

# RECENT MODIFICATIONS OF THE CONTRAVENTION JUDICIAL REGIME

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## Abstract

*The legislation in the contraventional law domain has recently been modified, an opportunity to analyse in the current study the main modifications brought and their impact on the public and private activity. Now it is already known that, towards the end of 2017 the prevention law was adopted and then a government decision was adopted for the establishment of the contraventions that get under the new law incidence but also the remediation plan.*

*During 2018, other legislative modifications intervened regarding the contravention judicial regime, modifications that had impact on the ongoing activity on the level of public and private domain authorities, such as, amongst others, the modification of the payment term of the contraventional fines and many more. We will focus on these aspects in the current work, this being our primary objective. Also, a secondary objective of this work refers to the fact that, through the case study we propose, we wish to surprise, from the activity of different public authorities, the dynamic of the contraventional sanctions applicability. Therefore, the most notable study methods used in the current study are: the statistic method, the deductive and informational method.*

*In the end, we will draw the conclusions that we have reached from our documentation over the analysed subject.*

**Keywords:** *the Government's Ordonance no. 2/2001 regarding the contraventional judicial regime, the contraventional fine, sole payment account, warning, the Romanian Court of Counts.*

## 1. Introduction

When this study is being written, in Romania there is no administrative or administrative procedure Codes, like there is for criminal or civil law. Like we mentioned in a prior study<sup>1</sup>, in the contraventional law at the end of 2017 and beginning of 2018 one could notice: "(...) the recent adopting of Law no. 270/2017 from December 12<sup>th</sup>, 2017 for prevention (hereinafter referred to as prevention Law<sup>2</sup>) and of the Government's Decision no. 33/2018 regarding the establishing of the contraventions that go under the prevention Law no. 270/2017, and of the remediation plan model<sup>3</sup>, with new legislative character". In this context, we are signaling what another author has noticed: "No state has a legislation that is valid for all the times"<sup>4</sup>.

It is more than a year since the forementioned legislative modification intervened, year in which it has begun to crystallize, step by step and jurisprudence about the abiding or not abiding the remediation plan, this being in fact the prevention law philosophy, the temporary clemence for the offender of not being sanctioned with a fine directly but with a warning and

establishing a term in which it has to abide what was being suggested in the remediation plan by the agent. Like it has already been mentioned, recently, in doctrine: "the contraventions domain is without a doubt a domain with profound and more complex implications in the day to day life of the citizens and thus in the administrative practice of the authorities with attributions in matter"<sup>5</sup>.

The administrative deviation is, perhaps, the most common form of breaking the law. "To eliminate any arbitrary situation in appreciating the social danger degree of a deed in order to qualify it as being a contravention or a crime, through normative acts it is expressly mentioned in what category a certain illicit conduct is classified"<sup>6</sup>, another author shows. "In the European Human Rights Court<sup>7</sup>, the contravention is considered a criminal fact (...) "<sup>8</sup>, noticed in the specialized literature. "The European Union Law embraces the monism theory, meaning the existence of a single judicial order that encompasses in a unitary system the international and national law"<sup>9</sup>.

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<sup>1</sup> Elena Emilia Ștefan, "Tools to ensure the prevention of contraventions" ("Instrumentele care să asigure prevenirea de contravenții") in *CKS-eBook proceedings 2018*, pp.681-686, [http://cks.univnt.ro/cks\\_2018\\_archive/cks\\_2018\\_articles.html](http://cks.univnt.ro/cks_2018_archive/cks_2018_articles.html), last accessed on 16.03.2019.

<sup>2</sup> Law no. 270/2017 from December 22<sup>nd</sup>, 2017 of prevention, published in the Official Gazette no. 1037 from December 27<sup>th</sup>, 2017.

<sup>3</sup> Government's Decision no. 33/2018 regarding the establishing of the contraventions that go under the prevention Law no. 270/2017, and of the remediation plan model, published in the Official Gazette no. 107 from February 5<sup>th</sup>, 2018.

