

# SPECIFIC FEATURES OF THE LIABILITY FOR CONTRAVENTION IN ENVIRONMENTAL LAW

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## Abstract

*Along with civil liability and criminal liability, contravention liability comes to complete the classical forms of liability applicable in the environmental protection field. This form of liability, unlike the civil liability, which has a predominantly reparatory character, has a sanction character, intervening in the case in which a subject of law does not comply with a conduct established by a rule of public law. Although contravention liability is not a specific liability of environmental law, it has an important economic role and constitutes a serious means of prevention, contraventions sanctions being the most often applied in cases of non-compliance of environmental rules.*

**Keywords:** *contravention, liability, environment, rules, prevention*

## Introduction

Next to civil and criminal liability, the liability for contravention completes the forms of classic legal liability applicable in environmental law. This form of liability, as opposed to civil liability which has mainly reparatory character, is predominantly penalizing, intervening when a subject of law does not comply with a conduct established by a rule of public law<sup>1</sup>.

In the specialized literature, over time, there was and still is a controversy regarding the liability for contravention considered as a distinct form of legal liability, as an administrative liability or as a form of such liability. Thus, some authors<sup>2</sup> treat the liability for contravention as a form of administrative liability, next to the actual administrative liability and patrimonial administrative liability, naming it administrative liability for contravention<sup>3</sup>.

Other authors of the specialized literature<sup>4</sup> state that administrative liability is not equal with liability for contravention, the latter being only a form of administrative liability and the contravention being a manifestation of administrative illicitness, its most serious form, in fact; the legal regime of this type of liability is predominantly an administrative law regime. The same authors are stating that this form of liability is an atypical and imperfect form of administrative liability, and the use, sometimes, of the administrative attribute is inappropriate, penalties for contravention applying not only by state administration bodies, but also by the court, so the term of administrative penalty does not keep anymore its proper meaning.

There is, however a unanimous opinion concerning the ground of the liability for contravention, namely the illegal fact that starts it, which actually represents the offense, and also it is stated that this form of liability is individual and personal; the active subject of the contravention is

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<sup>1</sup> Serban-Alexandru, Stanescu, *Marine environmental protection against oil pollution Prevention, damage control, liability*, (Bucharest, Hamangiu Publishing House, 2010), p.287.

<sup>2</sup> Antonie Iorgovan, *Treaty of administrative law*, fourth edition, volume II, (Bucharest, All Beck Publishing House, 2005), p.358; Verginia Vedinaș, *Administrative Law*, fourth Edition, (Bucharest, Universul Juridic Publishing House, 2009), 262; Dana Apostol Tofan, *Administrative Law*, Vol II, (Bucharest, All Beck Publishing House, 2004), p.175.

<sup>3</sup> Mircea Ursuța, *Contravention proceedings*, second edition, (Bucharest, Universul Juridic Publishing House, 2009), p.51.

<sup>4</sup> Alexandru Țiclea, Constantin Rujoiu, Ion Nita Stan, Ioan Doru Tărăcilă, Marin Corbu, *Liability for contravention*, (Bucharest, Lex Atlas Publishing House, 1995), p.5.

himself liable as this kind of liability is not transferable<sup>5</sup>.

In this issue, we acquiesce to the opinion of authors of the specialized literature<sup>6</sup> that state that the liability for contravention is a distinct form of legal liability, Government Emergency Ordinance no. 2 /2001<sup>7</sup> on the legal regime of contraventions representing the source of law in the matter of the liability in question; the contravention benefits of its own sanctioning system, and not least, the liability for contravention is involved under a specific procedure, only if a person commits an act which has all features of the contravention.

Regarding the liability for contravention in environmental law, we consider, together with other authors<sup>8</sup>, that it represents that form of legal liability which consists of the application of sanctions to persons guilty of violating environmental laws which provide and sanction offenses committed in connection with the protection and development of the environment.

Although the liability for contravention is not a specific liability of environmental law, it has an important economic role and it represents a serious means of prevention<sup>9</sup>; penalties for contraventions are most often applied in cases of non-compliance with rules of environmental protection.

