

THE FINEAS

A PENALTY IN SOME OF THE STATES FROM SOUTH AMERICA

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Abstract

The fine as a penalty is one of the penalties which can be found in almost all of the penal codes in the world, as a main penalty or as a complementary penalty, but the way in which the penalty is determined and it is applied differs from one country to another, depending on the penal law system and the political social order from every country.

Analyzing the penal codes from Columbia, Bolivia and Argentina – countries from South America, it can be noticed among the stipulations of these three penal codes and the Romanian Penal Code, regarding the fine penalty, there are significant resemblances and differences.

Keywords: Penal Codes, South America, penal fine, penalty, punishment, penalty limits, imprisonment

Argentina

The Argentinean Penal Code was published in the Official Gazette of Argentina from the 16 th of January 1985 and it has suffered multiple changes to the present.

In Title II, article 5 – 25 from Penal Code, there, are stipulated the main penalties which are applied to persons who commit offences.

The penalties are: imprisonment, confinement, the fine and forbidding different rights.

The article 21 from the Argentinean Penal Code stipulates as a main penalty the fine, which consists in the delegation by a Court order to convict somebody who committed an offence to pay an amount of money in the government's account for the offence he committed, in terms of the article 40 Penal Code, taking into account the economical situation of the convicted person and the gravity of the offence committed.

The Argentinean Penal Code, also stipulates that in case a convicted person doesn't pay the fine in the time stipulated by law, an purpose, the fine will be changed by the Court into imprisonment, but only after the fine was changed into work in the community's benefit.

If the convicted person doesn't execute the work in the community's benefit, then the fine is changed into imprisonment, taking into account the share treat was paid, or it was executed as work in the community's benefit.

The penal action in case of a penal fine it is banned by limitation after two years from when the offence was done.

The rehabilitation of a convicted person with a penal fine, according to the Argentinean Penal Code, takes place after two years from its execution.

Bolivia

The Penal Code from Bolivia is in force since 1973 and it suffered mire alterations, the last one being made in 1997.

In the Bolivian Penal Code, the main penalties applied to a person who committed an offence are stipulated in Title III, Chapter I, article 36, and are the following: imprisonment, confinement, the work for community's benefit and the fine.

As it is obvious, the fine is the last one from the main penalties applied to a person, and as a result, is the main penalty.

According to art. 29 Bolivian Penal Code, the fine consists in the payment of an amount of money to the state budget.

The fine applied to a person is established as days of fine.

When a fine is applied, it also takes in account the economical situation of the convicted person, his incomings and how many members does he has to look after.

According to the Bolivian Penal Code, in case the person who was convicted to a fine penalty and it doesn't pay the penalty fine established, determined by the Court, the penalty can be altered into imprisonment, or work in the community's benefit.

When a fine sentence is turned into imprisonment or work in the community's benefit, it is taken into account also the fact that if the convicted person to a fine it is solvent or not, or it refuses to pay the fine, being not a trustful person.

After the fine sentence is turned into imprisonment or work in the community's benefit the fine cannot be paid anymore.

When the fine is turned into imprisonment or work in the community's benefit, it is taken into account the aware of the fine that was paid.

The Bolivian Penal code stipulates for a fine sentence a limit of minimum and maximum for the sentence to be applied.

The limitation date for the sentence's execution with a penal fine is according to article 105 from Bolivian Penal Code – 3 years.

The recovery of the civil rights of a person convicted to a penal fine, according to the Bolivian Penal Code, it takes place after two years from the date when the sentence was carried out.

Brazilia

The Brazilian Penal Code published in Law 7209 at 11 th of July 1984 has suffered some changes being adapted to the new economic and social conditions.

By the penalties which are applied to individuals and companies, it can be found also the criminal fine which is applied between some specific minimum and maximum limits.

By the changes brought to the Penal Code, the criminal fine as a penalty applied to low social risk crimes, it is administered as fine days.

In case of total or partial non-payment of the penal fine, the court will turn it into community work and if the convicted person proves bad faith than the penal fine can be turned even into prison penalty.

Columbia

The Penal Code from Columbia was published on the 24 th. Of July, 2000 and it is considered to be a modern Penal Code.

In the general part, Title IV, Chapter I, there are stipulated the penal convictions, their classification and their effects.

According to article 35 Penal Code, the main convictions are: the privative convictions of liberty: the money convictions and convictions privative of other rights.

The Columbian Penal Code also stipulates the subsidiary convictions as imprisonment at home or custody, which replaces the fine, in case the convicted person to a fine didn't pay it with bad intentions/dishonesty.

The article 39 from the Penal Code, stipulates the fine and different degrees to apply it, according to the gravity of the offence committed.

The first degree of the fine equalizes with the minimum salary.

The second degree of the fine equalizes with 10 minimum salaries.

The third degree of the fine equalizes with 100 minimum salaries, and as it was shown above, it is applied according to gravity of the offence committed.

