THE LEGAL LIABILITY FOR THE COMMISSION OF THE ACTS PROVIDED FOR IN ART. 2703 PARA. (21) AND PARA. (31) THESIS I OF LAW NO. 31/1990 ON COMPANIES, AS REPUBLISHED, WITH SUBSEQUENT AMENDMENTS AND ADDITIONS

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Abstract

This study aims to analyze the provisions mentioned in its title from the perspective of their correlations with other provisions of the same legislative act, highlighting aspects that reveal the unclear, incomplete, inconsistent or even inapplicable nature of certain regulations regarding the active subject of the examined contraventions, namely their objective aspect.

At the same time, the author of this study examines how the provisions of para. (3^1) thesis I of art. 270^3 of Law no. 31/1990, as republished, with subsequent amendments and additions, correlate with the provisions of para. (2^1) of the same article and the implications of this correlation.

After analyzing these aspects, including by reference to the relevant doctrine in the subject matter under examination and the author's formulation of critical observations regarding the flawed manner in which several legal norms were drafted, the author's conclusions and corresponding proposals de lege ferenda are presented at the end of this study.

Keywords: *liability, company, contravention, dissolution, de lege ferenda proposals*.

1. Introduction

The provisions of para. (21) and para. (31) of art. 2703 of Law no. 31/1990 on companies, as republished[1], with subsequent amendments and additions -introduced by Law no. 265/2022 on the Trade Register and amending and supplementing other legislative acts affecting registration in the Trade Register[2], a legislative act that also amended the provisions of para. (3) of the same article - provide for new unlawful acts concerning joint-stock companies, for which distinct forms of legal liability are regulated, thereby seeking to establish greater discipline and rigor regarding the fulfillment of certain legal obligations pertaining to specific registers of such companies.

2. Aspects regarding the legal liability for committing the acts provided for in art. 2703 para. (21) of Law no. 31/1990, as republished, with subsequent amendments and additions

According to this provision, a violation of the provisions of art. 177 para. (1) point a) and art. 178 of Law no. 31/1990, as republished, with subsequent amendments and additions, constitutes a contravention and is punishable by a fine ranging from 5,000 lei to 15,000 lei.

Pursuant to the provisions of art. 177 para. (1) point. a) of the same law, in addition to the records required by law, joint-stock companies must maintain a register of shareholders that shows, as applicable, the first and last names, personal identification number, name, domicile, or registered office of the shareholders, as well as the payments made toward the shares, with the record of shares traded on a regulated market or alternative trading system being maintained in accordance with the specific legislation governing the capital market.

Art. 178 of Law no. 31/1990, as republished, with subsequent amendments and additions, provides as follows:

"(1) Directors, members of the board of directors, or, as the case may be, the entities responsible for maintaining the shareholder register in accordance with legal provisions, are required to make information regarding the company's shareholder structure available to shareholders and any other requesters and, upon request, to issue certificates regarding such information at the requesters' expense.

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[1] In *The Official Gazette of Romania*, Part. I, no. 1066/17.11.2004.

[2] Published in *The Official Gazette of Romania*, Part I, no. 750/26.07.2022.

(2) They are also required to make available to shareholders and bondholders, under the same conditions, the registers referred to in art. 177 para. (1) points b) and f).”

Although the use of the word “and” between “art. 177 para. (1) point a)” and “art. 178” in the text of art. 270^3 para. (2) and (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, might suggest that the provision in question applies only when both the provisions of art. 177 para. (1) point a) and those of art. 178 of the same law are violated, in reality, the provision in question provides a contravention with alternative elements, the legislature combining within the same provision two distinct contraventions[3], the first variant corresponding to a violation of the provisions of art. 177 para. (1) point a) of the same law, and the second normative variant corresponding to a violation of the provisions of art. 178 of the same law, such that, in the event of a violation of both the provisions of art. 177 para. (1) point a) and the provisions of art. 178 of the same law, a concurrence of contraventions may occur.

Regarding to the subject matter of the contravention provided for in art. 270^3 para. (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, in its original version, it is noted that it is defined as follows:

- either in the joint-stock company[4] to which the relevant shareholders’ register refers, since, pursuant to the provisions of para. (4) of the same article, the provisions of Government Ordinance no. 2/2001 on the legal regime governing contraventions[5], approved with amendments and additions by Law no. 180/2002[6], as subsequently amended and supplemented, and, pursuant to the provisions of art. 3 para. (2) of the aforementioned ordinance, a legal entity is liable for contraventions in the cases and under the conditions provided for by the normative acts providing and sanctioning such contraventions, or, if the law provides *expressis verbis* that the obligation to maintain the register of shareholders rests with it, with the exception of the case provided for in art. 177 para. (1) point a) thesis II of Law no. 31/1990, as republished, with subsequent amendments and additions, the joint-stock company to which that register refers[7], the violation of this obligation makes the joint-stock company that violated it the active subject of the contravention in question

- either with the central securities depository[8], in accordance with the provisions of art. 177 para. (1) point a) thesis II of Law no. 31/1990, as republished, with subsequent amendments and additions, when it comes to the record-keeping of shares traded on a regulated market/alternative trading system[9], considering Law no. 24/2017 on issuers of financial instruments and market operations, as republished[10], with subsequent amendments and additions, and Law no. 126/2018 on financial instrument markets[11], with subsequent amendments and additions.