### **The definition of contravention and the usefulness of it being defined by the legislature**

Article 1 paragraph (2) of Emergency Ordinance no. 2 / 2001 generically defines the contravention as “*the act committed with guilt, established and sanctioned by law, ordinance, Government decision or, where appropriate, by decision of the local council of the village, town, municipality or district of Bucharest, the county council or the General Council of Bucharest*”.

As for the utility of defining the contravention by the legislature, the doctrine<sup>10</sup> asserts that it represents a tool that practitioners use in applying the law for offenses, reflects some of the principles of the law for offenses, and also helps to delineate the scope of the contravention illicitness from the field of other species of illicit.

Thus, although there is no legal act defining the ecological contravention, this has been defined in doctrine<sup>11</sup> as *the act committed with guilt, representing a social risk lower than the crime, and which prejudices environmental factors*.

### **Features of the contravention**

From the definition given in art. 1 of Government Emergency Ordinance no. 2 / 2001, two specific features of the contravention result, namely<sup>12</sup>:

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<sup>5</sup> Alexandru Ticlea, *Regulation for contraventions*, sixth edition, (Bucharest, Universul Juridic Publishing House, 2008), p.7.

<sup>6</sup> Mircea Ursuța, *Contravention proceedings*, second edition, (Bucharest, Universul Juridic Publishing House, 2009), p.54.

<sup>7</sup> Published in Official Gazette no. 410 of July 25, 2001, approved by Law no. 180/2002 as subsequently amended and supplemented.

<sup>8</sup> Ernest Lupan, *Law treaty for environmental protection*, (Bucharest, C.H. Beck Publishing House, 2009), p.539.

<sup>9</sup> Daniela Marinescu, *Treaty of environmental law*, fourth edition, (Bucharest, Universul Juridic Publishing House, 2010), p.654.

<sup>10</sup> Mihai Adrian Hotca, *The legal regime of contraventions. Comments and explanations*, fourth edition, (Bucharest, C.H. Beck Publishing House, 2009), p.14.

<sup>11</sup> Valentin-Stelian Badescu, *Environmental law. Environmental management systems*, (Bucharest, C.H. Beck Publishing House, 2011), p.246.

<sup>12</sup> Other features of the contravention have been highlighted in the specialized literature, namely, *typicity* (the correspondence that must exist between the actual facts committed by the offender and the abstract model described by rules of criminalization of the contravention), *anti-juridicity* (characteristic of an act of being contrary to the existing legal order) *guilt* (requires the existence of a typical fact, the need for the person who committed the act incriminated to

- the act committed with guilt;  
 - the act provided and punishable under laws and other regulations expressly determined by law.

Below, we shall briefly present features of the contravention.

### *The act committed with guilt*

As known, any unlawful act, in our case the contravention, is important only if committed with guilt.

Indeed, the objective liability is predominant in the environmental field; however, we consider that in the case of liability for contravention in this area, given the nature of most offenses provided in regulations, only a subjective liability based on fault can be drawn.

The legislation for contravention does not define guilt<sup>13</sup>; this is why its forms and ways were taken from criminal law, but they are not important (and therefore we shall not analyze them) as long as the legislation in force provides that the liability for contravention is involved, whether the act is committed intentionally<sup>14</sup> or by negligence<sup>15</sup>.

Regarding the relapse into contravention, as an institution that has implications in terms of guilt, it is important to mention that there is no provision on the matter in Government Emergency Ordinance no. 2 / 2001, but according to expert authors<sup>16</sup>, the relapse has specialized nature, consisting of the repetition of unlawful conduct in a particular field, with no general relapse into contravention; also to be noted is that the relapse into contravention remains in the contraventions area, without becoming a crime.

In the field of environmental protection, two laws are regulating the relapse into contravention, namely:

Government Decision no. 984/2005<sup>17</sup> on establishing and punishing contraventions to veterinary and food safety rules provides in art. 8, three situations when the relapse into contravention applies:

(1) Contraventions referred to in art. 4<sup>18</sup> and art. 6 letter b) section 1<sup>19</sup> shall be sanctioned,

have realized the implications of his/her act and to have determined its effects) and *legality* (the feature of the offense to be prescribed by law). Ovidiu Podaru, Radu Chirita, *Government Ordinance no. 2 / 2001 on the legal regime of contraventions. Commented and annotated*, (Cluj-Napoca, Sfera Juridică Publishing House, 2006), 7-9.

