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Programmatic legal mechanisms and the multifaceted social inferences of the principle of proportionality in Romanian legislation, integrated into the international context

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Abstract

The precept of personalization has a unique historical and functional resonance, finding a fertile relational source across various legal domains. In an original manner, we have highlighted that this precept, through its synergistic dimension, brings about a welcome limitation within the generic notion of administrative liability, by conceptualizing certain requirements that are not only semantic in nature but also of profound factual relevance, inherent in the proper calibration of a just mechanism for engaging the legal liability of those at fault. Proportionality constitutes an inevitable dimension of the principle of legality, acting as a factor that facilitates the highlighting of the practical dimension of the issue, through the delineation of instruments that ensure equitable justice—namely, by calibrating, through an integrated and applied analysis, the means of shaping the administrative offense process so as to meet the demands for adaptability of repression in response to the social challenges of the modern world. We have proposed models of legal interpretation and formulated suggestions for improving the operational legal system, aimed at conferring flexibility and adaptability upon the act of administering justice.

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Key words

Proportionality; administrative liability; punishment; reasonable guarantee; equity

Resumen

El principio de individualización tiene una resonancia histórica y funcional única, y encuentra un terreno fértil en diversos ámbitos jurídicos. De manera original, hemos puesto de relieve que este principio, a través de su dimensión sinérgica, introduce una limitación positiva en el concepto genérico de responsabilidad administrativa, al conceptualizar ciertos requisitos que no solo son de naturaleza semántica, sino que también revisten una profunda relevancia fáctica, inherente a la adecuada calibración de un mecanismo justo para atribuir la responsabilidad jurídica a los culpables. La proporcionalidad constituye una dimensión ineludible del principio de legalidad, actuando como un factor que facilita el resaltado de la dimensión práctica de la cuestión, a través de la delimitación de instrumentos que garantizan una justicia equitativa —es decir, calibrando, mediante un análisis integrado y aplicado, los medios para configurar el proceso de infracción administrativa de modo que satisfaga las exigencias de adaptabilidad de la represión en respuesta a los retos sociales del mundo moderno. Hemos propuesto modelos de interpretación jurídica y formulado sugerencias para mejorar el sistema jurídico operativo, con el objetivo de conferir flexibilidad y adaptabilidad al acto de administrar justicia.

Palabras clave

Proporcionalidad; responsabilidad administrativa; sanción; garantía razonable; equidad

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1. Methods employed in the research

Throughout the present study, an interdisciplinary doctrinal scientific methodology was employed in order to understand the relationship between the legal norm—characterized by its abstract content—the causality underlying the commission of certain acts, and the realization of law under varying socio-economic conditions, with the identification of practical aspects derived from Romanian and European case law. This relationship cannot be dissociated from legal sociology, which promotes the importance of understanding social values and emphasizes the interdependence between the process of drafting legal norms, their evolution, and social justice.

The study has pursued several theoretical and practical aspects structured around the following research questions: whether the analysis of the historical development of the principle of proportionality of sanctions and the identification of the manner in which it has been incorporated into legal norms should be regarded as a guarantee of fair legal liability; whether the presentation of legal norms derived from the legislation of other states, through comparative analysis and their correlation with the general criteria for the individualization of sanctions/penalties, ensures the establishment of legal truth; whether the analysis of practical cases contributes to understanding the manner in which the principle of proportionality is applied in the process of the realization of law, including the individualization and application of sanctions/penalties; and whether socio-economic factors play a significant role in ensuring legal order, social justice, and the formation of perceptions regarding social equity and the effectiveness of legal norms.

The evolution of the analyzed principle, both within the legal traditions of other states and in the process of the formation of unitary states, has been examined through the historical method, thereby highlighting the impact of social transformations and the presence or absence of social order across different regimes, in relation to legislative preferences and the positivization of law. The legal norm, presented in correlation with historical milestones in the evolution of law, contributes to understanding the historical and social context, the legislator's reasoning, doctrinal influences from other legal systems, regional and global trends, the constraints imposed when actions or omissions contradict prescribed conduct, the general criteria for the individualization of sanctions/penalties, and judicial practice, particularly in light of the principle of proportionality of sanctions.

The presentation of legal norms, whose abstract content is relevant to supporting the analyzed principle and illustrates the interaction between the abstract content of legal norms and their concrete manifestation in both social facts and legal reasoning, has been conducted through the normative method of legal research. The analysis examines the coherence of national regulations and transitions toward Romanian and European jurisprudence, which reflects the manner in which courts act in compliance with the principle of proportionality of sanctions.

The theoretical or deductive method proved particularly useful in formulating coherent conclusions based on sound legal-logical reasoning, derived from the analysis of various legal texts examined within the study, and in advancing proposals *de lege ferenda* based on logical induction and deduction.

By means of the comparative method, elements of comparative law were identified, highlighting the common concern of legislators in the analyzed states with respect to the processes of individualizing, determining, and applying sanctions proportionate to the gravity of the act committed in concreto.

The findings of the study indicate that the realization of law presupposes integrated cooperation among the actors involved in determining the circumstances, manner, and means of the act, the assessment of the degree of danger and/or the extent of the damage caused, as well as the identification of participants in the commission of the act. Throughout history, in the evolution of legal systems, depending on the legal framework and legislative reasoning, the principle of proportionality of sanctions/penalties has had an interdisciplinary foundation. It cannot be dissociated from social, economic, cultural, and political factors, which have played a decisive role in the drafting of legal norms, the shaping of their abstract content, and their social validation or invalidation in relation to the common good, as measured against the severity of the sanction imposed on the basis of the principle of legality of sanctions and the general criteria for their individualization.

Judicial decisions result from a complex interaction between factual circumstances, the interpretation of legal norms, the existence of precedents in certain cases, behavioral characteristics, and human judgment.

In practical activities, justice system practitioners employ methods of reasoning (Condello *et al.* 2026) to assess whether the characteristics of a legal norm are applicable to particular situations, by comparing similarities on the basis of analytical reasoning.

Legal reasoning also depends on authentic legal understanding, which entails the identification, knowledge, and processing of concurrent factors that determine the decision to engage in delinquent conduct and the transition to criminal action; knowledge of the legal norms protecting social values; the evidentiary procedures that may be ordered in a case; elements of comparative law; and, ultimately, the authority of those responsible for imposing sanctions.

The results of the study may prove useful in the process of strengthening legal norms, increasing trust in the actors involved in legal governance, enhancing the capacity for law enforcement, and fostering a better understanding of comparative law aspects in relation to European standards concerning social equity.

The manner in which sanctions are enforced, their impact on society and on micro-social groups (such as family, workplace, educational institutions, and other entities providing education), correlated with the socio-economic and cultural factors affecting their effectiveness, reflects the degree of realization of social justice. This degree is determined not only by the existence, clarity, and quality of legal norms and the process of legal interpretation, but also by the manner in which sanctions/penalties are perceived in concreto (Prabhu *et al.* 2025), as well as by procedural justice (Kim *et al*. 2024).

Legal sociology contributes to raising legal awareness within society, underpins legal culture within the hierarchy of knowledge, ensures an understanding of prevailing socio-economic conditions at a given time, and may serve as a reference academic discipline for the training of human resources responsible for law enforcement, as well as for the prevention and combating of antisocial acts.

