

THE BURDEN OF PROOF IN CONTRAVENTION PROCEEDINGS – THE PRESUMPTION OF LEGALITY AND VALIDITY OF THE CONTRAVENTION REPORT VS. THE PRESUMPTION OF INNOCENCE

Ionuț TIRITEU *

Abstract

This paper examines the inherent tension within administrative offense proceedings between the statutory presumption of legality and validity attributed to official records (proces-verbal) and the fundamental presumption of innocence as guaranteed by Article 6 of the European Convention on Human Rights (ECHR).

In many jurisdictions, including Romania, the official report of a contravention is traditionally granted a rebuttable presumption of accuracy, shifting the burden of proof onto the petitioner. However, the European Court of Human Rights has consistently ruled that certain administrative sanctions possess a "criminal" character, thereby necessitating the full protection of fair trial rights.

The analysis focuses on the "fair balance" that courts must strike to ensure that the use of legal presumptions does not render the right to a defense illusory. By exploring recent jurisprudence, the study highlights the transition from an absolute administrative authority toward a more nuanced standard of proof, where the principle of in dubio pro reo must be reconciled with the necessity of efficient public enforcement.

By examining the criteria for 'reasonable doubt' in administrative litigation, the paper suggests that strengthening the evidentiary requirements for public authorities not only safeguards individual liberties but also enhances the overall transparency and accountability of the administrative act, ensuring that the punitive power of the state remains within the boundaries of the rule of law.

Keywords: forced intervention, incidental request, third parties, bringing to court, claimant.

1. Introduction

1.1. Context and Problem Statement

In contemporary legal practice and doctrine, the contravention report (procesul-verbal de constatare și sancționare a contravenției) serves a dual purpose: it is both a unilateral administrative act and a primary means of evidence. The prevailing view holds that such a report enjoys a rebuttable presumption of veracity (prezumție relativă de adevăr) regarding the facts and circumstances observed directly by the recording officer through their own senses.

However, this administrative presumption often finds itself in direct tension with the presumption of innocence, a cornerstone of the right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights (ECHR). While domestic law aims to ensure administrative efficiency, the European Court of Human Rights (ECtHR) requires that any legal presumption remains within reasonable limits, taking into account the stakes for the defendant and the preservation of defense rights.

1.2. Objectives and Scope of the Study

This paper aims to analyze the evidentiary weight of the contravention report in the Romanian legal system, particularly in light of the Civil Procedure Code.

A central point of this inquiry is the distinction between:

- Directly observed facts: Where the burden of proof is shifted to the petitioner to provide rebuttal evidence.
- Indirectly established facts: Based on technical means (e.g., speed cameras) or witness statements, where the burden of proof remains strictly with the issuing authority.

* PhD Candidate, Faculty of Law, „Nicolae Titulescu” University of Bucharest (e-mail: office@univnt.ro).

1.3. Thesis Statement

We argue that the contravention report must always be regarded as a means of evidence (înscriș), regardless of whether the officer directly perceived the offense. However, its probative value must be nuanced. This study contends that a passive stance by the petitioner should not be encouraged, yet the court's active role is paramount in ensuring that the "presumption of legality" does not de facto nullify the presumption of innocence in proceedings that often carry a "criminal" character under the autonomous criteria of the ECtHR.

2. Content

In judicial practice and legal doctrine, the most widespread opinion is that the record of the offense and the application of the sanction¹ (hereinafter referred to as the contravention report) enjoys a rebuttable presumption of truth² regarding the mentions concerning the circumstances perceived by the recording officer through their own senses³.

¹ Regarding the legal nature of the contravention report, we note that in the recitals of Decision no. 6/2015 of the Înalta Curte de Casație și Justiție – the Panel competent to decide on appeals in the interest of the law – it was held that the contravention report is an individual unilateral administrative act, issued under public authority and intended to produce legal effects. The majority of legal doctrine supports this solution provided by the Înalta Curte de Casație și Justiție. In this regard, see: O. Podaru, R. Chiriță, I. Păsculeț, A. Bachis, *Regimul juridic al contravențiilor*. O.G. nr. 2/2001 comentată, 5th Ed., Ed. Hamangiu, București, 2021, p. 191; A. Iorgovan, *Tratat de drept administrativ*, vol. II, 4th Ed., Ed. ALL Beck, București, 2005, p. 427; R. N. Petrescu, *Drept administrativ*, Ed. Hamangiu, București, 2009, p. 609; T. Drăganu, *Actele de drept administrativ*, Editura Științifică, București, 1959, p. 92.