<sup>13</sup> The specialized literature in the field has defined guilt in the matter of contravention as “*the state of consciousness of the perpetrator while breaching a statutory provision, the violation of which is considered contravention*” (Alexandru Ticlea, *Regulation for contraventions*, sixth edition, (Bucharest, Universul Juridic Publishing House, 2008), 9) or another definition, “*the subjective state of the author of the illicit fact while infringing upon the rule of law, expressing its negative mental attitude towards social interests and values protected by legal rules*” (Mircea Preda, *Administrative law. General Part*, third edition, (Bucharest, Lumina Lex Publishing House, 2004), 290).

<sup>14</sup> The fact is considered committed intentionally when the perpetrator anticipated the result of his action, pursuing its occurrence by committing the act in question (direct intention) and when the perpetrator foresaw the result of his action, and, although he did not pursue it, he accepted its occurrence (indirect intention). (Dana Apostol Tofan, *Administrative law, volume II*, second edition, (Bucharest, C.H. Beck Publishing House, 2009), 206)

<sup>15</sup> The fact is committed negligently when the perpetrator foresaw the result of his action, but did not accept it, believing without reason that it will not happen (easiness or fault with anticipation), as well as when the perpetrator did not anticipate the result of his action, although he had to and could anticipate it (negligence or fault without anticipation) (*Ibid.*)

<sup>16</sup> Corneliu-Liviu Popescu, “Relapse into contravention”, Law 3 (1997), p.62.

<sup>17</sup> Published in Official Gazette no. 814 of September 8, 2005.

<sup>18</sup> Article 4 of Government Decision no. 984/2005 provides several offenses, among which, for example: handling food and feed for animals with breach of veterinary and food safety rules; conducting hunting activities in areas with veterinary restrictions or without announcing the official veterinarian, as well as the consumption of venison without veterinary expertise and without veterinary documents; the storage, outside places specially prepared, of

next to a fine, also by *the suspension of the activity of production*, processing, storage, transport and recovery of products, sub-products of animal and non- animal origin, imported or indigenous fodder, for a period of one year, provided that they are committed for *the second time within 6 months from the application of the fine*.

(2) The contravention referred to in art. 6 letter a) section 9<sup>20</sup>, committed by possessors of the permit for distribution of veterinary medicinal products within the activity of distribution to third parties, shall be sanctioned next to a fine, also by *the suspension of the wholesale trade* of veterinary pharmaceuticals, for a period of one year, given that it is *committed the second time within 6 months from the application of the fine*.

(3) Contraventions referred to in art. 31, if they are committed *the second time within 6 months from the application of the fine*, shall be sanctioned, next to a fine, also by:

a) *cancellation of the deliverer's authorization*, for those provided to letter b) section 4<sup>21</sup> and letter d) section 3<sup>22</sup>;

b) *cancellation of the control point authorization* for those provided to letter c) section 6<sup>23</sup> and letter d) section 4<sup>24</sup>;

c) *cancellation of the certificate for professional competence* for those provided to letter b) sections 5<sup>25</sup> and 6<sup>26</sup>, letter c) sections 1, 5 and 6 and letter d) sections 1<sup>27</sup> and 2<sup>28</sup>.

The second piece of legislation is Government Ordinance no. 37/2002<sup>29</sup> for the protection of animals used for scientific or experimental purposes, which provides in art. 26 paragraph 3, the relapse into contravention which will be applied to the repeating of contraventions provided in paragraph 1<sup>30</sup> of the same article:

(4) In the case of repeating the contravention *within one year from finding the previous contravention*, *the penalty of canceling the authorization for pursuing the activity* of growth, supply and use of animals used for scientific or experimental purposes is also applied, next to a fine.

Two observations can be made to the above mentioned. First, in regard to penalties for the

residues and animal wastes, as well the failure of companies to evacuate them to companies in charged with their processing; not complying with the technological flow and not limiting dirty areas from clean areas;

<sup>19</sup> Article 6 letter b) section 1: refusal to allow the access of inspectors of the authorities for animal health and food safety, in units audited for food safety and animal health control or obstructing veterinary and food safety authorities competent in exercising the powers provided by law;

<sup>20</sup> Article 6 letter a) section 9: breaking sanitarian rules on the production, registration, circulation and marketing of veterinary medicines, fodder additives and other veterinary products.