In the specialized literature[12], it has been stated that the active subject of the first normative version of the contravention provided for in art. 270^3 para. (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, may be, among others, the entity that maintains records of its shareholders. In our opinion, since the obligation for an authorized independent registry company to maintain a company’s shareholder register is provided for in article 180 para. (3) of Law no. 31/1990, as republished, with subsequent amendments and additions, and not within the provisions of art. 177 para. (1) point a) of the same law - the violation of which constitutes the contravention provided for in art. 270^3 para. (2^1) of the same law, in its first normative version -, an extension of the application of the latter provisions violates the principle of legality in

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[3] See F. Streteanu, D. Nițu, Criminal law. The general part, vol. I, university course, Universul Juridic Publishing House, Bucharest, 2014, p. 262-264.

[4] In legal doctrine (St. D. Cărpenaru, Treatise on Romanian commercial law, 5th ed., Universul Juridic Publishing House, Bucharest, 2016, p. 313), a joint-stock company has been defined as “a company formed through the association of several persons, who contribute to the formation of the share capital through specific ownership interests represented by securities, called shares, for the purpose of conducting a commercial activity (production, trade, or provision of services), with the aim of sharing profits, and who are liable for the company’s obligations only to the extent of their contributions.”

[5] Published in The Official Gazette of Romania, Part I, no. 410/25.07.2001.

[6] Published in The Official Gazette of Romania, Part I, no. 268/22.04.2002.

[7] See Gh. Piperea, in Gh. Piperea, S. David, Companies Law. Commentary on articles, 6th edition, revised and expanded, C.H. Beck Publishers, Bucharest, 2023, p. 1021; T. Prescure, in I. Schiau, T. Prescure, Companies Law no. 31/1990. Analysis and commentary on articles, 3rd edition, revised, expanded and updated, Hamangiu Publishing, Bucharest, 2024, p. 523 and 981;

[8] It is a key institution in Romania’s capital market, organized as a joint-stock company and a member of the Bucharest Stock Exchange (BVB), whose primary role is to maintain records of ownership of shares and other financial instruments.

[9] See S. Bodu, Commentary on Companies Law, Rosetti International Publishing, Bucharest, 2023, p. 1012; T. Prescure, op. cit., p. 981.

[10] In The Official Gazette of Romania, Part I, no. 772/10.08.2021.

[11] Published in The Official Gazette of Romania, Part I, no. 521/26.06.2018 and corrected in The Official Gazette of Romania, Part I, no. 675/2.08.2018.

[12] Gh. Piperea, op. cit., p. 1021; T. Prescure, op. cit., p. 981.

the providing for of contraventions, which results from the provisions of art. 1 thesis II of Government Ordinance no. 2/2001, with subsequent amendments and additions, as the law does not provide that such an act may also be committed by another legal entity[13].

In the event of the commission of the contravention provided for in art. 270^3, para. (2^1) of Law no. 31/1990, as republished, with subsequent amendments and supplements, in its second normative version, the active subject is, when any of the obligations provided for in the paragraphs of art. 278 of the same law are violated, qualified, consisting of the natural person acting as the sole administrator of the joint-stock company in question or, as the case may be, any natural person who is a member of the board of directors of that company[14], the natural person acting as its sole general manager[15], any natural person who is a member of its executive board, or the entity which, in accordance with legal provisions, maintains the shareholder register, and, in the event of a breach of the obligation to maintain the register of bonds issued in dematerialized form and traded on a regulated market or through an alternative trading system, only the central depository[16].

Regarding to the objective element of the contravention provided for in art. 270^3 para. (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, in its original version, we consider that the act constitutes a contravention not only when the party obligated to maintain the shareholders' register[17] fails to maintain it, either manually or in a computerized system[18], in accordance with the provisions of art. 179 of the same law, which no longer exists, but also - even if the legislature does not state it *in terminis* - when the party subject to that obligation fails to regularly maintain the register in question, since the holder is obligated to record in that register both the data regarding the shareholders of the company in question and the payments made toward the shares, and this obligation includes updating the entries provided for in art. 177 para. (1) point. a) of the same law, a fact that follows from the provisions of art. 73 para. (1) point c) of the same law, according to which the directors are jointly and severally liable to the company for the existence of the registers required by law and their proper maintenance.