It should be mentioned that specialized doctrine also includes the opinion that both the contravention report and other acts prepared in connection with the application or execution of contravention sanctions have the legal nature of acts of contravention procedure. In this regard, see M. Ursuța, *Noul regim contravențional în contextul intrării în vigoare a Noului Cod de procedură civilă și a Legii nr. 76/2012 pentru punerea în aplicare a Legii nr. 134/2010 privind Codul de procedură civilă*, published in *Revista Dreptul*, no. 3/2013, and M. Ursuța, *Procedura contravențională*, 3rd Ed., Ed. Universul Juridic, București, 2010, p. 208. The author further states that: "Regarding the contravention report, although it is considered an administrative act by the majority of the doctrine... this opinion is only found in the doctrine subsequent to Decree no. 184/1954. Prior to this normative act... the contravention report was regulated by criminal procedure, having the legal nature of an act specific to criminal proceedings."

The same author, in another work, notes: "The contravention report... actually presents significant peculiarities, being—before 1958—an act of criminal procedure... Rather, the contravention report has a dual role: as an 'act de acuzare' (charging act) and a 'mijloc de probă' (means of evidence) within the contravention procedure (...)." See M. Ursuța, *Contenciosul contravențional, între dreptul penal material, procedura civilă și procedura penală*, in *Revista Dreptul* no. 1/2024.

For a similar opinion, see T. Toma, *Drept administrativ*, Vol. I, Editura Vasiliana, Iași, 2006, p. 312: "For our part, we consider that the report is an act of contravention procedure of an administrative nature... it will undoubtedly take on the legal nature of an 'act procesual contravențional'." Also, through Decision no. 4/30.01.2017, the Î.C.C.J. (Panel for the clarification of legal matters) held (para. 61) that: "Contravention legislation regulates the legal nature of the report in the sense of an individual administrative act and an act of contravention procedure, but does not contain regulations regarding the probative value..."

Similarly, it has been shown in doctrine that "the act of establishing and sanctioning the contravention is the first procedural act prepared within the contravention process" – A. Iorgovan, *Tratat de drept administrativ*, Ed. All Beck, București, 2002, p. 296, apud C. Uliariu, *Procedura angajării răspunderii contravenționale*, Editura C.H. Beck, București, 2025, p. 445.

For a critique of these opinions, see O. Podaru et al., *Regimul juridic al contravențiilor*. O.G. nr. 2/2001 comentată, 4th Ed., Ed. Hamangiu, București, 2019, pp. 182-186.

Notably, Art. 97 para. (5) of O.U.G. no. 195/2005 regarding environmental protection mentions: "Actele de constatare a contravențiilor întocmite de agenții constatatori... sunt acte procedurale, potrivit reglementărilor legale..." – C. Uliariu, 2025, p. 238. Regarding the notion of "procedură contravențională", it has been shown in doctrine to represent a particular form of administrative litigation (contencios administrativ)... – D.C. Dragoș, *Procedura contenciosului administrativ*, Editura All Beck, București, 2002, p. 2.

² The 1865 Code of Criminal Procedure provided that most contravention reports constituted proof until a formal challenge of forgery (înscrierea în fals) regarding the factual situation... making defense practically impossible. As the procedure was absurd, practice and doctrine considered that the contents of the report could only serve as proof until rebuttal evidence (proba contrară) was provided, and the 1938 Code of Criminal Procedure enshrined this solution (I. Tanoviceanu, *Tratat de drept și de procedură penală*, 2nd Ed., vol. IV, Tipografia „Curierul Judiciar”, București, 1912, pp. 528-536). – M. Ursuța, I. Lazăr, *Drept administrativ – Curs Universitar*, Ed. Universul Juridic, București, 2025, p. 408. "The law grants credit to the reports of officers whom it empowers to observe through their own senses or their own means..." Decision no. 293 of 05.10.1882, in C. Hamangiu, *Procedura penală adnotată cu jurisprudență română (1868/1904)*, Ed. Librăriei Leon Alcaj, 1904, p. 136.

³ For further details and nuances, see M. Ursuța, *Dreptul contravențional și procedura judiciară în dreptul public. Actualitate și perspectivă*, Ed. Hamangiu, București, 2018, pp. 36-37; O. Podaru, A. C. Loghin, *Drept contravențional – Curs universitar*, Ed. Hamangiu, București, 2024, pp. 107-110. In specialized doctrine, it has been shown that when "the author of the contravention is caught at the very moment of committing it... we are in the presence of a 'contravenție flagrantă'" (T. Toma, 2006, pp. 309-310). "Actul de constatare are, în virtutea legii, forță probantă..." – I. Poenaru, *Regimul juridic al contravențiilor*. Ordonanța Guvernului nr. 2/2001, Editura Lumina Lex, București, 2002, p. 108.