<sup>21</sup> Article 31 letter b) section 4: rearranging or changing the means of transport in a way that affects the welfare of animals.

<sup>22</sup> Article 31 letter d) section 3: the absence of a navigation system, for means of transport used for long journeys, as required by law.

<sup>23</sup> Article 31 letter c) section 6: not respecting the balance of space for each animal species.

<sup>24</sup> Article 31 letter d) section 4: the functioning of control points without holding the veterinary documentation provided by law.

<sup>25</sup> Article 31 letter b) section 5: the non-compliance with transport practices for loading, unloading, handling and separating animals.

<sup>26</sup> Article 31 letter b) section 6: not respecting watering and feeding intervals, the journey duration and periods of rest.

<sup>27</sup> Article 31 letter d) section 1: the infringement of provisions contained in the contingency plan.

<sup>28</sup> Article 31 letter d) section 2: the transportation of animals injured, sick or that manifest physiological weaknesses, without the official veterinarian's approval.

<sup>29</sup> Published in Official Gazette no. 95 of February 2<sup>nd</sup>, 2002.

<sup>30</sup> G.O. no. 37/2002 art. 26 paragraph 1: Under this ordinance, the following facts represent contraventions:

a) causing pain, suffering, anxiety and disability committed by the user, outside obligations assumed by him when approving the experiments;

b) the violation of instructions for housing and care of experimental animals, approved by joint order of the Minister of Agriculture, Food and Forests and of the Minister of Waters and Environmental Protection;

c) the delivery of unregistered and unmarked animals without veterinary certificate.

relapse into contravention in the cases above presented, one can notice that they are diverse and can consist, next to a fine, of the penalty of suspending or canceling some administrative authorizations. The second observation concerns the existence of a period when the contravention must be committed in order for it to be considered relapse; the period for the cases mentioned above is of 6 months, respectively one year<sup>31</sup>.

Concerning the environmental protection, we agree with the opinion of professional authors<sup>32</sup> who say that the great shortcoming of the liability for contravention is to allow the relapse into contravention (besides the two acts mentioned above, which we consider insufficient), allowing, by the repetition of illegal acts, to perpetuate a state with negative environmental impact with the costs of a repeated payment of fines, situation which is much more convenient to the offender.

In this regard, we propose that, in the future, the Law for environmental protection and special laws concerning environmental protection should be modified for the purpose of introducing some situations regulating the relapse, instituting severe penalties, differentiated depending of the severity of the repeated offense, and also taking into account if the relapse into contravention was committed by a natural or legal person, in order to discourage the repetition of such illegal acts.

#### ***The act provided and punished by law and other regulations expressly determined by law***

A person can be held liable for a certain act only if this act is provided and sanctioned as such, expressly, in a regulation issued by a competent body of the state, which is called legality for establishing and sanctioning contraventions<sup>33</sup>, established in art. 1 and art. 3 of G.O. no. 2/2001.

Thus, we notice<sup>34</sup> that the legality imposes the compliance with certain requirements:

- the regulation for offense must be published, ensuring thus the true accessibility of every individual to its text;
- the regulation for offense can not retroactivate;
- the regulation for offense must be stated with sufficient clarity so that any person should be able to understand which actions or inactions are prohibited.

In this regard, under art. 1 and art. 2 of the Ordinance, *the offense is established and sanctioned as such under law, ordinance, Government decision or, where appropriate, by decision of the local council of the village, town, municipality or district of Bucharest, the County Council or the General Council of Bucharest, and under laws, ordinances or decrees of the Government, offenses in all fields may be established and punished.*

In the contravention field, we find in art. 12 of the Ordinance, the application of the most favorable regulation in criminal law, which states that *"if by a legislative act, the fact is no longer considered contravention, implicitly it is no longer sanctioned, even if it was committed before the effective date of the entering into force of the new regulation. If the penalty provided in the new bill is easier, it will be applied. If the new regulation provides a more serious punishment, the contravention committed before will be punished under regulations in force at the time of its commission"*.