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[13] See I. Corbeanu, Administrative law, Lumina Lex Publishing House, Bucharest, 2002, p. 199; D. Băjan, The contraventional liability, Tribuna Economică Publishing House, Bucharest, 2003, p. 138; M. A. Hotca, Contraventional law. The general part, Editas Publisihing House, Bucharest, 2003, p. 33–37; M. Preda, Administrative law. The general Part, 3rd ed., Lumina Lex Publishing House, Bucharest, 2004, p. 291; F. Stanca, N. Gongea, The contravention - between theory and judicial practice, The Ministry of Administration and Interior Publishing House, Bucharest, 2005, p. 69; E. Albu (coord.), C. Banu, T. Popescu, B. Georgescu, Administrative Law, Part II, Romania of Tomorrow Foundation Publishing House, Bucharest, 2008, p. 187; C. Drăghici, A. Iacob, C. V. Drăghici, Contraventional law, Sitech Publishing, Craiova, 2008, p. 17; C. Manda, Administrative Law. Elementary treatise, 5th edition, revised and expanded, Universul Juridic Publishing House, Bucharest, 2008, p. 469 and 470; Al. Țiclea, Regulation of contraventions, 6th edition, Universul Juridic Publishing House, Bucharest, 2008, p. 12; M. Ursuța, The contraventional procedure, 3rd edition, revised and expanded, Universul Juridic Publishing House, Bucharest, 2010, p. 83; A.-G. Dinescu, Legislation on contraventions. Commentaries, doctrine and case law, Hamangiu Publishing House, Bucharest, 2016, p. 16 and 17; F. Maciu, The legal regime of contraventions, Romania of Tomorrow Foundation Publishing House, Bucharest, 2019, p. 36; D. Apostol Tofan, Administrative law, Vol. II, 5th ed., C.H. Beck, Bucharest, 2020, p. 320; E. L. Cătană, Administrative law, 2nd edition, revised and expanded, C.H. Beck Publishing House, Bucharest, 2021, p. 518 and 519; G. Manu, Administrative law. University course, Universul Juridic Publishing House, Bucharest, 2021, p. 286 and 287; D. C. Mâță, Administrative law, Vol. II, 3rd edition, revised and expanded, Universul Juridic Publishing House, Bucharest, 2021, p. 294; E. E. Ștefan, Administrative law, Part II, University Course, 4th edition, revised and updated, Ed. Universul Juridic, Bucharest, 2022, pp. 198–200; V. Vedinaș, Administrative law. Doctrine, practice, case law, 14th edition, revised and expanded, Universul Juridic Publishing House, Bucharest, 2023, p. 538; O. Podaru, A.-C. Loghin, Contraventional law. University course, Hamangiu Publishing House, Bucharest, 2024, p. 39; C.-C. Ulariu, The procedure for establishing the contraventional liability. Evolution, characteristics, perspectives, C.H. Beck Publishing House, Bucharest, 2025, p. 165-171.

[14] Pursuant to the provisions of art. 137 para. (1) thesis II of Law no. 31/1990, as republished, with subsequent amendments and additions, when a joint-stock company has more than one director, they shall constitute a board of directors.

[15] Pursuant to the provisions of art. 1531, para. (2)-(4) thesis I of Law no. 31/1990, as republished, with subsequent amendments and supplements, the management board, which consists of a single managing director (sole general director) or several directors, the number of whom is always odd, exercises its powers under the supervision of the supervisory board.

According to the provisions of art. 15313 para. (1) of the same law, the directors of a joint-stock company in the unitary system, or the members of the management board in the dualistic system, are natural persons.

[16] In the sense - which we believe to be erroneous, given the clarity of the provision in question that, in the event of committing the contraventions provided for in art. 2703 para. (21) of Law no. 31/1990, as republished, with subsequent amendments and supplements, in its second normative version, the company in question may be the active subject thereof; see S. Bodu, *op. cit.*, p. 1381; T. Prescure, *op. cit.*, p. 981.

[17] The register of shareholders serves as a means of proof and ensures enforceability against third parties, and its entries regarding shares are constitutive of the right of ownership over them, in accordance with the provisions of art. 98 para. (1) theses I and II of Law no. 31/1990, as republished, with subsequent amendments and additions. See S. Bodu, *op. cit.*, p. 1011; S. David, *op. cit.*, p. 617 and 618; T. Prescure, *op. cit.*, p. 523; Decision no. 187 of February 1, 2022, rendered by the High Court of Cassation and Justice - Second Civil Section, in S. Bodu, *Annotated Companies Law*, 3rd ed., Rosetti International, Bucharest, 2023, p. 575.

[18] Although the law does not expressly specify where the register in question must be kept, we believe that it should be kept at the company's registered office. See S. Bodu, *op. cit.*, p. 1016; S. David, *op. cit.*, p. 619.

Regarding to the objective element of the contravention provided for in art. 270^3 para (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, in its second version, regarding applicants who are not shareholders of the company to which requests are addressed to provide them with information regarding the shareholding structure of the company in question and to issue to them, upon their request and at their expense, certificates regarding the data indicated in art. 177 para. (1) point a) thesis I of the same law, in legal doctrine, in one opinion[19], it was held that, in the absence of an express statutory provision, they are not required to prove their interest in obtaining the subject matter of the requests in question, and cannot be refused if they fail to provide such proof, while, in another opinion[20], it was held that they must prove a legitimate interest. In our opinion, at present, the applicability of the provisions of art. 178 para (1) of Law no. 31/1990, as republished, with subsequent amendments and additions, is subject to the requirement to apply Regulation no. 679/ 2016 of the European Parliament and of the Council of the European Union on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation)[21], but one of the conditions for the lawfulness of the processing of such data, under this Regulation, is the existence of a legitimate interest - public or private -pursued by a private third party - a natural or legal person - for the fulfillment of which the processing in question is necessary, unless the interests or fundamental rights and freedoms of the data subject, which require the protection of personal data, prevail. In this scenario, the refusal to comply with such requests by the parties subject to the obligations set forth in art. 178 para. (1) of Law no. 31/1990, as republished, with subsequent amendments and additions, does not constitute a breach of those obligations, as it is permitted by law; thus, there can be no question of the commission of the contravention provided for in art. 270^3 para. (2^1) of the same law, in its second normative version.

