

CONTRAVENTION REGIME

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Government Ordinance no. 2/2001 on legal regime of contraventions, published in the Official Gazette no. 410/25th of July 2001
- Law no. 180/2002 for the approval of the Government Ordinance no. 2/2001 on the legal regime of contraventions, published in the Official Gazette no. 268/22nd of April 2002
- Government Ordinance no. 55/2002 on the legal regime of penalties for performing an activity for the use of the community and contravention imprisonment, published in the Official Gazette no. 642/30th of August 2002 approved by the Law no. 641/2002.
- Government Emergency Ordinance no. 108/2003 for the cancelling of the contravention imprisonment, published in the Official Gazette no. 747/26th of October 2003 approved by the Law no. 28/2004

I. Scope of the legal provisions in the field of contraventions

Both legal and natural persons may be sanctioned with contraventions. Law stipulates that the legal person is contravention responsible in cases and conditions provided by the normative documents that establish and sanction contraventions.

Contravention is an act committed with guilt, established and sanctioned by law, ordinance, by Government decision or, as the case may be, by the decision of the local council of the village, city and municipality or of the district of Bucharest municipality, of the district council or of the General Council of the Bucharest municipality.

II. Contravention sanctions

Ordinance no. 2/2001, as amended, establishes the applicable sanctions in contravention field and divides them into main sanctions and complementary sanctions.

1. Main contravention sanctions

The main contravention sanctions are the following:

- a) warning;
- b) contravention fine;
- c) contravener's forcing to perform an activity for the community's benefit;

For the same repeated deed two or more main sanctions cannot be applied.

a) Warning

Warning is a moral sanction, applied in the event of the performing of a contravention with a reduced degree of social peril. Warning consists of contravener's verbal or written informing about the social peril of the performed deed and it is recommended to him that in the future to comply with the legal provisions, otherwise being possible for a more severe sanction to be applied in the future.

Warning is applied to both natural and legal persons.

b) Contravention fine

This is a sanction with an administrative feature; it consists of a large amount of money that should be paid by the contravener in the event of committing of a contravention, which has a higher degree of social peril. It can be applied to both natural and legal persons.

The individualization of the fine shall be made by the body competent to apply the sanction, which shall appreciate according to each case, taking into account the circumstances of the deed, its consequences and the person of the contravener.

c) Performing of an activity for community's benefit

This sanction may be established only by law and only for a period that cannot exceed 300 hours; it can only be applied to contraveners, natural persons.

Government Ordinance no.55/2002 on the legal regime of the sanction of performing of activity for community's benefit and contravention imprisonment establishes the conditions in which this sanction can be applied. Thus, the court applies the sanction only if the contravener's consent exists.

It is the mayor's obligation to fulfil the warrant.

In the execution of the warrant the mayor establishes immediately the content of the activity that is to be performed by the contravener, the conditions in which he shall execute the sanction as well as the working program, notifying the unit in which the activity shall be performed about the measures taken.

d) Contravention imprisonment

This is a contravention that can be established only by special laws, ordinances and Government decisions; it is established alternatively with the fine.

This sanction can only be applied to natural persons. It is only the court that can apply the sanction of contravention imprisonment.

The duration of the contravention imprisonment is different according to the contravention committed, but it cannot exceed for any reason six months, respectively 300 hours.

Government Ordinance no. 55/2002 stipulates that in the event in which the contravener agrees, the sanction of contravention imprisonment shall be replaced with the sanction of forcing to the performing of an activity for community's benefit.

2. Complementary contravention sanctions

The complementary contravention sanctions are the following:

a) Seizure of goods destined, used or resulted from contraventions; the law expressly stipulates the goods subject to seizure namely goods destined, used or resulted from contravention, as well as those whose possession or use are prohibited by law.

If such a sanction is stipulated in the normative document for sanctioning of the contravention, its enforcement is compulsory.

The seizure shall always accompany a main sanction (usually, the sanction of fine or contravention imprisonment);

b) suspension and annulment, as the case may be of the approval, agreement or of authorization for the exercising of an activity;

c) closing down a unit;

- d) blocking of the bank account; this measure is equivalent with the suspension or even ceasing of the activity of the economic entity.
- e) suspension of the activity of the economic entity;
- f) withdrawal of the license or approval for certain transactions or for certain activities of external trade, temporary or definitive.
- g) cancelling of the works and bringing of the ground to its initial state.

Regarding complementary sanctions, the Ordinance no.2/2001 stipulates that these ones apply according to the nature and seriousness of the deed and may be cumulated.

III. Contraventions establishment

Contravention is established through a minutes concluded by the persons stipulated in the normative document for this purpose, which establishes and sanctions the contravention, generically named establishing agents.

1. Establishing agents

The following persons may be establishing agents:

- mayors;
- officers and sub-officers within the Ministry of Internal Affairs, especially designated;
- persons empowered for this purpose by the ministers and by other leaders of the central public administration authorities, by prefects, presidents of the county council, mayors, by the general mayor of the Bucharest municipality, as well as by other persons stipulated in special laws.

2. Minutes of the establishing of the contravention

The minutes shall be signed on each page by the establishing agent and by the contravener.