From a socio-legal perspective, law is not merely a set of norms but is closely connected to social and cultural values and power relations (Wahyudi *et al*. 2026), through which legal systems may promote social justice and reduce the gap between legal norms and social reality.

A legal norm is consolidated when it is respected and applied within the social context and when its social effectiveness is recognized. It is understood as a link in a chain of validity, grounded in the fundamental norm, which ensures unity and systematic coherence of the legal order (Dos Santos 2026).

Studies emphasize (Iwowo *et al*. 2026) the importance of strengthening mechanisms of compensation, restitution, and restoration, which ensure the rights of victims and guarantee that their voices are heard within the criminal justice process. The synthesis of analytical jurisprudence, conceptual analysis, formal logic, and the understanding of law as equity and morality generate modern legal reasoning capable of contributing to the pursuit of justice (Berebon 2025).

Although the instrumental role of law in society is acknowledged, research on legal consciousness emphasizes its constitutive role in structuring society (Halliday and Morgan 2013), both through the manner in which individuals relate to legal norms and applied and/or enforced sanctions, and through human conduct within society.

Other studies refer both to the importance of understanding evidence, which may assist in comprehending judicial decisions and assessing the proportionality of sanctions, and to the risk posed by legally irrelevant factors which, individually or in conjunction with evidence, may explain a particular outcome. Thus, the risk of various biases and cognitive errors may arise, potentially leading, for instance, judges toward confirmation bias—that is, the tendency to selectively emphasize a predetermined conclusion or hypothesis (Lidén 2026). The act of legal interpretation has varying relevance for the effectiveness of legal texts (Condello *et al*. 2026), the development of investigative strategies in concrete cases, the ordering of evidentiary procedures, the legal classification of acts, and the evaluation of particular situations.

2. The unique historical legacy of the principle of individualization of administrative (contraventional) liability

Since the earliest times, it has been considered that social order—consolidated at a fundamental level with the emergence of the first state formations in the Mesopotamian region—is shaped, refined, structured, protected, and enhanced by a set of moral concepts that justify and provide an ideological framework for a certain desirable conduct on the part of each individual within society, who is bound to comply with public precepts derived from patterns of conduct regarded as desirable in any collective society.

Thus, during the early antiquity period, law was regarded as an instrument of moral law which, in turn, represented an ideational legacy and a corpus of best practices transmitted from generation to generation, capable of ensuring stability as well as a superior form of organization of social entities. This construct of ideas specific to equity conferred, above all, security and certainty upon the existence of each citizen as a member of an individualized state structure.

In Romanian law specific to the Middle Ages, so-called sacramental norms or laws were applicable, of Byzantine origin and inspiration, wherein the legal foundation of the State's repressive function consisted in the belief that all punishments derived from God and were enforced through His "ministers," namely judges. Accordingly, the application of sanctions was often left to the discretion of the Ruler or the nobility, who administered justice without, however, possessing sufficient legal expertise.

However, the force of law depended on its issuer. In the case of princely laws, these primarily concerned criminal and fiscal matters, being applied predominantly to the nobility and governing their contribution obligations to the State treasury. There were also boyar laws, applicable at the local level, aimed at regulating disputes among peasants, particularly those concerning property and interpersonal conflicts within local communities.

In this context, the principle of individualization was often conflated with that of personalization of punishment, in the sense that nobles were most frequently held liable through pecuniary sanctions, whereas peasants were held accountable for legally equivalent acts through corporal punishments or even capital punishment.

A similar tendency may be observed in the Kingdom of Poland, where three types of laws existed, each with its own scope of application and legal force: royal law, issued by the monarch or the royal court, which had full authority throughout the territory but was generally limited to criminal and fiscal matters; ducal or feudal law, applied in the form of local statutes and decisions of the nobility; and local law (customary law), specific to each village or region, comprising its own rules for resolving local disputes, for example those relating to property or conflicts among peasants.

Likewise, in Bohemia—corresponding to the present-day territories of the Czech Republic and Slovakia—major cities began, as early as the 14th century, to adopt the rules of German (Magdeburg) law, particularly in matters of trade and urban governance, thereby forming a genuine body of urban jurisprudence. Although the monarch held supreme authority, the nobility and autonomous cities maintained their own internal legal regulations.

Structured in such a fragmented manner, the legislation of Eastern and Central European countries was marked by a prolonged period of conceptual, social, and legal inertia. Consequently, the Enlightenment principle—according to which "any punishment that does not arise from absolute necessity is tyrannical" (Montesquieu 2011, p. 3) and which emphasized the urgent need to establish a "just proportion between punishment and crime" (Montesquieu 2011, 124) — was adopted in Romanian territory only with the Constitution of 1866. Article 93 thereof provided that the Ruler had the right "to pardon or mitigate penalties in criminal matters", representing an incipient form of sanction individualization.

In the Kingdom of Yugoslavia, the principle of proportionality was only recognized, in an early form, by the Criminal Code of 1929, which established that punishment must correspond to the gravity of the offense.

Similarly, in Greece, the Penal Code of 1834—the first criminal code of independent Greece, inspired by the Napoleonic Penal Code—introduced for the first time the idea

that punishment must be linked to the gravity of the offense, although the concept of individualization of punishment was not explicitly articulated.

In Romania, under the significant and beneficial influence of the Constitution of 1923, the perspective on the adaptation of sanctions underwent a fundamental transformation. The principle of proportionality came to be analyzed in relation to the assessment of the social risk introduced by the act into the legal order, in conjunction with the dangerousness of the offender or other participants. Risk thus plays an essential role in shaping perception, and the extent to which it is assessed depends on multiple concurrent factors, relating both to the typology of the individual and to the manner in which public safety and social order are ensured.

3. Structural elements of the principle of appropriateness of the punishment in relation to the circumstances of the case

In its modern understanding, the principle of proportionality has two salient dimensions: the first concerns the normative framework of substantive law applicable in criminal or contraventional matters, depending on the specific nature of such laws and the fulfilment of certain inherent and ineluctable conditions for the fairness of criminal proceedings, within which a range of dissuasive sanctions of both repressive and educative origin is applied; the second dimension of the principle of individualisation of coercive measures imposed on the offender relates to the quality of the sanctions applied, which must represent the necessary and inevitable outcome of the judge's assessment, within the meaning of Article 6 paragraph 1 of the European Convention on Human Rights, of all the circumstances of the case—both objective and subjective—so as to ensure a correspondence between, on the one hand, the gravity of the unlawful act committed and its socially dangerous consequences, and, on the other hand, the nature and severity of the coercive response imposed on the accused by the state authorities.

This approach will, as will be shown below, have a significant impact on the manner in which society relates to the way in which state agents, and ultimately the courts, exercise judicial review of sanctioning acts and assess the calibration of penalties.

In this regard, French legal doctrine (Pin 2018, pp. 24–25) has observed that the court assesses a potential violation of fundamental rights in light of the factual circumstances. In this context, it examines whether the applicable legal norm is appropriate, necessary, and does not conflict with interests deemed superior.

From the perspective of "legal proportionality", which denotes the imperative of the strict reference of the state agent to a binding legal provision in force in order to impose a fair and equitable sanction in criminal or contraventional proceedings, it is considered that in these specific fields, in order to avoid disregarding the principle of legality—which represents a structured manifestation of the broader legal principle of the rule of law—the judge's reliance on the legal provision must be a restrictive one.