The wording of the provisions of art. 178 of Law no. 31/1990, as republished, with subsequent amendments and additions, indicates that making available to the shareholders of a company or to any other requesters, by the company in question, of information regarding its shareholder structure, refers to the disclosure of such information without the relevant applicants having to request a certificate regarding the respective data, nor by making the shareholder register available to them.

In the absence of specific provisions in the regulations, requests made by the shareholders of a company and by any other applicants, addressed to that company, for the purpose of obtaining information regarding the shareholding structure of the company in question, or for the issuance of certificates regarding such data, may be made orally or in writing; however, in order to prove that the information in question was requested and to demonstrate any refusal by the company in question, we consider that such requests may only be made in writing and must be submitted to the registry office of the company in question or sent to it via email/fax/mail/courier service, with confirmation of receipt.

Regarding to the obligation establised in art. 178 para. (2) of Law no. 31/1990, as republished, with subsequent amendments and additions[22], a literal interpretation of these statutory provisions, and at the same time in accordance with the provisions of para. (1) of the same article, it follows that the obligation in question must be fulfilled only at the request of the shareholders of the company in question, or of the holders of bonds issued by it and for a fee.

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[19] S. Bodu, *Commentary on Companies Law*, Rosetti International, Bucharest, 2023, p. 1015.

[20] S. David, *op. cit.*, p. 620; T. Prescure, *op. cit.*, p. 524.

[21] Available at https://eur-lex.europa.eu/eli/reg/2016/679/oj?locale=ro, accessed on 25.03.2026. Art. 6 para. (1) of the Regulation states: "Processing is lawful only if and to the extent that at least one of the following conditions applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is a party or to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, unless such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child."

[22] Regarding the argument that this provision is unclear, see S. Bodu, Commentary on Companies Law, Rosetti International, Bucharest, 2023, p. 1016.

In the specialized literature[23], noting that the legislature failed to specify a time limit within which the obligations provided for in art. 178 of Law no. 31/1990, as republished, with subsequent amendments and additions, must be fulfilled, it has been asserted that it may be presumed that these obligations must be fulfilled either immediately or within the shortest possible time. In our opinion, although it is common sense that the obligations in question should be fulfilled immediately after the aforementioned request is made or, if this is not possible, as soon as possible, the principle of legality in the determination of contraventions precludes such an application of the provisions of art. 178 of Law no. 31/1990, as republished, as subsequently amended and supplemented, as those provisions do not meet the requirement of foreseeability, given that their addressees lack an objective temporal benchmark for compliance, in the form of a precise deadline, with an express indication of the moment from which it begins to run and whose expiration would lead to their contraventional liability in the event that they fail to fulfill their obligations within the time limit prescribed by law. Since there is no statutory deadline for fulfilling the obligations in question, failure to comply with them - regardless of how long it lasts - cannot, in fact, constitute a contravention, even though the legislature has classified such conduct as such, which renders the provisions of art 270^3 para. (2^1) thesis II of Law no. 31/1990, as republished, with subsequent amendments and additions, inapplicable as of the date of their entry into force. This observation holds true even if the parties subject to the obligations in question promptly issue an explicit refusal, since, in the absence of an express provision in the relevant regulation stating that the act constitutes a contravention if the obligations are not fulfilled within a specific time limit, a period within which this refusal may be reconsidered, such an act cannot be considered a contravention, as it violates the principle of legality in the classification of contravention, a principle incompatible with the presumption of an essential requirement of the material element of the objective aspect, to which the moment of commission of the respective contravention is linked[24] - an instantaneous one -, an important aspect from the perspective of determining the moment when the statute of limitations for the imposition of the administrative fine begins to run[25].

Finally, it should be noted that, since Law no. 31/1990, as republished, with subsequent amendments and additions, does not preclude the imposition of the contraventional sanction of a warning, this sanction, in accordance with the provisions of art. 7 para. (3) of Government Ordinance no. 2/2001, with subsequent amendments and additions, may, in principle, be applied in the case of the commission of the contravention provided for in art. 270^3 para. (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, in both of its normative versions; however, given that the provisions of the second thesis of para. (2^1) of the same article are inapplicable as of the date of their entry into force. in reality, the respective sanction may be applied only in the case of committing the first normative variant of the contravention in question.