<sup>31</sup> In other areas, sanctions may consist of increasing the fine, and as for the period within which one new offense must be committed in order to be considered relapse, it may lack; any new offense committed, regardless of the period of time from the penalty application for the first offense, leads to the relapse situation. (Corneliu-Liviu Popescu, "Relapse into contravention", Law 3(1997): 62)

<sup>32</sup> Valentin-Stelian Badescu, *Environmental law. Environmental management systems*, (Bucharest, C.H. Beck Publishing House, 2011), p.251.

<sup>33</sup> Alexandru Ticlea, *Regulation for contraventions*, sixth edition, (Bucharest, Universul Juridic Publishing House, 2008), p.12.

<sup>34</sup> Ovidiu Podaru, Radu Chirita, *Government Ordinance no. 2 / 2001 on the legal regime of contraventions. Commented and annotated*, (Cluj-Napoca, Sfera Juridică Publishing House, 2006), p.10-11.

### Constitutive elements of the liability for contravention

Since the contravention is nothing but a crime that in a time of social and cultural development is felt to be less serious, constitutive elements of the contravention are the same as those of the crime, namely, the subject, the object, the objective and subjective sides<sup>35</sup>.

Below we shall briefly present the constitutive elements of the liability for contravention, taking into account its specific features of environmental law.

### Subjects of the liability for contravention

Except for minors under 14 years and for permanently irresponsible persons, all members of society are likely to commit contraventions. For the child who turned 14 years, the penalizing regime is less severe, the minimum and maximum of the fine established under law for the fact committed is reduced by half, and the minor who has not reached the age of 16 can not be penalized with performing an activity for the community<sup>36</sup>.

Active subject of the contravention may be a natural person, as well as a legal person.

In environmental law, *the passive subject* of the liability for contravention, the victim of the contravention, is the whole community, because of the general interest for environmental protection and preservation of nature<sup>37</sup>.

*The active subject* of ecological offenses is represented by the natural and legal persons carrying out activities contrary to the rules or provisions on environmental protection or not meeting the legal obligations arising from legal relations of environmental law<sup>38</sup>. Certain additional sanctions, as we shall see in subchapter 5.4, can be applied only to legal persons, such as closing the unit, suspending the activity etc.

Another feature of subjects of the liability for environmental contraventions is that they can be, next to natural and legal persons, also some circumstantial subjects, such as public local authorities (By the complaint registered by this court under no. 9023/236/29.09.2008, the complainant C.G., requested through the Mayor, in contradiction with the respondent G.N.M.G., the cancellation of the contravention report, series GNM, no. 008370 drawn up by the respondent, on September 11, 2008. As grounds for the complaint, the complainant showed, essentially, that the penalty was unfairly applied, as C.G. had achieved measures established, and the fine of 100,000 lei was excessive and evidence of bad faith. The defense motivation showed, in essence, that the petitioner was punished because she had failed to comply with the legal obligation to establish the sanitation service. The entire report was showing that the locality Gostinari did not realize measure no.1 established by finding note no.458/01.02.2008, concerning the establishing or granting of the sanitation service. According to this finding note, a deadline was given until February 29, 2008, for establishing the sanity service in the village. The complainant annexed to the file, two decisions of the local council, no. 23/04.07.2008 and no. 27/13.08.2008. By decision no. 27/2008 of the local council, the association of C.G. with other administrative units from the county, within the Intercommunity Development Association, "Efficient management for a clean county" was approved, and by decision no. 23/2008 of the local council, the participation of C.L.G. in setting up the "Eco Walachia" Intercommunity Development Association was also approved. The court commended initiatives implemented by those decisions, but mentioned that the combination of the two associations could not replace the sanity service, therefore it can be concluded that the obligation

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<sup>35</sup> Mircea Ursuța, *Contravention proceedings*, second edition, (Bucharest, Universul Juridic Publishing House, 2009), p.86.

<sup>36</sup> Article 11 of G.O. no. 2 / 2001.

<sup>37</sup> Mircea Dutu, *Treaty of environmental law*, third edition, (Bucharest, C.H. Beck Publishing House, 2007), 543.

<sup>38</sup> Daniela Marinescu, *Treaty of environmental law*, fourth edition, (Bucharest, Universul Juridic Publishing House, 2010), p.654.

established by commissioners of the Environmental Guard was not accomplished, being met the constitutive elements of the offense for which the sanction was applied. Compared to those shown, the court accepted, in part, the complaint and disposed the reduction of the fine imposed by the report, from 100,000 lei to 50,000 lei<sup>39</sup>), owners and possessors of land with or without title etc<sup>40</sup>.