In the event in which the contravener is not present, refuses or cannot sign, the establishing agent shall mention these circumstances, which has to be confirmed of at least one witness. In this event, the minute shall comprise the personal data from the witness's identity card and his signature. Another establishing agent cannot have the capacity of a witness.

If there is no witness, the establishing agent shall specify the reasons leading to the conclusion of the minutes in this way.

Nullity of the minutes

The lack of the mentions regarding the name, surname and the quality of the establishing agent, contravener's name and surname (in the case of the legal person the lack of its name and headquarter), of the deed committed and of the date of its committing or of the signature of the establishing agent, brings about the nullity of the minutes.

Nullity is established ex officio, too.

Contravener's right to lodge objections

The contravener, legal or natural person, has the right to lodge objections regarding to the content of the establishing document. The legislator has provided for this right to be brought to its knowledge by the establishing agent in the moment of the conclusion of the minutes.

The objections are distinctively mentioned within the minutes at the section "Other mentions", under the sanction of the nullity of the minutes.

IV. Enforcement of the contravention sanctions

The establishing agent, through the establishing minutes, shall enforce the sanction too, in the event in which the normative document for the establishing and sanctioning does not provide otherwise.

If, according to the normative document of establishing and sanctioning of the contravention, the establishing agent has not the right to enforce the sanction too, the establishing minutes is sent immediately to the competent body or competent person to enforce the sanction. In this case, the sanction is applied through written resolution on the minutes.

The sanction is applied within the limits provided by the normative document and should be proportional with the degree of social peril of the deed committed.

When establishing and enforcing sanctions, the circumstances in which the deed has been committed, the way and the means of committing, the purpose, the result produced as well as the contravener's personal circumstances and the other data written in the minutes shall be taken into account.

In the event in which by committing contravention damage has been produced and there is the possibility of its evaluation, the person empowered to enforce the sanction shall establish compensation, with the express agreement of the damaged person.

An according mention shall be made in the minutes regarding this fact.

If there is no tariff for the evaluation of the damage, the damaged person shall be allowed to valorize her/his claims according to the common law.

In the event in which the contravener has been sanctioned with a fine, as well as if he was forced to damages, he shall receive once with the minutes, the **payment notification**. In the payment notification the mention shall be made about the compulsoriness to pay the fine and, as the case may be, of the damage, within 15 days from the forwarding, otherwise the forced execution would be ordered.

If the establishing agent enforces the sanction too and the contravener is present at the conclusion of the minutes, a copy of the minutes and payment notification shall be given to the contravener, this thing being mentioned in the minutes too. The contravener shall sign for receipt.

The same way shall be proceeded before the other persons to whom the copy of the minutes has to be given, if they are present to its conclusion.

If the **fine is the enforced sanction**, the contravener has the possibility of paying immediately or in 48 hours from the date of the conclusion of the minutes at the most half of the minimum of the fine stipulated in the normative document, the establishing agent mentioning this possibility in the minutes.

In the normative document for the establishing of the contraventions this possibility must be expressly mentioned.

The payment of the fine is made at the Savings and Deposits Bank or at the treasury of public finances and a copy of the receipt shall be delivered by the contravener to the establishing agent or is sent by mail to the body from which it belongs, within 48 hours.

The payment of half of the minimum of the fine stipulated in the normative document for the deed committed has as a consequence the cessation of any action against the contravener.

V. Ways of attack

Against the minute for establishing a contravention and of enforcement of sanction a **complaint** may be filed within 15 days from the date of its delivery or its communication.

The law gives to the injured party the right to file a complaint but only regarding the compensation.

If the measure of seizure of goods has been ordered and the person who owns those goods is the contravener, he may file a complaint only regarding the measure of seizure.

Filing of the complaint

The complaint, along with the copy of the minutes establishing the contravention is filed with the body to which the establishing agent belongs, this one being forced to receive it and to give to the depositor a proof in this respect.

The complaint, along with the dossier of the case are immediately sent to the law court in whose jurisdiction the contravention has been committed.

The complaint suspends the execution.

The complaint lodged by the injured party suspends the execution only regarding the compensation.

The complaint lodged by the person to whom the seized goods belong, other than the contravener suspends the execution only regarding the seizure.

Receiving the complaint, the law court shall settle a term of judgment that shall not exceed 30 days and shall order the contravener's summoning or, as the case may be, of the person who made the complaint, of the body that enforced the sanction, of the witnesses stipulated in the minutes or in the complaint, as well as of any other persons capable of contributing to the settlement of the case.

Complaint settlement

Law stipulates that the complaints against minutes establishing and sanctioning of contraventions are settled preeminently.

Before settling the complaint, the competent court checks if it has been introduced within the term.

If the complaint has been introduced within the term, the court shall hear the one who has made it and other summoned persons, if they are present, produces any other proofs provided by law, necessary for the proving of the legality and groundlessness of the minute and decides upon the sanction, the established damages as well as upon the measure of seizure.

Within 15 days from the communication, recourse may be filed against the judgment through which the complaint is settled. Until the settling of the recourse, the enforcing of the judgment shall be suspended.

The motivation of the recourse is not compulsory. The reasons for recourse may be verbally sustained before the court.

The complaint against the minutes of establishing and sanctioning of the contravention, the recourse filed against the judgment through which the complaint has been settled, as well as any other applications are exempted from the judicial stamp duty.