Thus, the existence of clear and precise legal norms, updated in accordance with social reality, reinforced by confidence in the strength, precision, and clarity of legal argumentation, and further supported by legal reasoning and methodological rigour, strengthens the legal order (ECHR, *Grzęda v. Poland*, 2022).

However, the effectiveness of state bodies in combating unlawful administrative acts depends, *inter alia*, on the quality, clarity and, ultimately, the dissuasive effect of the provisions of normative acts establishing certain sanctioning limits for contraventional offences. These elements, however, vary across Member States of the European Union.

For example, as a recent study shows, within Europe, in the field of contraventional sanctions in road traffic matters, the strictest legislation concerning speeding, mobile phone use while driving, failure to respect traffic lights, driving under the influence of alcohol, and failure to wear seatbelts is that of Denmark, with a strictness score of 83.81 points, followed by Norwegian legislation, with a score of 82.46 points (Vignetteswitzerland 2026). These countries are followed, in terms of sanctioning severity, by the legislation of Spain, Slovakia, the Netherlands, Italy, the Czech Republic, France, Poland and Greece (Vignetteswitzerland 2026).

By contrast, countries such as Romania, Slovenia, Hungary, Bulgaria, and Portugal rank towards the lower end of the classification assessing the severity of legal sanctions.

A comparative, inferential and ontological analysis (Hirschl 2019) of the aforementioned statistical data against those concerning the number of fatal road accidents (GDPR Enforcement Tracker)[5] could easily suggest the existence of an almost programmatic and axial, yet inversely proportional, relationship between the degree of legal severity and the level of compliance with legal norms by the population.

As has also been aptly stated, "the social norm is a prospective, universal proposition in which the particular is subsumed and through which human conduct is regulated within a given system of action" (Popa *et al*. 2023, 108). Therefore, a repressive legislative system generates, on the part of citizens, a process of evaluation and behavioural response, in which they weigh the demands of compliance with the norm against, conversely, the possibilities of transgressing legal provisions that carry sanctioning consequences.

Nevertheless, it is observed that the states with the highest number of road fatalities due to breaches of contraventional rules, particularly speeding violations, include Romania, Bulgaria, Greece, Serbia and Poland (Topics European Parliament 2025).

Similarly, in the field of sanctions imposed for breaches of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data, the countries with the highest number of fines between 2018 and 2023 are Spain, Italy, Romania, and Germany, while the highest-value fines were recorded in Ireland (where the European headquarters of major technology companies such as Meta Platforms Europe and TikTok Technology are located), Luxembourg, France, and Italy (GDPR Enforcement Tracker). Over the same period, the highest number of GDPR complaints were recorded in Spain, Italy and Germany.

A cursory comparative analysis of these two sets of statistics might lead to the conclusion that respect for the law functionally and intrinsically depends on the severity of the sanctions to which members of society would presumably be subject in the event of transgressing legal norms.

[5] https://www.enforcementtracker.com/

However, as has rightly been noted, "the norm must not be respected or enforced solely out of fear of state coercion" (Vedinaș 2025, 87).

A closer analysis of individuals' social behaviour shows that no direct proportional relationship can be assumed between the severity of legally prescribed sanctions and the degree of societal compliance with normative provisions.

One of the links that holds a society together is the participation of the general public—that is, of each individual member—in the implementation of "legality," through a conscious, informed intellectual and volitional act of compliance with the law.

In this regard, sociological doctrine has emphasised that

> legality primarily concerns the manner in which policies and rules are formulated and applied, rather than their content. (…) In a community aspiring to a high level of legality, compliance with the law does not mean submissive conformity. (Schwartz and Skolnick 1970, 20-23)

Therefore, the degree to which the law is enforced does not necessarily depend on its severity, but rather on the extent to which it is accepted by the members of society. This acceptability is influenced by several factors, such as the credibility of the administrative authority issuing the legal norm, the uniform and non-discriminatory application of the law, the quality of the judicial process that enforces it, and the level of education and legal awareness among members of society.

Societal adherence to the effective implementation of the law is decisively influenced by the plausibility and coherence of the law enforcement system, but above all by the prestige enjoyed by judicial authorities in the eyes of public opinion.

As regards the second component of the public acceptability of rules of conduct established by normative provisions—namely the justice system—this is fundamental in a society governed by the rule of law.

In this respect, the European Court of Human Rights has held that "the courts—as guarantors of justice, whose role is fundamental in a State governed by the rule of law—must enjoy public confidence" (ECHR, *De Haes and Gijsels v. Belgium*, 1997, para. 37).

In Romania, however, public perception of the judicial system is profoundly unfavourable, with only 23.7% of citizens holding a positive view of the activity of the courts (in terms of celerity, accuracy of decisions, and absence of external influence) (INSCOP 2026b). Furthermore, within EU Member States, the average level of public confidence in the independence of the judiciary is only 53%, an alarmingly low level in light of the legitimate expectations associated with democratic societies. The highest levels of trust in the judicial system are again found in Finland, Denmark and Luxembourg (83%–85%), while the lowest levels are recorded in Central and Eastern European countries such as Croatia, Poland and Bulgaria (22%–30%). In Romania, public confidence in the independence of judicial authorities stands at 51% (European Union 2023), close to the European average, ranking 17th among the 27 EU Member States.

In light of these sociological data, which reveal a concerning persistence of relatively low levels of trust in the legislative and judicial systems of EU Member States (INSCOP 2026a), we propose, *de lege ferenda*, a closer alignment of national legislative activity with the normative framework of the European Union. As regards the courts, a more rigorous

and exacting adherence to the case-law of the Court of Justice of the European Union and of the European Court of Human Rights is required, both institutions enjoying a high level of public confidence across Europe. Specifically, we propose that the Romanian legislator introduce a new article (or respectively art. 23^1, of Cap. 3) into the content of Government Ordinance no. 2/2001 on the legal regime of contraventions.

In this manner, by establishing a common framework for the administration of justice, both components of the public acceptability of normative activity—namely the legal norm itself and society's participation in its effective implementation—are fulfilled, thereby enabling a coherent understanding of the overarching concept of legality. Legality is what animates the administration of justice and confers legitimacy upon it, while public confidence in the fairness of measures (including punitive ones) adopted under the law constitutes the very foundation of administrative institutions in national states and, at the same time, the link between social compliance and the soundness of judicial action.

Furthermore, in the view of the European Court of Human Rights, the principle of proportionality represents the converse of arbitrariness, the latter arising where no reasonable grounds or criteria can be identified to justify the necessity of the criminal or administrative sanction imposed upon the offender (ECHR, *Castells v. Spain*, 1992).

Thus, proportionality constitutes a dimension of necessity and reasonableness in the application of deterrent measures against persons responsible for committing antisocial acts that infringe fundamental rights and freedoms.

Proportionality, as an element of the fairness of sanctioning procedures, also entails that such repressive measures must not include unjustified legal restrictions or limitations and must not extend over an unreasonable period of time (ECHR, *Association Ekin v. France*, 2001).

Accordingly, in order not to be regarded as arbitrary, a criminal penalty or an administrative sanction must satisfy five conditions inherent to a reasonable legal framework.