### ***The object of the liability for contravention***

The object of the liability for contravention is represented by social values, property or legitimate interests protected by legal rules that are affected or endangered by the illegal act, in our case the contravention.

The exact knowledge of the contravention object is relevant from the perspective of legal classification of the fact constituting a contravention, especially in the case of similar contravention rules<sup>41</sup>.

Generally, contraventions are divided into regulations depending on their subject, this fact resulting from the very title of the regulation<sup>42</sup>, for example: G.D. no. 127/1994<sup>43</sup> on the establishment and sanctioning of infringements of rules for environmental protection, G.D. no. 984/2005<sup>44</sup> on the establishment and punishment of contraventions to veterinary and food safety rules, Law no. 171/2010<sup>45</sup> on the establishment and sanctioning of forest contraventions etc.

### ***The objective side of the liability for contravention***

It is well known that the objective side is the action or inaction described in the rule for establishing and sanctioning the contravention, in the result that the unlawful conduct has, as well as in the causal relationship that must exist between the two elements above<sup>46</sup>.

Contraventions can be committed either by action or by omission, as the crimes. *Action* means to do what the rule for contravention forbids (*burning stubble, woody and herbaceous vegetation, irrespective of land and ownership, including adjacent land of passageways, except for cases permitted by environment authorities<sup>47</sup>, unlawfully flooding land from the national forest fund, by building dams, rapids or others alike, on the beds of streams or valleys<sup>48</sup>*), and *inaction* means the abstention to perform an action that the law pretends to have performed, violating in this way, a operative rule (*failure, by the public services and responsible economic agents, of taking street cleaning measures, maintenance and management of green spaces, markets and public parks<sup>49</sup>, the non-delimitation, by owners, of forest land which they possess, according to property documents and / or the inappropriate maintenance of property boundary signs<sup>50,51</sup>*).

<sup>39</sup> Civil Sentence no. 396/2009 at Giurgiu Court in Alexandru Paul Coman, Nicoleta Moroşanu, *Contravention. The legal regime of contraventions G.O. no. 2 /2001. Legal practice 2008 -2009*, (Moroşan Publishing House, 2010), p.419-421.

<sup>40</sup> Mircea Dutu, *Treaty of environmental law*, third edition, (Bucharest, C.H. Beck Publishing House, 2007), 544.

<sup>41</sup> Mihai Adrian Hotca, *The legal regime of contraventions. Comments and explanations*, fourth edition, (Bucharest, C.H. Beck Publishing House, 2009), p.19.

<sup>42</sup> Alexandru Ticlea, *Regulation for contraventions*, sixth edition, (Bucharest, Universul Juridic Publishing House, 2008), 14.

<sup>43</sup> Published in Official Gazette no. 94 of April 12, 1994.

<sup>44</sup> Published in Official Gazette no. 814 of September 8, 2005.

<sup>45</sup> Published in Official Gazette no. 513 of July 23, 2010.

<sup>46</sup> Ovidiu Podaru, Radu Chirita, *Government Ordinance no. 2 / 2001 on the legal regime of contraventions. Commented and annotated*, (Cluj-Napoca, Sfera Juridică Publishing House, 2006), p.24.

<sup>47</sup> Article 1, paragraph 1), letter j) of G.D. no. 127/1994 on the establishment and sanctioning of contraventions to the rules for environmental protection, published in Official Gazette no. 94 of April 12, 1994.

<sup>48</sup> Article 9, letter a) of Law no. 171/2010 on the establishment and sanctioning of forest contraventions, published in Official Gazette no. 513 of July 23, 2010.

<sup>49</sup> Article 1, paragraph 1), letter c) of G. D. no. 127/1994.

<sup>50</sup> Article 3, letter b) of Law no. 171/2010.

### ***The subjective side of the liability for contravention***

The subjective side concerns the offender's mental attitude towards the contravention committed and its consequences that are expressed by guilt. Therefore, we agree with the professional author's appreciation<sup>52</sup> indicating that, in light of current regulations, there can be no contravention committed without guilt, and as shown in the first pages of this chapter, there can be no objective liability.