3. Aspects regarding the legal liability for committing the acts provided for in art. 270^3 para. (3^1) thesis I of Law no. 31/1990, as republished, with subsequent amendments and additions

According to this provision, if, within 30 days of the date on which the contraventionale sanction provided for in para. (2^1) of art. 270^3 of Law no. 31/1990, as republished, with subsequent amendments and additions, the representative of the legal entity has not fulfilled the obligations provided in art. 177 para. (1) point a) and in art. 178 of the same legislative act, following the verification carried out by the control bodies of the Ministry of Finance - The National Agency for Fiscal Administration and its territorial units, the court/specialized court may order the dissolution of the company at the request of the Ministry of Finance - The National Agency for Fiscal Administration, with the provisions of art. 237 para. (3)-(13) of the same law applying accordingly.

Just as in the case of the provisions of para. (2^1) of art. 270^3 of Law no. 31/1990, as republished, with subsequent amendments and additions, so too in the case of the provisions of para (3^1) thesis I of the same article, the word "and" is inappropriately placed between "art. 177 para. (1) point a)" and "art. 178," which, through a literal interpretation of the provisions of art. 270^3 para. (3^1) thesis I of the same legislative act, would lead to the conclusion that, for the application of these latter provisions, it is necessary to violate both the

[23] T. Prescure, op. cit., p. 981.

[24] See G. Pop, G. Șimu, G. Petre, M. Roman, I. Dobrescu, Gh. Frânculescu, G. Becheanu, Determination and sanctioning of contraventions. Theory and judicial practice, All Beck Publishing, Bucharest, 2004, p. 11; M. A. Hotca, The legal regime of contraventions. Commentaries and explanations, 5th ed., C.H. Beck Publishing, Bucharest, 2012, p. 278; A.-G. Dinescu, op. cit., p. 112, 117, 118, and 120; D. Apostol Tofan, op. cit., p. 348; O. Podaru, A.-C. Loghin, op. cit., p. 91 and 92.

[25] Pursuant to the provisions of art. 13 para. (1) of Government Ordinance no. 2/2001, with subsequent amendments and additions, the right to impose an administrative fine expires six months after the date on which the offense was committed.

provisions of art. 177 para. (1) point a) as well as those of art. 178 of the same law; however, in reality, for the application of those provisions, only the provisions of art. 177 para. (1) point a) of the same legislative act must be violated, given that the provisions of art. 270^3 para. (2^1) thesis II of Law no. 31/1990, as republished, with subsequent amendments and additions, are inapplicable as of the date of their entry into force.

Furthermore, it should be noted that, unlike the provisions of para. (2^1) thesis I of art. 270^3 of Law no. 31/1990, as republished, with subsequent amendments and additions, the provisions of para. (3^1) thesis I of the same article refer to the representative of the legal entity that has failed to fulfill the obligation specified in art. 177 para. (1) point a) of the same legislative act. Thus, there is a complete lack of consistency between these provisions, since the obligation in question falls on the joint-stock company to which the shareholder register or the central securities depository refers, and not to one or more of its representatives who are natural persons, even if, in practice, those obligations must be fulfilled by such a person or persons[26]**.** Under these circumstances, in order to apply the provisions of art. 270^3 para. (3^1) thesis I of Law no. 31/1990, as republished, with subsequent amendments and additions, the parties subject to the obligations provided for in art. 177 para. (1) point a) of the same law must be taken into account.

Continuing the comparison between the provisions of art. 270^3 para. (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, and the provisions of art. 270^3 para. (3^1) thesis I of the same legislative act, it should be noted, with regard to the legal classification of unlawful acts, that the first provision concerns contraventions, whereas the second provision concerns civil wrongs. Therefore, in the event of a single recurrence of noncompliance with the provisions of art. 177 para. (1) point a) of Law no. 31/1990, as republished, with subsequent amendments and additions, for 30 days from the date of imposition of the contraventional fine for the act in question, the same conduct - which occurs when the party subject to the obligation ceases to maintain the shareholders' register regularly and ends upon the voluntary cessation of the act in question or, if this has not occurred, at the time the contraventional fine is imposed for the act in question, as this constitutes a continuing contravention[27] - is placed, by the will of the legislature, within the sphere of civil wrongdoing [an aspect resulting from the legal nature of the sanction applicable in this scenario - the dissolution of the respective company - which indicates the addition, thus, of a case of company dissolution to those provided for in art. 237 para. (1) of the same law, given that it is not found in those cases[28], a situation unprecedented in relation to the legislature's conception - frequently reflected in Romania's current legislation - that, in the event of the repetition of a contravention after its sanctioning, it should be sanctioned either as a contravention or as a criminal offense.

Beyond these issues, the legislator's inconsistency is also evident when comparing the provisions of the second thesis of para. (3) of art. 270^3 of Law no. 31/1990, as republished, with subsequent amendments and additions - which states that the report on the finding of the contravention provided for in para. (2^1) of the same article shall record that failure to fulfill the obligations provided for in art. 177 para. (1) point a) and in art. 178 of the same law entails the dissolution of the company under the provisions of art. 237 of the same law - with the provisions of para. (3^1) of art. 270^3 of the same law, from which it follows that the imposition of the

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[26] Art. 1432 para. (1)-(4) thesis I of Law no. 31/1990, as republished, with subsequent amendments and additions, provides:

"(1) The board of directors represents the company in dealings with third parties and in legal proceedings. Unless otherwise provided in the articles of incorporation, the board of directors represents the company through its chairman.