<sup>4</sup> Laura-Cristiana Spătaru-Negură, *Old and New Legal Typologies*, in *CKS-eBook proceedings 2014*, Pro Universitaria Publishing House, Bucharest, 2014, p. 354.

<sup>5</sup> Dana Apostol Tofan, *Administrative Law*, volum II, 4<sup>th</sup> edition, Bucharest, C.H.Beck Publishing House, 2017, p.371.

<sup>6</sup> Cătălin Silviu Săraru, *Administrative Law. Fundamental public law problems*, C.H. Beck Publishing House, Bucharest, 2016, p.214.

<sup>7</sup> About the jurisprudence part in the international law, in general, check out Roxana-Mariana Popescu, *Introduction in the European Union Law*, Universul Juridic Publishing House, Bucharest, 2011, p. 41.

<sup>8</sup> Dana Apostol Tofan, *Administrative Law*, op.cit., p.379.

<sup>9</sup> Laura-Cristina Spataru-Negură, *The European Union Law – a new judicial typology*, Hamangiu Publishing House, Bucharest, 2016, p. 190.

But in the current study, we do not wish to approach the European Union *acquis*<sup>10</sup> and neither the jurisprudence of the European Union Court of Justice regarding the contravention but we will focus on the national legislation in this domain.

## 2. Content

Law no. 203/2018 regarding the efficiency measurements of paying the contraventional fines<sup>11</sup> represents the modification act of G.O. no. 2/2001 regarding the contraventions judicial regime<sup>12</sup>. Like it was shown in doctrine: “any state has its law legislated, in accordance to its own socio-political exigences, with traditions and values that it proclaims<sup>13</sup>”.

Concretely, amongst the most important legislative modifications brought to this normative act regard:

- The fine’s payment term

In the presentation of motives of the law<sup>14</sup> it is mentioned: “because the 48 hour term may be insufficient to quickly identify certain amounts of money, it is proposed *an intervention on the conditions in which half of the minimum of the fine mentioned in the sanctioning normative act is paid*. Therefore, there is a general rule (not only for the situations in which through special laws this possibility is mentioned) to pay half of the minimum of the fine in a 15 day term from the date the verbal-process was handed over. Exceptions from this rule will be established through special laws only if the payment terms will be bigger than 15 days”.

- The constitution of a sole payment account opened at the State’s Treasury

destined to collect the contraventional fines. According to article 6 of the Law, the payment in cash of the contraventional fines is possible at any unit of the State’s Treasury, at the cash registers of the territorial administrative units / subdivisions or at any entity that is established through applicability norms to the present law, no matter the domicile of the natural person. It is of utmost importance that, in case of unpaid fines on the grounds of present law, the offender is not forced to prove the payment to the agent.

- The electronic debt title

is formed and it has the contravention verbal process data. The debt title is then transmitted

electronically, to the organ that the agent is part of, the competent fiscal organ for collecting the fiscal debts.

- The content of contravention constatation verbal process changes.

Article 16 from G.O. no. 2/2001 (...) line 1 shows that “is mandatory for the contraventional official record to mention: the date and place where it is closed; name, surname, quality and institution of the agent; name, surname, domicile and identity number of the offender, the description of the contraventional fact with indication of the date, hour and place where it was done, but also it has to show the circumstances that can serve to appreciate the gravity of the fact and the evaluation of the possible damages caused; the indication of the normative act through which the contravention is established and sanctioned; the insurance society, in case the fact produced an accident; the possibility to pay half of the minimum amount mentioned in the normative act in a 15 day term; terms in which it can be attacked in justice and the instance where the complaint can be submitted”. In article 16, it is expressly mentioned *the 15 day term to pay the fine*, unlike the 48 hour term from the prior relementation.