### **Penalties for the contravention**

The penalty for contraventions was defined in the doctrine<sup>53</sup>, as a measure of restraint and rehabilitation, being applied to the offender for straightening him and for preventing the committing of other contraventions.

The penalties applicable to violations of environmental protection activities are generally, *main and complementary*<sup>54</sup>.

The *main* penalties for contraventions are: warning, fine for offenses and providing a community service activity.

It should be noted that all main legal provisions relating to the main sanction of prison for contraventions<sup>55</sup> were repealed by Government Emergency Ordinance no.108/2003<sup>56</sup>.

The *complementary* penalties for contravention are: confiscation of assets intended, used or resulting from contraventions, suspension or cancellation, as appropriate, of the permit, agreement or authorization to pursue an activity, closing the unit, blocking the bank account, suspension of the economic unit, withdrawal of the license or permit for certain operations or activities of foreign trade, temporarily or permanently, the dismantling of works and bringing the land to its initial state.

### ***Application of the penalty for contravention***

Applying the penalty is the second stage of the liability for contravention, which comes, naturally, after finding the fact. Without the application of the penalty, the finding report<sup>57</sup> of the contravention does not produce any legal effect to the offender; it is necessary for the offender to be informed on the penalty through a report ordering that penalty<sup>58</sup>.

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<sup>51</sup> Mircea Ursuța, *Contravention proceedings*, second edition, (Bucharest, Universul Juridic Publishing House, 2009), p.93.

<sup>52</sup> Ernest Lupan, *Law treaty for environmental protection*, (Bucharest, C.H. Beck Publishing House, 2009), 547.

<sup>53</sup> Mihai Adrian Hotca, *The legal regime of contraventions. Comments and explanations*, fourth edition, (Bucharest: C.H. Beck Publishing House, 2009), p. 94.

<sup>54</sup> Ernest Lupan, *Law treaty for environmental protection*, (Bucharest, C.H. Beck Publishing House, 2009), 540.

<sup>55</sup> The penalty of imprisonment for contravention is a criminal penalty which was taken exclusively from the criminal law, in the matter of contraventional law. The imprisonment for contravention consists of the offender's deprivation of freedom, for a period of one to six months and it is applied only by the court; the inspector is the body that proposes its application. Currently, under the Constitution, the imprisonment can only be of criminal nature. (Mihai Adrian Hotca, *The legal regime of contraventions. Comments and explanations*, fourth edition, (Bucharest, C.H. Beck Publishing House, 2009), 96, note 2).

<sup>56</sup> Published in Official Gazette no. 747 of October 26, 2003.

<sup>57</sup> Complaints against the official finding report of the contravention and the application of sanction may be appealed within 15 days after being handed or communicated. Complaints shall be resolved by the court in whose jurisdiction the offense was committed. The report uncontested within the term and the irrevocable court decision resolving the complaint shall be enforceable.

<sup>58</sup> Mircea Ursuța, *Contravention proceedings*, second edition, (Bucharest, Universul Juridic Publishing House, 2009), p.175.



In the field of environmental protection, the application of penalties for contravention pursues the achievement of the following purposes<sup>59</sup>:

- compelling the pollutant agent to precisely respect the law, in other words, to promote technologies and techniques that would protect the environment, preventing pollution or reducing its consequences as much as possible;

- usually, the amounts paid as a fine enter into separate special funds for financing anti-pollution investments, supporting research, providing incentives to entrepreneurs who invest in this field and for ecological reconstruction etc.;

- the fine for pollution also fulfills the role of factor of economic balance between pollutants and those that do not pollute the environment. In this way, it is intended that pollutants do not obtain, following the avoidance of investment in order to prevent or reduce pollution, higher profits than units complying with the social requirements.

#### ***Persons competent to apply penalties for contravention***

The framework law in contravention matter, G.O. no. 2 / 2001 provides the application of the penalty, by the inspector.

In the field of environmental protection, G.E.O. 195/2005 establishes, in art. 97, the competent persons that can find and punish contraventions:

- commissioners and persons authorized under the National Environmental Guard and the “Danube Delta” Biosphere Reservation;

- public local authorities and their authorized personnel;

- the National Commission for Nuclear Activities Control, Ministry of National Defense and Ministry of Administration and Interior, by authorized personnel, in their fields, in accordance with powers established by law.