The first of these conditions requires that the sanction be grounded in a clear and precise legal provision, drafted in such a manner as to meet the requirements of accessibility and foreseeability.

In this respect, as noted in legal doctrine,

> European case-law, following the line developed by the European Court of Human Rights, increasingly embraces the idea of verifying a proper correlation between the principle of legality and that of proportionality. Thus, a full interdependence between these two precepts is achieved, legality no longer being analysed independently and in a fragmented manner, but within a binary system, correlated with the proper individualisation and optimisation of sanctions. (Ulariu 2025, 167–168)

Thus, in its case-law, the human rights court has held that an unjustified sanction may arise where a Parliament

> acts manifestly in excess of its powers, arbitrarily or in bad faith, by imposing a sanction not provided for in its internal rules or one that is indisputably disproportionate to the alleged disciplinary offence. (ECHR, *Karácsony and Others v. Hungary*, 2016, para. 72).

In this regard, Romanian courts have also held, in a particular case, that

> having analysed the constituent elements of the administrative offence attributed to the applicant, the court finds that the material element consists in the failure to ensure the viability of any component forming part of the public road. (...) Thus, on the basis of the analysed legal provisions, the court considers that the commission of the material element of the offence cannot be imputed to the applicant, as no breach of the obligations incumbent upon it under Article 105 point 4 of Government Emergency Ordinance No. 195/2002 has been established, leading to the conclusion that the act is not provided for by contraventional law. (Sector 4 District Court of Bucharest, judgment no. 4947/ 2026)

The proportionality of sanctions cannot be dissociated from the principle of legality, which constitutes an axiom endowed with constitutional force and value, being enshrined in Article 1(3) and (5) of the Constitution of Romania, in the sense that only a fair and equitable sanction may be regarded as a punitive measure that complies with all the legal characteristics specific to a democratic society. Moreover, the principle of legality is also enshrined at the level of Articles 263 and 269 of the Treaty on the Functioning of the European Union.

The second condition of this fundamental axiom requires that the imposition of an administrative (contraventional) sanction, and even its enforcement, must be carried out in good faith by the competent state authorities. This entails that the procedure for applying the sanction, as well as the structural elements underlying this punitive measure, must not reveal elements of predetermination of the sanction, a preconceived approach regarding the requirements for engaging legal liability, or certain legal vulnerabilities from the perspective of the substantive components of the administrative offence legal relationship (ECHR, *Cumhuriyet Vakfı and Others v. Turkey*, 2013, para. 83).

For instance, in the case-law of Romanian courts, it has been held that

> the good-faith application of the law requires that the record of offence be drawn up and communicated as soon as possible, as the passage of time is evidently detrimental to the offender, who is no longer able to secure the necessary evidence for an adequate defence. (Slatina District Court, jugement no. 4947/ 2022)

On the other hand, as rightly held by the Constitutional Court of Romania, "in order to exercise their rights and legitimate interests, parties must act in good faith, and not in an abusive, vexatious or harassing manner towards judges or the court" (Constitutional Court of Romania, Decision no. 344/2012).

The third requirement of the proportionality precept is closely linked to the purpose of the dissuasive measure, which must reflect the expediency of the sanction. From the perspective of reasonable necessity in a democratic society, the imposition of such a penalty is required in order to prevent the perpetuation of harm to fundamental social values of the domestic legal order, or to avoid disregard, through the commission of unlawful conduct, of legal and behavioural concepts imposed by the domestic regulatory framework.

In one case, a Romanian court held that

> improper overtaking on a road segment with a high risk of accidents constitutes an administrative offence of increased severity, affecting the social values protected by the

> special legislation governing road traffic—Government Emergency Ordinance no. 195/2002, whose stated purpose in Article 1(2) is to ensure the smooth and safe flow of traffic on public roads, as well as to protect the life, bodily integrity and health of persons participating in traffic or present in the road area, and to protect their legitimate rights and interests, public and private property, as well as the environment. Therefore, the application of a more lenient sanction, such as a warning, is not warranted. (Sector 3 District Court of Bucharest, judgment no. 1511/ 2026)

The fourth requirement concerns the reasonableness of the applicable sanction, which must be individualised only after assessing all subjective elements relating to the person of the offender and their social conduct, as well as the full range of objective circumstances, whether prior, concurrent or subsequent to the sanction, which determine its inherent features of individualisation.

In this regard, in another case, a Romanian court held that

> with regard to the individualisation of the sanction imposed by the respondent authority, the court notes that Article 5(5) of Government Ordinance no. 2/2001, as amended and supplemented, provides that the sanction imposed must be proportionate to the degree of social danger of the committed act, and in the present case it is found that the aforementioned proportionality and the reasonable character of the sanction are lacking, which requires its re-individualisation by the court. (Constanța District Court, jugement no. 8538/ 2018)

The final requirement of the expediency of the sanction lies in the necessity of providing the sanctioned person with an adequate, coherent and reasonable procedure to challenge, before an independent and impartial state body, both the procedure and manner of imposition, as well as the amount of the sanction (ECHR, *Lombardi Vallauri v. Italy*, 2009, para. 70).

In relation to this requirement, the European Court of Human Rights held in *Karácsony and Others v. Hungary* (GC) that

> in the context of disciplinary sanctions imposed a posteriori, the procedural safeguards should include, at a minimum, the right of the Member of Parliament concerned to be heard in parliamentary proceedings before the sanction is imposed. This right appears increasingly to constitute in democratic States an elementary procedural norm… a fair balance must be ensured so as to guarantee minority rights and prevent abuse by the majority. (ECHR, *Karácsony and Others v. Hungary*, 2016, para. 68).

The Court further held that "the fair balance required will not be achieved if the person concerned is made to bear an excessive and disproportionate burden" (ECHR, *Sporrong and Lönnroth v. Sweden*, 1982, para. 69–74) and that, in assessing proportionality, "the Court will examine whether the interference imposed an excessive burden, having regard to the specific circumstances of the case" (ECHR, *Béláné Nagy v. Hungary*, 2016, para. 57).

As correctly noted in doctrine,

> proportionality is assessed essentially in relation to the seriousness of the offence and the functions of punishment. This is the primary criterion applied by the European Court of Human Rights in two recent judgments condemning France in similar circumstances concerning failure to declare cash at customs. The confiscation of the sum, combined with a fine equal to half (European Court of Human Rights, 26 February

> 2009, application no. 28336/02) or one quarter (European Court of Human Rights, 9 July 2009, application no. 39973/03) of its value, constituted a disproportionate sanction in relation to the offence committed. (Vogel 2017, 599)

From the perspective of European Union law, the principle of proportionality is laid down in Article 5(1) of the Treaty on European Union, as part of the allocation of competences governed by the principle of conferral. In application of this primary law norm, Article 5 of Protocol No. 2 on the application of the principles of subsidiarity and proportionality establishes that any legal obligation imposed on a subject of law must comply with requirements of reasonableness and must be "as limited as possible and proportionate to the objective pursued".

According to the case-law of the Court of Justice of the European Union, "the principle of proportionality requires that, where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued" (Vogel 2017, 599).