- The lack of some mentions in the official report that get its annullment

are also modified: “the lack of one of the mentions regarding the name and surname of the agent, the identity number for the persons that have such a code, and, for the legal person, lack of name and of its headquarter; of the done deed and the date when it has been committed or the agent’s signature”. The nulity can also be given *ex officio*.

Of course, there are many more legislative changes, but we only wanted to mention these in the content of our analysis.

## 3. Case study

In the following, we analysed, selectively, the activity of some public authorities to observe if there were any violations of the contraventional legislation but also in the case of detection of some situations, if any contraventional sanctions were applied and what the sanctions were. Thus, the selection took into account the activity of the General Inspectorate for Emergency Situations, of the Romania’s Counts Court, of Romanian Police, of the Medium National Guard, of

<sup>10</sup> “The (UE) communitary *acquis* – or the (union) communitary acquire represents the totality of judicial norms that regulate the activity of the European Communities (European Union), of their institutions, the (European Union) communitary policies. The (EU) *acquis* includes, thus, the institutive and subsequent Treaties, the adopted legislation by the (EU) communitary institutions throughout the time (regulations, directives, decisions, recommendations and advice), the CJUE jurisprudence, adopted declarations and resolutions in EU, the common actions, the adopted positions and acts in PESC and the cooperation in the justice domain and internal affairs and the international accords to which the EU is part of” (Augustin Fuerea, *The European Union Book*, 6<sup>th</sup> edition, reseen and added, Universul Juridic Publishing House, Bucharest, 2016, pp. 37-38).

<sup>11</sup> Law no. 203/2018 regarding the efficiency measurements of paying the contraventional fines, published in the Official Gazette no. 647 from July 25<sup>th</sup>, 2018.

<sup>12</sup> Government’s Ordinance no. 2/2001 regarding the contraventions judicial regime, published in the Official Gazette no. 410 from July 25<sup>th</sup>, 2001, with the ulterior modifications and addings.

<sup>13</sup> See Elena Anghel, *Constant aspects of law*, in CKS-eBook proceedings 2011, Pro Universitaria Publishing House, Bucharest, 2011, p. 594.

<sup>14</sup> See: <http://www.cdep.ro/proiecte/2015/500/50/4/em682.pdf>, last accessed March 10<sup>th</sup>, 2019.

the State Inspectorate for Traffic Transport Control, of the National Authority for Sanitary Veterinary and for Food Safety, of the Romanian Gendarmerie. And so it was surprised the dynamic for the contraventional sanctions applicability during 2017 or 2018.

From the activity of **General Inspectorate for Emergency Situations - GIES**<sup>15</sup>, in the emergency situations prevention, the document entitled “*The evaluation of the activity in the year 2018*”, section *Control and inspection*, by comparing 2017 to 2018, one can notice:

- “Number of prevention controls grew from 39.978 in 2017 to 40.031 in 2018
- The number of detected deficiencies dropped from 160.381 in 2017 to 147.704 in 2018
- The number of fines grew from 22.2017 in 2017 to 41.401 in 2018 “.

About the activity *Romania’s Counts Court*, from the 2017 activity report<sup>16</sup> of the institution, one can notice: “During 2017 there were 16 control activities, through which the following were noticed: in the case of five public entities, the aspects included in the complaints were not confirmed; the other 11 checked public entities a number of 46 irregularities from legality, three of which were fixed during the control”. In the same report the following is noticed: “the consequence for the irregularities from legality were: 143,8 thousand lei prejudice, out of which during control 1,55 thousand lei were collected (...); the control actions had the following consequences:

- Five contraventional fines amounting to 26 thousand lei were applied to four public entities
- 11 decisions containing 44 measures regarding the irregularities from legality were emitted
- a number of three contestations were formulated against three emitted decisions (...) “.