(2) By the articles of incorporation, the chairman and one or more directors may be authorized to represent the company, acting jointly or separately. Such a provision is enforceable against third parties.

(3) By unanimous agreement, directors who represent the company only by acting jointly may authorize one of them to carry out certain transactions or types of transactions.

(4) If the board of directors delegates the powers to manage the company to the directors in accordance with Article 143, the power to represent the company rests with the general manager."

Art. 1533 para. (1)-(3) of the same law states:

"(1) The management board represents the company in dealings with third parties and in court.

(2) Unless otherwise provided in the articles of incorporation, the members of the management board represent the company only by acting jointly.

(3) Where the members of the management board represent the company only by acting jointly, they may, by unanimous agreement, authorize one of them to conclude certain transactions or types of transactions."

[27] Pursuant to the provisions of art. 13 para. (2) of Government Ordinance no. 2/2001, with subsequent amendments and additions, an administrative offense is considered a continuing offense where the breach of the legal obligation persists over time, and the statute of limitations for imposing the contraventional fine begins to run from the date on which the commission of the offense ceases. See F. Stanca, N. Gongea, op. cit., p. 161; Al. Țiclea, op. cit., p. 21; M. A. Hotca, Contraventional law. The general part, Editas Publishing House, Bucharest, 2003, p. 180 and 181; D. Apostol Tofan, op. cit., p. 347; O. Podaru, A.-C. Loghin, op. cit., p. 93.

[28] See S. Bodu, Commentary on Companies Law, Rosetti International, Bucharest, 2023, p. 1380; T. Prescure, op. cit., p. 982.

dissolution sanction by the competent court is discretionary. Given that the imposition of the sanction of dissolution of a joint-stock company, in accordance with the provisions of art. 237 para. (3)-(13) of Law no. 31/1990, as republished, with subsequent amendments and additions, must be applied as a *last resort*, as the priority is to safeguard the company in question, in the event of a single recurrence of the conduct provided for in art. 270^3 para. (2^1) thesis I of the same legislative act for a period of 30 days from the date of imposition of the contraventional fine for the act in question, the court may admit or dismiss the action as unfounded or as having become moot[29], the request to impose the relevant sanction, submitted by the Ministry of Finance - The National Agency for Fiscal Administration; such a request must be submitted when, following an investigation conducted by the competent authorities, it is determined that the conduct in question has been repeated during the aforementioned time period[30].

Considering the literal interpretation of the provisions of the thesis I of para. (3) of art. 270^3 of Law no. 31/1990, as republished, with subsequent amendments and additions, if the administrative violation report drawn up in accordance with these regulatory provisions does not impose a fine, but rather a warning, it can be concluded that the repetition of the act in question within 30 days from the date of application of this sanction will not lead, upon the expiration of this period, to the imposition, pursuant to the provisions of para. (3^1) of the same article, as the act in question constitutes an contravention pursuant to the provisions of para. (2^1) of the same article.

4. Conclusions and de lege ferenda proposals

The analysis conducted in this study reveals the legislature's intent, as evidenced by the inclusion in art. 270^3 of Law no. 31/1990, as republished, with subsequent amendments and additions, of para. (2^1) and para. (3^1), as well as by amending the provisions of para. (3) of the same article, to provide adequate protection, through the means of administrative law, to shareholders, bondholders, and other persons whose rights or legitimate interests are affected by the commission of acts assessed, *in abstracto*, as being more serious than the contraventions provided for in the same legislative act even prior to the introduction of the respective provisions therein, but less serious than criminal offenses, relating to the violation of legal obligations concerning certain registers of joint-stock companies.

It should also be noted that the conduct described in art. 270^3 para. (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, for a period of 30 days from the date of imposition of the contraventional fine for the respective act, within the scope of civil tort. This choice by the legislature is, in our view, welcome because, in addition to the fact that the regulation in question has -through the extremely severe sanction it includes - a deterrent effect considerably greater than that of the contravention, which provides for a fine - it also makes it possible to safeguard the joint-stock company in question during the judicial proceedings initiated by the filing of the dissolution petition submitted by the Ministry of Finance - The National Agency for Fiscal Administration - the institution of company dissolution is treated uniformly, with the respective sanction, if applicable, being imposed by a panel of judges specialized in disputes with professionals, as in the cases provided for in art. 237 para. (1) of the same legislative act.

However, the manner in which the legislature's aforementioned concern was reflected in the drafting of the legal provisions analyzed in this study reveals significant shortcomings regarding their clarity and predictability, as demonstrated in the body of the study; an improvement in the quality of these rules is necessary so that they do not encounter difficulties in implementation, do not encourage various abusive practices, or, as the case may be, remain unenforceable. In this regard, we will formulate some proposals *de lege ferenda* in the following sections.

Thus, to ensure greater legal precision, and considering the observations presented in this regard in the present study, we propose replacing the wording "the provisions of art. 177 para. (1) point a) and art. 178" in the text of para. (2^1) of art. 270^3 of Law no. 31/1990, as republished, with subsequent amendments and additions, with the wording "the provisions of art. 177 para. (1) point a) or of art. 178."