Through an integrated and teleological interpretation of the relevant case-law of the two supranational courts, it is clear that the axiom of individualisation or proportionality of administrative sanctions emerges as one of the most important institutions of administrative law within the European legal space.

This principle derives from the multifaceted structure of the principle of legality and is designed to ensure an adequate and balanced legal and institutional framework for the imposition and application of sanctions in the administrative field.

This legal precept of proportionality, in the view of European courts, requires an integrated and coherent institutional mechanism aimed at aligning punitive measures taken against the person accused of an administrative offence with the concrete level of gravity reflected by the manner of commission of the unlawful act, the degree to which the domestic legal order is disrupted, the importance of the social values infringed, and the nature and relevance of the individual rights and freedoms affected.

4. The pronounced social valences of the modern concept of sanction individualization

The extension of the concept of risk into other fields transcending the boundaries of law, also touching upon salient aspects of the social sciences, is based on the degree of public harm or self-inflicted harm that a contraventional act introduces into the legal order and into the socially relevant depths of a given community (Li, 2023).

An individualized and concretely applied sanction, established in accordance with the general criteria provided by the legal norms of States, also creates the premises for victim protection, through various methods and practices aimed at compensating pecuniary losses suffered (such as obliging the perpetrator of the unlawful act to bear all material and moral damages incurred by the victim), as well as through mechanisms for the victim's social reintegration, where appropriate, such as the provision by State authorities of psychological therapy tools or access to social facilities necessary to mitigate the harm suffered.

Therefore, we emphasize the necessity of calibrating contraventional legislation in Romania and, why not, throughout the European area, so as to ensure greater

transparency regarding the manner in which administrative sanctions are applied in cases of major social impact, and a more tailored approach to the treatment of victims of such unlawful acts, who are generally ostracized by the spectre of a negative public image, exacerbated by the prejudice to their dignity, which is likely to undermine public confidence in the State's coercive power against such contraventional offences committed in sensitive fields.

Accordingly, we propose *de lege ferenda* that, in sensitive or particularly serious areas—such as the protection of minors, victims of social exclusion, psychological and physical violence, etc.—a special electronic register be established, accessible to the general public, in which the names of perpetrators of such serious unlawful acts and the sanctions imposed upon them would be recorded.

To substantiate the above view, we note that even at the time of drafting this article, the Romanian public space is engaged in debate—sometimes with considerable intensity—regarding a media trust-owning company, known as "Realitatea Plus", which has repeatedly been accused by the fiscal authority of intentionally failing to pay taxes, duties, and administrative fines owed to the national budget, leading the National Audiovisual Council of Romania to impose the complementary contraventional sanction of suspending the television station's broadcast.

In this case, the court decision suspending the execution of the sanctioning act (namely the suspension of the broadcaster's transmission) against that media trust has generated a wave of public indignation among media institutions and a communicational rift between two major components of Romanian society. This situation may be described as a genuine social conflict, determined by the fact that the Romanian State, through its various institutional components, has sought to enforce contraventional law in a dissonant manner. On the other hand, public disapproval has also been directed at the appropriateness and fairness of the judicial act rendered in this case (Pricop 2026).

In the case of *Karan v. State NCT of Delhi*, the Delhi High Court instructed judicial authorities to prepare a Victim Impact Report, which would allow for more adequate compensation to victims in accordance with restitution principles (Singh 2024).

Accordingly, we highlight the risk that an insufficiently coordinated normative framework, or one that is excessively lenient in the methodology of investigation and enforcement of contraventional sanctions, or, conversely, a coherent and integrated body of legislation that is nevertheless implemented in a fragmented, non-functional and dissipated manner as regards the foreseeability of its deterrent effect, may generate a phenomenon of "victimization", particularly of those who are accustomed to breaching the law, relying on their economic power, social status, or a favourable political context.

Furthermore, in international legal doctrine, some authors conclude that one of the most important solutions to address the negative consequences of excessive reliance on custodial sentences is the consideration of alternative penalties, insofar as the legislature provides such alternatives, provided that the social danger and the risk of reoffending are sufficiently low (Abdelaziz 2024).

The establishment of alternatives to imprisonment corresponds to the fundamental idea of restorative justice and the principles of a progressive system. The theoretical models of "restorative justice" and the "progressive system" have already been developed, yet

the institution of alternative sanctions has not yet been fully implemented in all States. For example, in the Republic of Uzbekistan, provisions concerning alternatives to imprisonment have not yet been transformed into a coherent system of legal norms with a specific purpose and method of regulating social relations (Kobilov 2025).

A State's sentencing policies may indicate, at least on an apparent level, the preferences of decision-makers regarding the type of sanction applicable in different concrete cases, thereby serving as an indicator of severity.

This approach reflects the idea that the logic of many sentencing regimes is based on the belief that, if a person persists in unlawful conduct after being sanctioned or punished, a more severe penalty will, by itself, be more effective in correcting deviant behaviour. However, the impact of sentencing severity can only be assessed in correlation with the type of offence committed after an initial sanction or in a recidivist context. Assessing these possibilities requires studies analysing the appropriateness of different sanctions, how they are perceived by individuals, and the specific sequences of sanctions (Mears and Cochran 2018).

However, a comprehensive analysis of proportionality in sanctions and punishments cannot ignore the social factors that lead an individual to commit a crime, a contravention, or another unlawful act. The manner in which the family, social, cultural, educational, conceptual and relational environment exerts a profound influence not only on individual personality—orienting it towards unlawful behaviour—but also on a structural and educational memory that affects recurrence, repetition, severity, persistence, and the degree of rehabilitation in relation to deviant conduct.

As has been shown in sociological doctrine,

> individuals and communities face a wide variety of problems, or 'troubles'. The processes of identifying and attributing blame for these problems are complex and not fully understood, although numerous research fields address them. When individuals and communities manage to identify problems and potential causes, a wide range of solutions becomes available: they may 'ignore the problem' (i.e. take no action to resolve it); initiate legal proceedings; use self-help techniques; seek psychological counselling; use organizational dispute-resolution mechanisms such as union negotiations, grievance hearings or ombudsman services; join or initiate a social movement; turn to the church for support; or lobby elected representatives, among other options. (Handler 1966, 479-510)

Thus, certain elements of the organization and manifestation of social order may exert a determining influence on the legal order, by updating and dynamizing a spectral analysis of unlawful acts, with a series of practical consequences regarding the objective application of the legal principle of individualized legal liability for acts committed by various legal subjects, who are undoubtedly under the significant influence of the social environment in which they were born and developed.

Thus, if sociology recognizes the incidence of such inherent factors in the full manifestation of unlawful phenomena, legal science cannot ignore these fundamental assertions derived from in-depth sociological inquiry.

Perception therefore remains variable in relation to the sanction provided by law, as established, applied, or executed. The principle of proportionality may also be analysed

from the perspective of the configuration of a certain risk. Risk plays an important role in shaping perception, and the degree to which it is assessed depends on several concurrent factors, relating both to individual typology and to the manner in which public safety and social order are ensured.

We note that the extension (Li 2023) of the meaning of risk to other fields (public health, mental health, political science and migration), beyond criminal law, is based on the degree of public harm or self-harm.