From the **Romanian Police** activity, we mention the 2018<sup>17</sup> activity report (the document entitled: the evaluation of the conducted activities by the General Direction of Bucharest during 2018). In the public Order domain, page 29 of the report it is mentioned that: “75.196 contraventional sanctions were applied, amounting to 21,61 million lei, out of which 58.933 (78%) contraventional sanctions to Law no. 61/1991”. At page 32 it is showed that: “security systems: 8.319 controls carried out (...): 2.301 applied contraventions, 3 certificates revoked, 3.361 given notices, 1.034 schools checked under the aspect of security, out of which 104 dooms “.

At page 34, traffic safety, it is mentioned: “activities of maintaining and imposing the law: 5.386 executed missions, 485 actions for the fighting the main

generating causes of serious accidents, 179.216 established contraventions (...) “.

Regarding the **Medium National Guard activity**, in the activity report on 2018<sup>18</sup> is mentioned: “in the Medium National Guard during January 1<sup>st</sup> – December 31<sup>st</sup>, 2018, a number of 39.841 inspections in the pollution and biodiversity domain, biosafety and natural protected areas were done (...). A number of 1.570 warnings were given and 2.606 contraventional fines, amounting to 39.121,420 lei. 140 activity stopping dispositions were enforced, 1 activity stopping disposition, 53 propositions to suspend the medium accords / authorisations. 25 criminal complaints were formulated (...) “.

At pages 3 and 4 of the same document it is mentioned: “checking the townships’ sanitation state and communication ways – between March 20<sup>th</sup> and July 15<sup>th</sup>, 2018 an unplanned thorough control was taken to check the townships’ sanitation state and communication ways. As a result, 2.323 inspection actions and control were done (2.263 to local public administrations, 7 to roads / railroads administrators, 18 to economic agents / natural persons and 35 to sanitation operators. Following these controls (...) a number of 313 warnings and 611 contraventional sanctions were given amounting to 2.137.200 lei, like this: 595 to local public administrations, amounting to 1.535.000 lei; 6 to economic agents / natural persons, amounting to 79.000 lei; 10 to sanitation operators, amounting to 523.200 lei “.

In the same document it is stated that: following these controls, it was noticed that, from the 2.263 local public authorities, 701 UATs have not implemented the selective collecting system of township waste. From 595 contraventional sanctions applied to local public administrations, 69 contraventional sanctions were given, amounting to 928.000 lei and 131 warnings for the lack of implementing the township waste collecting system “.

Regarding the **National Authority for Consumers Protection – NACP**, from the 2017<sup>19</sup> annual report it is apparent, from noticing the *Contraventional sanctions applicability*: “(...) the irregularities regarding the consumers’ protection domain was noticed, in 43.420 cases contraventional sanctions were applied, amounting to 79.53 million lei. The official records ratio of applied fines is: 39.7% to groceries; 30.9% to non-groceries; 9.9% grocery services; 1.7% financial services; 2.4% other segments “.

Regarding the activity of **The State Inspectorate for Traffic Transport Control SITTC**<sup>20</sup> from the public informations for the 3<sup>rd</sup> trimester of 2018:

<sup>15</sup> See: [https://www.igsu.ro/media/comunicate/Evaluare\\_IGSU.pdf](https://www.igsu.ro/media/comunicate/Evaluare_IGSU.pdf), last accessed March 23<sup>rd</sup>, 2019, page 8 of the document entitled “The evaluation of the activity in the year 2018 “

<sup>16</sup> See : <http://www.curteadeconturi.ro/Publicatii/Raportul%20de%20activitate%20pe%20anul%202017.pdf>, last accessed March 23<sup>rd</sup>, 2019, file 55 of the report.

<sup>17</sup> See: [https://b.politiaromana.ro/files/pages\\_files/Bilant\\_2018\\_site.pdf](https://b.politiaromana.ro/files/pages_files/Bilant_2018_site.pdf), last accessed March 10<sup>th</sup>, 2019; March 23<sup>rd</sup>, 2019.