A presumption⁴ is merely a means through which a factual matter is intended to be proven; Article 327 of the Code of Civil Procedure provides that a presumption is the consequence that the judge or the law deduces from a known fact in order to establish an unknown fact⁵.

Government Ordinance (G.O.) no. 2/2001 does not contain express provisions regarding the probative value of the contravention report. It is interesting to note, however, that the Code of Criminal Procedure confers express evidentiary value upon records drawn up by the criminal investigation body or the court; Article 198 para. (2) of the Code of Criminal Procedure stipulates that a record containing the personal findings of the criminal investigation bodies or the court constitutes a means of evidence.

This solution—namely, granting evidentiary value to a document containing the personal findings of a person invested with state authority—is, in fact, what also occurs in the case of contravention reports in civil proceedings.

Specifically, in contravention proceedings, evidentiary value is assigned to the document containing the personal findings of the person invested with state authority. In this case, the "rebuttable presumption" effectively implies that if the document was drawn up by the recording body, it recorded the truth. In other words, the evidence is represented by the factual situation, the means of evidence is the document (the contravention report), and the presumption is that the recording officer recorded the aspects perceived by them exactly as they occurred in reality.

Legal doctrine indicates that the report "has a dual legal nature in contravention proceedings: a charging act and a means of evidence." Furthermore, in situations where the deed is not perceived by the recording officer through their own senses, "the report does not also function as a means of evidence within the judicial contravention procedure, thus retaining only its character as an accusatory act (...)."⁶

In our opinion, the contravention report will always constitute a means of evidence in contravention proceedings, regardless of whether the deed was perceived by the officer through their own senses or not. The report constitutes a "document" (înscriș) within the meaning of Article 265 of the Code of Civil Procedure, according to which: "A document is any writing or other record containing data about a legal act or fact, regardless of its physical medium or the method of preservation and storage."

The fact that the officer did not witness the contravention through their own senses does not mean the report ceases to be a document under Article 265; rather, it simply means it does not possess the same probative weight as a report concluded by an officer who personally witnessed the deed. Additionally, the report may contain the objections or even the confession of the offender (in practice, it is common to record under the "Objections" section, with the offender's signature, the fact that they admit to the deed). Thus, it cannot be argued that it solely represents a charging act without constituting a means of evidence.

Regarding the presumption of legality and the presumption of innocence, the Romanian Constitutional Court held the following in Decision no. 1096 of September 8, 2009⁷:

"The Court notes that the contravention report enjoys a presumption of legality; however, when a complaint is filed against it, the very presumption it enjoys is challenged. In this case, the competent court shall admit the evidence provided by law, necessary to verify the legality and accuracy of the report. The person filing the complaint does not have to demonstrate their own innocence; the court has the obligation to administer all the evidence necessary to establish the truth. Even though Art. 47 of G.O. no. 2/2001 refers to the Code of Civil Procedure, courts cannot strictly apply the rule of *onus probandi incumbit actori* [the burden of proof lies with the claimant]; on the contrary, they must manifest an active role in finding the truth, since the contravention falls under Article 6 of the European Convention on Human Rights. Therefore, it cannot be argued that the burden of proof is reversed."

These statements were partially reiterated in Decision no. 152 of May 6, 2020, of the Constitutional Court⁸.

⁴ For an extensive analysis of legal and judicial presumptions in civil proceedings, see: C. Lungănașu, *Prezumțiile și principiul contradicționalității în procesul civil*, in *Revista Dreptul* no. 5/2024; V. Maruchson et al., *Prezumția ca mijloc de probă în procesul civil*, cu referire specială la prezumțiile legale, in *Revista Dreptul* no. 2/2018.

⁵ For a detailed analysis regarding legal and judicial presumptions, see D. Ramona, T. Andreea, *Prezumția ca mijloc de dovadă, potrivit noului Cod de procedură civilă și noului Cod civil*, in *Revista Română de Drept Privat*, no. 6/2011.

⁶ M. Ursuța, I. Lazăr, *Drept administrativ – Curs Universitar*, Ed. Universul Juridic, București, 2025, p. 434.

⁷ Published in M. Of. nr. 695/15.10.2009. Through this judgment, the exception of unconstitutionality regarding Articles 16 paras. (1), (6), and (7), Art. 21 paras. (1) and (3), Art. 26 para. (1), Art. 28, and Art. 47 of Ordonanța Guvernului nr. 2/2001 was dismissed.