Recent doctrine highlights that an individualized and concretely imposed sanction, established according to general criteria provided by the legal norms of States, also creates the premise in which the victim may be protected. There is a permanent need to enhance measures aimed at preventing the risk of victimization, including through awareness of sanctions applied in various cases and through public communication regarding the time elapsed until compensation is obtained (Earl 2009).

5. Comparative law elements regarding the structuring of the principle of proportionality

The elements of individualization of the manner of incidence and those concerning the personalization principle constitute a constant feature in the national law of the Member States of the European Union and, more generally, within the constitutional order of all democratic states, whether Western or Eastern.

In this context, we note that institutional mechanisms in all democratic States provide precise rules for the fair and adequate application of proportionality in the incidence of sanctions of a predominantly punitive and repressive nature.

For instance, in Austria, pursuant to Article 10(1) of the Criminal Code, the proportionality between the immediate effects of the commission of an act and the danger from which the perpetrator defends himself constitutes an element in assessing the applicability of the institution of self-defence, as a cause excluding criminal liability. Likewise, remnants of this legal principle can also be found in Article 20(4) of the same Criminal Code, which operationalizes proportionality in the context of seizure measures concerning assets "obtained for the purpose of committing a criminal offence or through the commission of a criminal offence."

In the Czech Republic, Article 31(1) of the Criminal Code regulates the institution of permissible risk, which operates as a cause excluding criminal liability for acts committed by those who, "in accordance with the information available to them at the time of decision-making, carry out an activity beneficial to society in the performance of duties arising from their employment, profession, office or function." However, under paragraph 2 of the same article, risk loses its admissible character where, *inter alia*, the criminal act results in a socially dangerous outcome manifestly disproportionate to the level of risk reasonably assumed by the perpetrator. Article 38 of the Czech Criminal Code establishes the principle of sentencing individualization, according to which coercive punitive measures are imposed in consideration of factors such as the nature and seriousness of the offence and the personal circumstances of the offender. In any case, the principle of sentencing reasonableness is established, in the sense that, where a lighter penalty is sufficient to achieve the intended repressive effect, a more severe

penalty may not be imposed. The same rule is provided by Article 98 of the Czech Criminal Code with regard to security measures.

In Denmark, proportionality is reflected in the institution of the "state of emergency," regulated by Article 13 of the Criminal Code, which provides that acts committed in such a situation are not punishable insofar as they are necessary to repel an unlawful attack and are not manifestly disproportionate, taking into account the danger of the attack, the offender's characteristics, and the seriousness of the act. Article 77 further provides that where the convicted person has compensated the damage established by the judgment, the confiscation amount shall be proportionally reduced.

In Estonia, Part 4 of the Criminal Code establishes that punishment must be proportionate to the harm caused, the dangerousness of the offence, the motives of the act, and other elements of culpability manifested in the constitutive elements or context of the offence.

In France, Article 122-5 of the Criminal Code provides a ground of non-responsibility whereby a person is exempt from liability if, in the face of an unjustified attack or to interrupt the commission of a crime or offence, he or she performs an act of defence, subject to necessity and a reasonable degree of proportionality between the means used and the seriousness of the offence.

In Germany, Section 78 of the Criminal Code establishes proportionality as a ground of inadmissibility for security measures where such measures are disproportionate in relation to the gravity of the offence committed or expected to be committed and the degree of danger posed by the offender.

In Latvia, fines must be proportionate to the damage caused and to the offender's financial situation, as provided in Section 8 of the Criminal Code.

In Malta, Article 1–54 of the Criminal Code establishes proportionality in confiscation measures, allowing seizure where the value of assets is disproportionate to lawful income and is reasonably presumed to be derived from criminal activity.

In the Netherlands, Article 24 of the Criminal Code requires that the offender's financial capacity be taken into account when determining fines, ensuring that sanctions are not disproportionately burdensome.

In Slovakia, Article 44(2) requires that security measures consider the minimisation of impact on the offender's family situation, while paragraph 5 provides an exception prioritising social protection over strict proportionality considerations.

In Slovenia, Article 3(2) enshrines individualized sentencing, requiring proportionality between punishment, the seriousness of the offence, and culpability.

In Spain, Article 128 allows courts to refrain from confiscation or order partial confiscation where proportionality is not met between assets and the offence.

In Hungary, Section 23 establishes proportionality as a condition for necessity-based defences, requiring that the harm caused is not disproportionate to the threatened danger.

Through an analysis focused on the principle of "transjurisdictional constitutional pollination" (Hirschl 2019, 20-21), which involves a comparative analysis based on the

normative structure of the legal systems in the countries mentioned, the teleological and logical-legal interpretation of the norms cited above, and comparative jurisprudence, we reach the conclusion that, in the majority of European states, the application of the proportionality principle is experiencing a desirable and timely development. However, it is predominantly oriented towards the dimensioning of cases involving exonerating circumstances for the contravener, rather than focusing on the necessity of individualizing the manner of applying sanctions, subsequent to the triggering of the intrinsic legal responsibility system.

This approach, although timely in terms of outlining from the outset the sphere of legal responsibility of those involved in the commission of an administrative offense, we believe, suffers from the limiting scope for the valorization of this fundamental principle, focusing mainly on the manner of adjusting sanctions for those whose responsibility has already been established.

In this regard, we note that the proportional application of administrative sanctions, as an element of individualization of the legal repression against those guilty of an antisocial act, falls, within these states, primarily within the responsibility of the courts, with the legislator providing only a series of generic and abstract guidelines in this sense.

For instance, in one case, it was decided that

> the insufficient individualization of the claim in the summons can be completed later. The completion of individualization does not suspend the limitation period retroactively according to § 204 paragraph 1 no. 3 BGB, but only from the moment it is carried out. For subsequent individualization of the claim in the summons procedure, as for individualization in the summons, only the perspective of knowing the debtor is considered. Consequently, it does not matter whether the individualization of the claim is made through a request to the court or outside the judicial procedure. (Federal Court of Germany – *Bundesgerichtshof* - case no. VII ZR 594/21, 2023)

We consider that leaving the task of individualizing sanctions primarily to the courts, without the national legislation of the states mentioned above providing clear and effective guidelines for this fundamental process of engaging legal responsibility for those guilty of an unlawful act, constitutes a risky bet and could raise issues of inconsistent practices within the judicial bodies, with a certain prejudicial effect for those held legally accountable.

In this context, in a specific case of attempted theft committed during the COVID-19 pandemic, the Supreme Court of the Czech Republic ruled that

> it is not enough for a crime to be committed during an event that threatens the life or health of people. There must also be a material connection between the theft committed and the event that constitutes a serious threat to the life or health of people. Such a material connection may be that the perpetrator directly uses or abuses such an event to commit the crime or that the event allows or facilitates the commission of the crime. (...). Thus, the lower courts made an incorrect legal evaluation of the attempted theft, concluding that the criteria for classifying the crime as 'aggravated' under Article 205 paragraph (4) letter b) of the Penal Code were met solely because of the temporal (and local) link of the act with the event threatening people's lives and health. (Supreme Court of the Czech Republic, case no. 15 Tdo 110/2021)

This exemplifies the risks of a "hypo-regulation" legislative technique in administrative and criminal matters, in which courts may interpret the same unlawful context differently.

One can even contest the constitutional authorization of these judges to analyze and apply limits of law exceeding such criteria for the dosage of sanctions. Moreover, parties sometimes question the judge's right to rule on the case, including the manner of their appointment to the position.