The determination of the amount of the fine it is done according to the gravity of the offence committed, the amount of the damage that needs to be recovered, the offender, his economical situation, if he works legally or not, how many members are in his family and his criminal records.

When a penal fine, is determined, the Court also takes into account the circumstances which indicate that the offender has real possibilities to pay it.

When a person has accumulated more penal fines, this person has to pay the biggest fine – the maximum sentence according to the degrees for applying a fine, stipulated in the Penal Code.

The fine sentence, according to article 39, point 5, Penal Code, it is paid as soon as the conviction sentence is irrevocable. The Columbian Penal Code does not say what means “immediately” or which will be the pay date of the fine, which leads to the conclusion that “immediately” means after the conviction sentence is irrevocable, 24 hours since the fact that the conviction sentence is irrevocable was informed, the convicted person has to show a proof to the Court that the fine was paid.

In case a convicted person proves to the Court that pays the fine immediately, the Court can decide to phase the payment of the fine for a period of maximum two years.

If the convicted person cannot pay the fine, this can be changed by the Court into work in the community’s benefit or social benefit.

The change of the fine into work in the community’s benefit or social benefit can be done totally or particularly, taking into account the share of the fine that is paid yet.

A unit of the fine is equalized either 15 days of work.

The value of a fine’s unit it’s also determined by the Court.

The person convicted to work it isn’t paid for what he does, and the activity he has to do it’s for public or social use.

The period of work for a convicted person cannot be more than 8 hours a day.

The conviction with a penal fine it is banned by limitation according to article 89 from Columbian Penal Code, after 5 years from the date it was applied and it was settled as irrevocable.

The interruption of the penalty with a fine can take place in case of a proactive execution of it (work in the community’s benefit or social benefit), or in case it is changed into imprisonment, or in case the convicted person didn’t pay on purpose the fine and didn’t perform any work in the community’s benefit or social benefit.

The interruption of the date banned by limitation of the conviction with a penal fine can take place anytime during the 5 years.

The rehabilitation of the convicted person to a penal fine, according to the Columbian Penal Code, takes place after two years from when conviction was carried out.

Peru

The Peruvian Penal Code is provided by Law 26926 which was promulgated in 19th of February 1998 and published in 21th of February 1998.

So far the Peruvian Penal Code had suffered some changes but insignificant ones.

Criminal penalties provided by the Peruvian Penal Code are : life imprisonment , imprisonment, and penal fine .

The penal fine is applied for low social risk crimes whose imprisonment punishment is up to two years.

The penal fine is applied as independent penalty but also both with the imprisonment penalty when the court judge that the imprisonment penalty is not enough.

The application limits of the penalty are periodically modified depending on the economic situation.

In case of non-payment of the penal fine , the court will turn it into imprisonment penalty.

Venezuela

The Penal Code of the Republic of Venezuela applicable from 1975 till now had suffered some changes.

The penal fine between some certain minimum and maximum limits is also provided by the Penal Code of the Republic of Venezuela for low social risk crimes and if one person by bad faith doesn't pay it , this penal fine will be turned into imprisonment penalty by the court.

According to Penal Code of the Republic of Venezuela the penal fine is applied to low social risk crimes as we noted above.

Conclusion

Comparing the stipulations of the Romanian Penal Code with the stipulations of the Penal Codes from Bolivia, Columbia, Brazilia, Peru, Venezuela and Argentina, the fine is stipulated as a main conviction.

It also has to be mentioned the fact that in case the convicted person to a fine, does not pay it on purpose, the fine will be changed into imprisonment, this stipulation can be found also in the Romanian Penal Code, as in the Bolivian and Argentinean Penal Code.

Regarding to the differences between the Romanian Penal Code and the Penal Codes from the three countries from South America which had been discussed, I have to say that in the Columbian Penal Code, which is a modern penal code, the fine in case it is not paid by the convicted person, it's changed into work in the community's benefit and not into imprisonment as in the Romanian Penal Code.

In the Romanian penal Code it is not stipulated the fine as a penalty as days of fine although it was disposed this matter, in comparison with the stipulations from the Columbian Penal Code.

The Romanian Penal Code, stipulates a direct change in case somebody doesn't pay on purpose the fine, while in the penal codes from Bolivia, Argentina, before the fine is changed into imprisonment, it is changed by the Court into work in the community's benefit or social benefit. If the person convicted to work doesn't have bad intentions, then the Court it will change the share from the fine that is left into imprisonment.

I consider that the Romanian Penal Code should go through some changes regarding the fine penalty because at present there isn't clear distinction between the convicted persons who on purpose don't pay the penal fine settled by the Court and the persons who really don't have enough money to pay the fine.

I also consider that in order to prevent some cases when persons that are convicted to a fine penalty didn't have enough money to pay it , so the penalty with a fine was changed into imprisonment, sometimes for minor offences and for very old people, it is necessary to be introduced in the Romanian Penal Code, the penalty of the fine days, a penalty that can be found in all the penal codes of the States from the European Union.

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