that responsibility for vignette payment belongs to natural or legal person registered in the registration certificate, who owns or, as the case may be, uses, on the basis of a legal right, vehicles registered in Romania, whether, in fact, someone drives along or not on public roads, especially considering the arguments of the Constitutional Court, presented above, within the framework of Decision no. 459 / June, 6th, 2015.

REFERENCES:

Civil decision no. 741 A /2016, June, 29th of Arad Tribunal – Administrative and Fiscal Contentious Division, delivered in file no. 1438/210/2015, unpublished.

Civil decision no. 1165 2016, November, 9th, of Arad Tribunal – Administrative and Fiscal Litigation Division, delivered in the file. No 3731/55/2016, unpublished.

Civil Sentence no. 4925, October, 27th, 2014 pronounced in File. Nr. 14629/55/2014.

Decision no. 459 / 2015, June, 16th, regarding the dismissing of the unconstitutionality exception of the provisions of art. 1 paragraph (1) letter b) of the Government Ordinance no. 15/2002 regarding the application of usage tariff and crossing tariff on Romanian national road network.

Government Ordinance no. 15/2002 on the application of use tariff and crossing tariff on Romanian national road network, amended and republished, published in the Official Monitor, no. 885/19 December 2007.

Government Emergency Ordinance no. 195/2002, republished, on the circulation on public roads: published in the Official Monitor no. 958 of 28/12/2002.

M.A.I order no. 1501 of November, 13th, 2006 on procedure for matriculation, registration, erasure and issue of provisional driving license or vehicle samples.