For instance, in a very recent case, the Supreme Court of the Republic of Poland

> annulled the decision of the Warsaw Court of Appeal, which had declared the judicial proceedings null of its own motion due to the alleged improper appointment of a judge who resolved the case in the first instance. In its reasoning, the Supreme Court clearly opposed the practice of contesting the status of a judge through an unprocedural judicial review, highlighting the lack of legal basis and the severe constitutional and systemic threats posed by such an approach. (Supreme Court of the Republic of Poland, case no. III CZ 273/24, 2026)

Exceptions to this "minimalist" normative practice are found in the legislation of Germany, Spain, France, Denmark, and Slovenia, where national legislators insist on developing a normative template for the dimensioning of sanctions, thus providing state authorities and, predominantly, the courts with valuable tools for guiding the balancing of legal repressive instruments against those guilty of antisocial acts.

However, it should be noted that, as a rule, the legislation of modern states is based on both determining cases of responsibility and ensuring a fair and equitable dimensioning of the main penalties imposed on those who break the law, as well as determining the cases and conditions in which an exculpatory situation may arise in relation to those acting in legitimate defense against an unlawful act committed against them.

Thus, it can be said that, despite multiple differences in approaches regarding the materialization of the individualization principle of responsibility, a *common European standard* is emerging from the comparative analysis of the above-mentioned legislations. This standard is based on the requirement to ensure a just proportionalization of sanctions and the respect for legitimate social expectations, such as the prompt application of the law, the effective accountability of those at fault, and the provision of fair and equitable judgment to those submitting their cases to the courts. This, however, implies a "more robust and analytical methodological approach" (Hirschl 2014, 222) from the perspective of adapting national legislations to new social realities, in which citizens are better informed and, consequently, more demanding of the state and its legislative bodies.

Thus, there is well-defined legislation in this area in all these states, but what we believe is missing from this international legislative framework is a proper correlation of the principle of proportionality with that of punishment personalization. This is because the manner in which the national judge is equipped with tools to adapt sanctions to the behavioral traits and social integration of the individual convicted of committing an administrative offense should be regulated with more depth and attention.

The emphasis should primarily be placed not only on the contextual-material aspects of the circumstances of the unlawful act but also on "scanning" the contravener's

personality and, especially, on integrating the penalty's scope within the social context in which the author of the unlawful act manifested and on the consequences of sanctioning them upon the regularity of the legal order and the credibility of the judicial act among the citizens of those states.

Ultimately, it is about "allocating authority and determining those who may exercise physical coercion as a socially recognized privilege, along with selecting the most effective forms of physical sanction to achieve the social goals the law serves" (Schwartz and Skolnick 1970, 17).

Thus, it would be appropriate to eliminate the arbitrary element specific to "positive law" (Ashworth and Wasik 2004) by integrating new, comprehensive criteria for sanction individualization in these legislations, such as: the author's prior behavior in society; their attitude towards the victim before, during, and after committing the antisocial act; repentance, or, conversely, a defiant attitude toward the law during the trial; an analysis of their personality based on a psychological assessment; public reaction to the manner of sanctioning (a punishment that is either too lenient or too severe could result in public unrest within society); the convicted person's attempt to eliminate or compensate for the harmful consequences of their administrative offense, etc.

6. The reflection of the principle of proportionality in the Romanian sanctioning system from the perspective of administrative-tort liability and its social resonances

In relation to the French legislative tradition, which has historically influenced Romanian legislation, in the Romanian legal system of administrative-tort (contraventional) origin, the principle of proportionality entails the adequacy of the coercive measure imposed on the person found guilty of committing a contravention, in relation to the overall objective circumstances of the case, as well as with regard to the perpetrator's person, from the perspective of highlighting, in the process of applying an administrative sanction, the subjective, antecedent, concurrent, and subsequent factors of the unlawful act, which reveal the concrete social dangerousness of the offender.

In Romanian legal scholarship, as an objectification of relevant European judicial practice (in the case-law of the European Court of Human Rights (ECtHR), it has been held, for example, that:

> The applicant was subjected to sanctions which, although classified as administrative under domestic law, are 'criminal' in nature within the autonomous meaning of Article 6 § 1, and therefore that provision applies under its 'criminal limb'. However, a peaceful demonstration should not, in principle, give rise to a threat of criminal sanctions, in particular deprivation of liberty. (Ulariu 2025, 173)

Likewise, French doctrine has emphasised that "the sanction imposed must not be excessively severe in relation to the seriousness of the prohibited conduct" (Kolb and Leturmy 2019-2020, 52).

Furthermore, we consider that, for the purpose of shaping the structural elements of this principle, it is not sufficient, in Romanian law, to relate the administrative sanction solely to the act and the perpetrator; sociological aspects must also be taken into account, such

as the intensity of social dynamics that should shape the State's response to the phenomenon of legal norm violation, as well as the social forces that shape the legal-repressive structure of the State against antisocial acts.

From this perspective, we note that, in the process of holding the author of an administrative offence liable, two opposing social interests or vectors come into conflict, and their collision entails the production of the most significant effects upon the Romanian legal order.

The first conceptual vector relevant to the legal order is the legitimate expectation of society at large for the prompt, appropriate, and deterrent restoration of the rule of law (disrupted by the commission of an unlawful act by a legal subject who disregards the relevant social standard), namely the non-discriminatory, unhindered, and prompt application of national law. This societal mechanism is grounded in Article 1(3) and (5) of the Romanian Constitution, which enshrine the supremacy of the Constitution and of other national laws, as an expression of the principle of legality and the rule of law.

The second element involved in this conflict of opposing forces is the right of the person subject to administrative liability proceedings not to be judged according to public perception, possibly shaped by media coverage of the case, regarding the degree of responsibility, but strictly in accordance with legal provisions and all circumstances of the case. Only in this way is the requirement of the right to a fair trial, enshrined in Article 6 of the European Convention on Human Rights, respected.

Although, regrettably, Romanian legislation does not expressly provide anything in this regard, we nevertheless note that this conflict—bearing both legal and sociological connotations—between the two opposing interests can only be resolved through the intervention of the courts, which must calibrate the sanction in the most reasonable manner possible.

Therefore, the principle of proportionality becomes effective only if the judicial authority takes into account not only the purely legal aspects of the case, but also the social impact and public perception of the fairness of the procedural act carried out in a given case.

The relevance of this balance stems from the necessity of maintaining, among the Romanian public, strong confidence in the act of justice, without which even the most correct process of legal liability loses its social relevance.

In support of this view, we reproduce a decision of a Romanian court which held that,

> of all community issues, the most important for the Local Police is sanctioning citizens who occupy parking spaces without a subscription, and, in the applicant's case, he was not 'forgotten' or 'forgiven' on 16 June 2015 for not having a subscription in April 2015, and he was sanctioned in June for April. The sanction is not time-barred, but the act has minimal social relevance; the applicant did not occupy someone else's space who had a valid subscription, but rather a parking space at the building where he resides, and subsequently purchased a subscription for the following period, June–December 2015. (Court Sighișoara judgment no. 1096/ 2015)

In this case, the court, assessing the relevance and social echo of the procedural measure to be taken, upheld the complaint and exempted the offender from liability.