In the event of a violation of the first statutory provision set forth in art. 270^3 para. (2^1) of Law no. 31/1990, as republished, with subsequent amendments and additions, we consider that if the joint-stock company to

[29] See T. Prescure, op. cit., p. 982.

[30] See, in the same vein, T. Prescure, op. cit., p. 982; to the contrary, S. Bodu, Commentary on Companies Law, Rosetti International, Bucharest, 2023, p. 1380.

which the shareholders' register pertains has contracted, pursuant to the provisions of art. 180 para. (1) of the same legislative act, with an independent private registry company, the maintenance of said registry in a computerized system and the performance of registrations and other operations related to the registry in question, the active subject should be the entity that maintains the shareholder records of the company to which said registry refers. *De lege lata*, a breach by such an entity of the obligation provided for in art. 177 para. (1) point a) thesis I of Law no. 31/1990, as republished, with subsequent amendments and additions, does not give rise to its contraventional liability in the absence of an express statutory provision to that effect, or, since this situation is comparable to that in which the company referred to in the aforementioned register or, as the case may be, the central depository is administratively liable for the breach of the aforementioned obligation, we propose supplementing the introductory part of the provisions of art. 177 para. (1) of the same legislative act to the effect that the obligation in question falls, as the case may be, on the entity in question. Furthermore, to ensure greater clarity in the statutory text, we propose that these latter provisions also include an express reference to the fact that the obligation in question falls, as the case may be, on the legal custodian, who currently acts as the active party in the event of the commission of the contravention provided for in art. 270^3 para. (2^1) thesis I of Law no. 31/1990, as republished, with subsequent amendments and additions, resulting from the correlation of these provisions with the provisions of art. 177 para. (1) point a) thesis II of the same legislative act, the same argument being valid, by analogy, in the case of committing the contravention provided for in art. 270^3 para. (2^1) thesis II of the same law, by reference to the provisions of art. 178 para. (2) of the same law, in conjunction with the provisions of art. 177 para. (1) point f) thesis II of the same legislative act.

Regarding to the objective element of the contravention provided for in art. 270^3 para. (2^1) thesis I of Law no. 31/1990, as republished, with subsequent amendments and additions, for greater accuracy of the statutory text, we propose that art. 177 para. (1) point a) of the same law expressly provide for the obligation to keep the register of shareholders permanently updated.

Regarding to the objective element of the contravention provided for in art. 270^3 para. (2^1) thesis II of Law no. 31/1990, as republished, with subsequent amendments and additions, we consider that, in order to align the provisions of art. 178 para. (1) of the same legislative act with the provisions of art. 6 of Regulation no. 679/2016 of the European Parliament and of the Council of the European Union, it is necessary to introduce the condition that applicants, whether natural persons or legal entities under private law, who are not shareholders of the company to which they address requests to be provided with information regarding the shareholding structure of that company and to be issued, upon their request and at their expense, certificates regarding such data, must demonstrate a legitimate interest where the data subjects to whom their requests relate have not given their consent to the processing of their personal data for one or more specific purposes.

Since, as previously noted, the absence of a deadline by which the obligations provided for in art. 178 of Law no. 31/1990, as republished, with subsequent amendments and additions, must be fulfilled renders inapplicable the provisions of art. 270^3 para. (2^1) thesis II of the same legislative act from the date of their entry into force , as the requirement of predictability of the respective provision is thus not met, we consider it to be of the utmost necessity to enact legislation specifying such a deadline, as well as the point in time from which it is calculated.

Given that the phrase "representative of the legal entity" contained in the provisions of para. (3^1) of art. 270^3 of Law no. 31/1990, as republished, with amendments and additions, is not consistent with the provisions of art. 177, para. (1) point a) and art. 178 of the same legislative act regarding the parties subject to the obligations established by the latter, we propose replacing the aforementioned phrase with the phrase "the party subject to the obligation provided for in art. 177 or the obligations provided for in art. 178."

Although the regulations examined in this study are, to a significant extent, flawed, there is a notable growing interest on the part of the legislature in establishing greater discipline regarding the fulfillment of legal obligations pertaining to certain registers of joint-stock companies, by classifying certain unlawful conduct as contraventions, and by placing the same conduct, repeated even once, for a certain period following the date of their sanctioning with a contraventional fine, within the scope of civil liability, which demonstrates the legislature's commitment to ensuring appropriate means of enforcing compliance with the law regarding those obligations, while also taking into account the principle of safeguarding the companies in question.