⁸ Published in M. Of. nr. 268/31.03.2020.

In our opinion, the claim that the report enjoys a presumption of legality, but that this presumption is challenged as soon as a complaint is filed—thereby obliging the court to administer evidence while the petitioner remains passive—is equivalent to the *de facto* absence of the presumption of legality.

The presumption in the case of contravention reports is merely an assumption regarding the veracity of the findings mentioned therein. Consequently, asserting that the petitioner can remain passive in terms of evidence and that the court must verify the report's legality and accuracy equates to the non-existence of this very assumption. Of course, the court must manifest an active role, but this does not mean the petitioner can be passive, as the report itself represents a means of evidence (document) which the court may deem sufficient to resolve the case.

Constant jurisprudence of the European Court of Human Rights (ECtHR) in contravention matters indicates that the Convention is not incompatible with the use of legal or factual presumptions. For example, in the case of *Anghel v. Romania* (para. 60), the Court showed that presumptions of fact and law are found in every legal system and the Convention does not prohibit them; however, in "criminal" matters, they must not exceed a certain threshold⁹. Article 6 para. 2 of the Convention requires Member States to keep presumptions within reasonable limits, proportionate to the gravity of the facts and the necessity of respecting the right to a defense¹⁰.

In that case, the Court found that the applicant's request was not judged fairly under Article 6, but this was not due to the presumptions applied, but because the national courts failed to allow a confrontation with a prosecution witness—a primary guarantee, given that the officer who drew up the report was not present at the time of the deed.

Therefore, it is clear that the existence of a presumption of legality and accuracy regarding the contravention report does not, in itself, constitute a violation of Article 6 ECHR (under its criminal part), but the manner in which this presumption is applied may lead to such a violation¹¹.

In the case of *Haiducu and Others v. Romania*, the applicants complained that national courts expected them to rebut the presumption of legality and accuracy. However, the ECtHR considered that the application of the presumption did not infringe upon the presumption of innocence, as Art. 6 para. 2 does not oppose the application of rebuttable presumptions concerning the conformity of a report with reality¹².

It can be concluded that the petitioner has the obligation to provide rebuttal evidence (*proba contrară*) against findings made by the recording officer. Where we are dealing with a "criminal charge", national courts must ensure they apply the presumption of accuracy within a reasonable limit, ensuring the right to a fair trial¹³.

Regarding contraventions which, by law, must be established through certified and metrologically verified technical means, the report will not benefit from the presumption of accuracy. In such cases, the burden of proof lies with the issuer of the report, who is obliged to submit the evidence resulting from the use of said technical means to the case file. This is supported by Decision no. 4/2017 of the High Court of Cassation and Justice¹⁴, which held (para. 67) that unlike reports based on personal observations, those based on technical evidence do not benefit from these presumptions, and the burden of proof rests entirely with the issuer.

A report may also be drawn up by a competent officer (who did not personally witness the deed) based on other evidence, such as witness statements, the offender's statements, or material evidence. In this situation as

⁹ See also C.-L. Popescu, "Neconvenționalitatea" și neconstituționalitatea procedurii contravenționale judiciare de drept comun, în raport cu dreptul la respectarea prezumției de nevinovăție, în *Pandectele Române* nr. 6/2002, p. 203.

¹⁰ In this regard, see also the cases *Salabiaku v. France* and *Telfner v. Austria*, available at www.echr.coe.int.

¹¹ For a similar view, see D. Serena, *Sarcina probei și limitele prezumției de nevinovăție în materia plângerilor contravenționale analizate în lumina Convenției Europene a Drepturilor Omului*, în *Revista Română de Drept Privat*, nr. 4/2008 (accessed via www.sintact.ro on 08.11.2024), as well as D. Bogdan, B. Tândărescu, M. Selegean, *Prezumția de nevinovăție în procedura contravențională judiciară. Aplicarea art. 6 în dimensiunea sa penală. Instituirea unor prezumții de fapt sau de drept. Dreptul apărării. Audierea martorilor. Aprecierea probelor*, în *Revista Română de Jurisprudență*, nr. 1/2009. For an opposing view, see E. M. Fodor, *Aplicarea principiului legalității din dreptul penal în dreptul contravențional*, în *Revista Transilvăneană de Științe Administrative* nr. 3/2010.

¹² See paragraph 12 of the indicated judgment. A similar reasoning is found in the case *Salabiaku v. France* (an analysis of the latter judgment can be found in L. M. Mercan, G. Anamaria, *Prezumția de nevinovăție versus prezumția de legalitate și temeinicie a procesului-verbal de contravenție. Rolul activ al judecătorului*, în *Revista Română de Drept European* nr. 2/2011).