In light of the above doctrinal considerations, it has been held in case-law that, pursuant to Article 53 of the Romanian Constitution,

> a restrictive measure may only be imposed if it is necessary in a democratic society, must be proportionate to the situation that determined it, applied in a non-discriminatory manner, and must not affect the very existence of the right or freedom. (Constitutional Court of Romania, jugement no. 461/ 2014)

However, we note that the above arguments are not sufficient to fully define this legal principle in its true juridical and social dimension.

In this regard, we propose *de lege ferenda* that, at the moment of individualising the administrative sanction, both the state agent (as administrative authority) and the court, when adjudicating the complaint against the sanction, should also take into account the social resonance of the act and the societal implications of sanctioning the offender. Specifically, we propose to supplement art. 23 with a new alienation

We further emphasise that proportionality of the coercive measure is ensured only through the regulation of adequate legal safeguards, which provide concrete benchmarks both for the sanctioning agent, when imposing the fine, and for the judicial authority, within the subsequent review procedure, exercised fully over the legality and correctness of the individualisation of the sanction.

The fair calibration of administrative sanctions pursues a dual purpose: on the one hand, it ensures the enforcement of legal norms established by the legislature for the protection of fundamental legal relations essential to the preservation of the rule of law; on the other hand, it avoids imposing an unjustified burden on the person or property of the offender, which could undermine the principle of legality and the principle of legal certainty and stability of legal relations.

The criteria for individualising administrative sanctions provided in Article 5(2) and (3) of Government Ordinance No. 2/2001 are generally regulated in Article 5(5) of the same act, and specifically in Article 21(3) thereof.

In this respect, the Constitutional Court of Romania has held that

> the proportionality of the administrative sanction is determined concretely through judicial individualisation, in compliance with Article 5(5) and Article 21(3) of Government Ordinance No. 2/2001, according to which the sanction is applied within the limits provided by the normative act and must be proportionate to the degree of social danger of the act, taking into account the circumstances in which it was committed, the manner and means of commission, the purpose pursued, the consequences produced, as well as the personal circumstances of the offender and other data recorded in the official report. At the same time, courts must also refer to the criterion established in the case-law of the European Court of Human Rights, namely that the sanction must not fundamentally affect the financial situation of the person concerned, including through deprivation of property, carrying out a review of compatibility permitted by the Convention and the Court's case-law. (Constitutional Court of Romania, Decision No. 220/2023)

The individualisation or proportionalisation of administrative sanctions represents an epistemological exercise carried out by the state agent at the initial stage of sanction calibration, and by the judicial authority during the review of the sanctioning act, aimed at correlating punitive action with the principle of legality, whose conceptual

requirement presupposes a certain degree of foreseeability of state coercion exercised against the offender.

In this regard, state authorities use objective criteria such as the factual and intellectual context of the offence, the manner, means, purpose and motive of its commission, the consequences produced or that could have been produced, and public reaction to the seriousness of the act.

Moreover, in light of Article 5(5) and Article 21(3) of Government Ordinance No. 2/2001, it is also necessary to apply subjective criteria, including the form of guilt, the offender's attitude towards the victim, antecedent behaviour, age and life experience, possible special or pathological conditions, and the offender's attitude towards the sanctioning officer during the constatation of the act.

For instance, in one case, the court held that

> the administrative sanction applied to the claimant, a fine of 9,000 lei, corresponds to the degree of social danger of the act and of the perpetrator, who failed to consider the social relations protecting road transport safety and, implicitly, the life, physical integrity and health of road users, as well as public and private property and the environment; the court considers that a milder sanction, namely a warning, is not warranted, the fine being necessary to draw the claimant's attention to the consequences and seriousness of the act and to prevent its recurrence. (Court of First Instance of Slatina, Judgment no. 1158/2025)

Nevertheless, these purely legal criteria—objective and subjective—are not sufficient to fully shape a proportionate sanction.

Therefore, we propose that Romanian legislation be promptly and balancedly revised in order to respond to common European standards regarding the deterrent repression of antisocial behaviour.

Specifically, these amendments should follow several guidelines: correlating legal individualisation criteria with sociological ones, involving statistical analysis of the frequency and social resonance of a given contravention (so that frequently occurring contraventions, such as customs misdeclaration, speeding, or driving under the influence, would attract an automatic increase of sanctions through a legally defined multiplier); calibrating sanctions not only according to offender dangerousness but also according to the social resonance of the act; and individualising sanctions according to public notoriety of the offender, so that stricter sanctions for public figures (such as politicians, artists, or content creators) may serve as an example for society, thereby ensuring deterrence and prevention.

Thus, it cannot be accepted that all offenders who commit the same unlawful act should be subject to identical sanctions, as this would contravene the principle of legality enshrined in Article 1(3) and (5) of the Romanian Constitution, whereas individualisation and adaptation of sanctions are required depending on multiple endogenous and exogenous factors, ensuring a proper correlation between the seriousness of the danger and the sanction imposed.

Identical sanctions for different offenders in different factual situations would give rise to a discriminatory situation among subjects of the contraventional legal relationship.

In conclusion, in Romania, the normative framework for the application of the principle of proportionality aligns with common European standards, providing valid criteria for the individualisation of sanctions, but it requires improvement through the incorporation of sociological tools for behavioural assessment.

7. Conclusions

The principle of proportionality or individualized sanctioning in the field of contraventional law constitutes more than a mere reference to philosophical and legal considerations; it reflects the requirement to observe a fair and foreseeable standard of equity in the punitive activity of the authorities empowered by law to restore the legal order infringed through the commission of a contraventional offence.

Thus, this legal axiom represents an objective necessity of a rational and socially just system of justice, which distinguishes, in the exercise of contraventional punishment, between the various situational and personal circumstances that individualize each participant in the commission of an unlawful act.

In this respect, *de lege ferenda*, we propose that both the legal and practical approach to the operationalization of the principle of proportionality should comply with the requirement of transdisciplinarity, combining legal, sociological, pedagogical, and psychological elements, with the aim of providing clear, coherent, integrative, and sufficient legislative criteria for the fair calibration of contraventional sanctions—namely the introduction into the Romanian Code of Civil Procedure of a new chapter within Book VI—Special Procedures.

In this way, methodological impropriety and instrumental instability—features that presently characterize, in many cases, Romanian and European legislation in general—may be avoided, particularly with regard to the integration of individualization factors such as the social resonance of the unlawful act committed, public confidence in the procedure for the application and assessment of contraventional sanctions, and social tendencies of behavioral reverberation in the sphere of breaches of rules of a contraventional nature.

Furthermore, we propose that in the process of punitive individualization, particular emphasis should be placed, especially at the stage of the concrete application of contraventional sanctions, on the cognitive elements and distinguishing features of social constructivism, highlighting the legal and social reasons for which such unlawful conduct requires an appropriate retaliatory response. This conceptual framework is indispensable in ensuring that the deterrent and preventive effect of measures imposed against persons who commit contraventions produces a real and significant social impact, thereby facilitating the process of making the law effective, influenced by the cultural and social context in which it operates.

Accordingly, the legal nature of the principle of proportionality is characterized by an unyielding reference to the profound legal and sociological phenomenon of adapting punishment to the situation that effectively necessitates its enforcement.

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