References

- Sebastian Bodu, *Annotated Companies Law*, 3rd edition, Rosetti International Publishing House, Bucharest, 2023;
- Sebastian Bodu, *Commentary on Companies Law*, Rosetti International Publishing House, Bucharest, 2023;
- Stanciu D. Cărpenaru, *Treatise on Romanian commercial law*, 5th edition, Universul Juridic Publishing House, Bucharest, 2016;
- Gheorghe Piperea, Sorin David, *Companies Law. Commentary on articles*, 6th edition, revised and expanded, C.H. Beck Publishing House, Bucharest, 2023;
- Ioan Schiau, Titus Prescure, *Companies Law no. 31/1990. Analysis and commentary on articles*, 3rd edition, revised, expanded, and updated, Hamangiu Publishing House, Bucharest, 2024.
- Emanuel Albu (coord.), Cristina Banu, Traian Popescu, Bogdan Georgescu, *Administrative law*, Part II, *Romania of Tomorrow* Foundation Publishing House, Bucharest, 2008;
- Dana Apostol Tofan, *Administrative law*, Vol. II, 5th edition, C.H. Beck Publishing House, Bucharest, 2020;
- Doru Băjan, *The contraventional liability*, Tribuna Economică Publishing House, Bucharest, 2003;
- Emilia Lucia Cătană, *Administrative law*, 2nd edition, revised and expanded, C.H. Beck Publishing House, Bucharest, 2021;
- Ion Corbeanu, *Administrative law*, Lumina Lex Publishing House, Bucharest, 2002;
- Adrian-Gabriel Dinescu, *Contraventional law*. *Commentaries, doctrine and case law*, Hamangiu Publishing House, Bucharest, 2016;
- Constantin Drăghici, Adrian Iacob, Constantin Victor Drăghici, *Contraventional law*, Sitech Publishing House, Craiova, 2008;
- Mihai Adrian Hotca, *Contraventional law*. *The general part*, Editas Publishing House, Bucharest, 2003;
- Mihai Adrian Hotca, *The legal regime of contraventions*. *Commentaries and explanations*, 5th edition, C.H. Beck Publishing House, Bucharest, 2012;
- Florin Maciu, *The legal regime of contraventions*, *Romania of Tomorrow* Foundation Publishing House, Bucharest, 2019;
- Corneliu Manda, *Administrative law*. *Elementary treatise*, 5th edition, revised and expanded, Universul Juridic Publishing House, Bucharest, 2008;
- Gabriel Manu, *Administrative law*. *University course*, Universul Juridic Publishing House, Bucharest, 2021;
- Dan Constantin Mâță, *Administrative law*, vol. II, 3rd edition, revised and expanded, Universul Juridic Publishing House, Bucharest, 2021;
- Ovidiu Podaru, Andreea-Carla Loghin, *Contraventional law*. *University course*, Hamangiu Publishing House, Bucharest, 2024;
- Gavrilă Pop, Giorgel Șimu, George Petre, Mirel Roman, Iulian Dobrescu, Gheorghe Frânculescu, Gelu Becheanu, *Determination and sanctioning of contraventions*. *Theory and judicial practice*, All Beck Publishing House, Bucharest, 2004;
- Mircea Preda, *Administrative law*. *The general part*, 3rd edition, Lumina Lex Publishing House, Bucharest, 2004;
- Florea Stanca, Nicolae Gongea, *The contravention - between theory and judicial practice*, The Ministry of Administration and Interior Publishing House, Bucharest, 2005;
- Florin Streteanu, Daniel Nițu, *Criminal law*. *The general part*, Vol. I, university course, Universul Juridic Publishing House, Bucharest, 2014;
- Elena Emilia Ștefan, *Administrative law*, Part II, university course, 4th edition, revised and updated, Universul Juridic Publishing House, Bucharest, 2022;
- Alexandru Țiclea, *Regulation of contraventions*, 6th edition, Universul Juridic Publishing House, Bucharest, 2008;
- Constantin-Claudiu Ulariu, *The procedure for establishing the contraventional liability*. *Evolution, characteristics, perspectives*, C.H. Beck Publishing House, Bucharest, 2025;
- Mircea Ursuța, *The contraventional procedure*, 3rd edition, revised and expanded, Universul Juridic Publishing House, Bucharest, 2010;
- Verginia Vedinaș, *Administrative law*. *Doctrine, practice, case Law*, 14th edition, revised and expanded, Universul Juridic Publishing House, Bucharest, 2023.
- Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), available at https://eur-lex.europa.eu/eli/reg/2016/679/oj?locale=ro, accessed on 25.03.2026
- Law no. 31/1990 on companies, republished in *The Official Gazette of Romania*, Part I, no. 1066/17.11.2004, with subsequent amendments and additions;
- Government Ordinance no. 2/2001 on the legal regime of contraventions, published in *The Official Gazette of Romania*, Part I, no. 410/25.07/2001, with subsequent amendments and additions;

- Law no. 180/2002 approving Government Ordinance no. 2/2001 on the legal regime of contraventions, published in *The Official Gazette of Romania*, Part I, no. 268/22.04.2002;
- Law no. 24/2017 on issuers of financial instruments and market operations, republished in *The Official Gazette of Romania*, Part I, No. 772/10.08.2021, with subsequent amendments and additions;
- Law no. 126/2018 on financial instrument markets, published in *The Official Gazette of Romania*, Part I, no. 521/26.06.2018, and corrected in *The Official Gazette of Romania*, Part I, no. 675/02.082018, with subsequent amendments and additions;
- Law no. 265/2022 on the Trade Register and amending and supplementing other legislative acts affecting registration in the Trade Register, published in *The Official Gazette of Romania*, Part I, no. 750/26.07/2022.