<sup>18</sup> See: [https://www.gnm.ro/staticdocs/Raport\\_activitate\\_GNM-2018.pdf](https://www.gnm.ro/staticdocs/Raport_activitate_GNM-2018.pdf), last accessed March 23<sup>rd</sup>, 2019.

<sup>19</sup> See: <http://www.anpc.gov.ro/galerie/file/544/2018/R2017.pdf>, page 8, last accessed March 23<sup>rd</sup>, 2019.

<sup>20</sup> See: [http://www.isctr-mt.ro/informatii\\_doc\\_164\\_raport-de-activitate-isctr-pe-trimestrul-iii-2018\\_pg\\_0.htm](http://www.isctr-mt.ro/informatii_doc_164_raport-de-activitate-isctr-pe-trimestrul-iii-2018_pg_0.htm), last accessed May 23<sup>rd</sup>, 2019.

“Following the control and inspection activities carried out by the inspectors from the State Inspectorate for Traffic Transport Control, in the 3<sup>rd</sup> trimester of 2018, in 48.823 vehicles / vehicles ensembles were checked in traffic, out of which 43.055 held by romanian operators / transport enterprises and 5.768 held by (...). With this occasion 9.608 official records of contravention were made: 9.029 for romanian operators / transport enterprises and 579 for foreign transport operators. 2.853 vehicles were checked in traffic for the maximum dimensions and / or masses for which 297 official records of contraventions were done. Also, from the technical point of view 1.506 vehicles were checked in traffic and 955 official records for contravention were made. Also, 2.105 controls were done at the headquarters of the enterprises (...) at the end of which 528 official records for contraventions were done “.

Regarding the **Romanian Gendarmerie** activity, the institution’s activity report for 2018: “during public order missions 15.165 crimes were noticed, 15.975 authors were identified and 130.255 contraventional sanctions were applied, amounting to 34.389.764 lei<sup>21</sup>“.

From the activity of **National Sanitary Veterinary and for Grocery’s Safety Authority - NSVGS**<sup>22</sup> report for 2017: “ during 2017, the public clerks from the Litigation Service have insured the interest defence for NSVGS in 373 cases, out of which 26 cases had the annulment of an administrative act as an object, 14 cases had the suspension of an administrative act as an object, (...), 15 cases had a

contraventional complaint as an object, 6 cases had execution complaints as an object, (...)”, mentioned at page 10, from the document.

#### 4. Conclusions

Last legislative modifications that have occurred in contravention domain, we consider they come in handy for the sanctioned ones. The relaxation for the payment term for the contraventional fines, from all domains, in the sense of its growth from 48 hours to 15 days or the establishment of a sole way to pay, are just two of the measures that we appreciate to be a progress in the philosophy of the contraventional sanctions approach by the legislator.

The case studies, from the domain we have chosen, to public but also private institutions, domains such as traffic transport, sanitary veterinary, public order, traffic police etc. have underlined the fact that, all the domains subjected to the control have revealed contraventional legislation breaches, for which diverse contraventional sanctions were applied both in 2017 and 2018 and the amount was fairly big.

In conclusion, through our analysis we consider we have achieved the purpose and objectives established in realising this study, that of presenting the modifications to contraventional legislation, and through our case study, we surprised the dynamic of the contraventional sanctions applicability, in diverse domains.

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<sup>21</sup> See: <http://www.jandarmeriaromana.ro/sites/default/files/Resurse/Documente/primaPagina/Raport%20activitate%202018.pdf>, last accessed March 23<sup>rd</sup>, 2019.

<sup>22</sup> See: [http://www.ansvsa.ro/download/raportari\\_ansvsa/rapoarte\\_activitate\\_ansvsa/Raport-Activitate-ANSVSA-2017.pdf](http://www.ansvsa.ro/download/raportari_ansvsa/rapoarte_activitate_ansvsa/Raport-Activitate-ANSVSA-2017.pdf), last accessed March 23<sup>rd</sup>, 2019

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