Paragraph 2 of the same piece of legislation provides that, finding contraventions and applying penalties is performed also by the personnel of management structures and custodians of natural protected areas, only within the protected area managed.

Applying the penalty for contravention, by the competent body, requires an accurate appreciation of the social danger of the act, in order to achieve a correct individualization of the penalty, taking into account the causes that exclude or remove the character of the contravention or the perpetrator’s liability for contravention<sup>60</sup>.

#### **Conclusions**

In this study we reached the following conclusions:

- the liability for contravention completes the forms of classic legal liability applicable in environmental law;

- this form of liability is predominantly penalizing, intervening when a subject of law does not comply with a conduct established by a rule of public law;

- liability for contravention in environmental law represents that form of legal liability which consists of the application of sanctions to persons guilty of violating environmental laws which provide and sanction offenses committed in connection with the protection and development of the environment;

- although the liability for contravention is not a specific liability of environmental law, it has an important economic role and it represents a serious means of prevention;

- penalties for contraventions are most often applied in cases of non-compliance with rules of environmental protection

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<sup>59</sup> Daniela Marinescu, *Treaty of environmental law*, fourth edition, (Bucharest, Universul Juridic Publishing House, 2010), p.655.

<sup>60</sup> Alexandru Ticlea, *Regulation for contraventions*, sixth edition, (Bucharest, Universul Juridic Publishing House, 2008), p.47.

Therefore we believe that the Law for environmental protection and special laws concerning environmental protection should be modified for the purpose of introducing some situations regulating the relapse, instituting severe penalties, differentiated depending of the severity of the repeated offense, and also taking into account if the relapse into contravention was committed by a natural or legal person, in order to discourage the repetition of such illegal acts.

## References

- Serban-Alexandru, Stanescu, *Marine environmental protection against oil pollution. Prevention, damage control, liability*, (Bucharest, Hamangiu Publishing House, 2010).
- Antonie Iorgovan, *Treaty of administrative law*, fourth edition, volume II, (Bucharest, All Beck Publishing House, 2005).
- Verginia Vedinaș, *Administrative Law*, fourth Edition, (Bucharest, Universul Juridic Publishing House, 2009).
- Dana Apostol Tofan, *Administrative Law*, Vol II, (Bucharest: All Beck Publishing House, 2004).
- Mircea Ursuța, *Contravention proceedings*, second edition, (Bucharest, Universul Juridic Publishing House, 2009).
- Alexandru Ticlea, Constantin Rujoiu, Ion Nita Stan, Ioan Doru Tărăcilă, Marin Corbu, *Liability for contravention*, (Bucharest, Lex Atlas Publishing House, 1995).
- Alexandru Ticlea, *Regulation for contraventions*, sixth edition, (Bucharest, Universul Juridic Publishing House, 2008).
- Ernest Lupan, *Law treaty for environmental protection*, (Bucharest, C.H. Beck Publishing House, 2009).
- Daniela Marinescu, *Treaty of environmental law*, fourth edition, (Bucharest, Universul Juridic Publishing House, 2010).
- Mihai Adrian Hotca, *The legal regime of contraventions. Comments and explanations*, fourth edition, (Bucharest, C.H. Beck Publishing House, 2009).
- Valentin-Stelian Badescu, *Environmental law. Environmental management systems*, (Bucharest, C.H. Beck Publishing House, 2011).
- Ovidiu Podaru, Radu Chirita, *Government Ordinance no. 2 / 2001 on the legal regime of contraventions. Commented and annotated*, (Cluj-Napoca, Sfera Juridică Publishing House, 2006).
- Mircea Preda, *Administrative law. General Part*, third edition, (Bucharest, Lumina Lex Publishing House, 2004).
- Corneliu-Liviu Popescu, "Relapse into contravention", Law 3(1997).
- Mircea Dutu, *Treaty of environmental law*, third edition, (Bucharest, C.H. Beck Publishing House, 2007).
- Alexandru Paul Coman, Nicoleta Moroșanu, *Contravention. The legal regime of contraventions G.O. no. 2 /2001. Legal practice 2008 - 2009*, (Moroșan Publishing House, 2010).