¹³ Specialized doctrine has argued that "in relation to those contraventions that may lead to a criminal qualification according to the Court's criteria, it is necessary to adopt a jurisprudence that places the burden of proof for the contravention on the issuer of the contravention report." In this regard, see O. Podaru, R. Chiriță, I. Pășculeț, A. Bachis, *Regimul Juridic al contravențiilor*. O.G. nr. 2/2001, comentată, 5th Ed., Ed. Hamangiu, București, 2021, pp. 11-12.

¹⁴ Published in M. Of. nr. 168/08.03.2017.

well, the report does not benefit from the presumption of accuracy, and the burden of proof remains with the issuer¹⁵.

Regarding reports drawn up based on evidence without personal observation by an officer, we note that recently, following the recording of aggressive driving by other participants using audio-video devices, G.E.O. no. 84/2024¹⁶ introduced Article 109³ into G.E.O. no. 195/2002¹⁷. According to this new article, a traffic officer may establish a contravention of "aggressive driving" based on a report from another participant who witnessed the maneuver and captured it on a video recording.

Previously, according to Art. 109, contraventions could only be established "directly" by the officer or through certified technical means. This restrictive framework significantly limited the ability of officers to establish offenses. In our opinion, it is natural and preferable for a contravention report to be concluded based on any means of evidence provided by law, not just personal observation¹⁸. We believe Art. 109 para. (1) should have been modified to remove the word "directly," allowing the officer to establish offenses based on various evidence. This would ensure that evidence obtained by traffic participants respects the principle of legality and can be used in the litigation initiated by the contravention complaint.

3. Conclusions

From the content of this paper, the following conclusions can be drawn as most relevant:

- The petitioner bears the obligation to provide rebuttal evidence against findings personally perceived and recorded by the officer. In cases involving a "criminal charge," courts must ensure the presumption of accuracy remains within reasonable limits;
- The issuer of the contravention report bears the burden of proof when the deed was not personally perceived by an officer but was established based on other means of evidence;
- The judicial review of contravention complaints must transcend a formalistic application of the *onus probandi incumbit actori* rule. Under the ECHR framework, the judge must exercise an active role (*rol activ*), being mandated to order the administration of evidence *ex officio* to ensure that the factual truth is established beyond a reasonable doubt;
- Given that many administrative sanctions qualify as "criminal charges" under the Engel criteria, the petitioner must benefit from the presumption of innocence. Consequently, any persistent ambiguity or evidentiary gap in the recording officer's findings must be interpreted in favor of the petitioner, pursuant to the *in dubio pro reo* principle;
- The contravention report should not be viewed as an absolute proof, but as a rebuttable instrument. Its evidentiary weight varies significantly depending on whether it is based on the officer's personal perceptions or on indirect evidence (witnesses or technical recordings), in which case the burden of proof remains entirely with the issuing authority;
- Ultimately, the Romanian legal system must maintain a reasonable balance between the presumption of legality (protecting administrative efficiency) and the right to a fair trial. Legal presumptions are permissible only if they are not absolute and if the defendant is granted a genuine opportunity to provide rebuttal evidence.

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¹⁵ In this regard, see, for example, O. Podaru, R. Chiriță, I. Pășculeț, *Regimul juridic al contravențiilor*. O.G. nr. 2/2001 comentată, 4th Ed., Ed. Hamangiu, București, 2019.

¹⁶ Published in M. Of. nr. 610/29.06.2024.

¹⁷ Within the statement of reasons (*expunerea de motive*) for the Draft Law approving Government Emergency Ordinance no. 84/2024, it is stated, among other things, that "through the proposed solution, the involvement of civil society is desired in the process of reporting serious traffic violations... it is proposed to expand the modality of establishing traffic contraventions... by instituting a mechanism through which traffic participants can submit complaints regarding possible violations caught in video or audio-video recordings."

¹⁸ The existence of means of evidence proving the commission of a contravention ensures a high degree of objectivity in a contravention trial and contributes to ensuring the right to a fair trial.

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- Government Emergency Ordinance no. 195/2005 regarding environmental protection (O.U.G. nr. 195/2005 privind protecția mediului).
- Government Emergency Ordinance no. 84/2024 for the amendment and completion of some normative acts in order to increase road safety (O.U.G. nr. 84/2024 pentru modificarea și completarea unor acte normative în scopul creșterii siguranței rutiere).
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