

THE LEGAL NATURE OF THE CONTRAVENTION AND ITS INFLUENCE ON THE NULLITY OF THE RECORD OF FINDING THE CONTRAVENTION

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Abstract

In the current system of Romanian law, as in other European countries, the contravention was removed from the scope of criminal law, which is subject to an administrative regime, the option of the Romanian legislator being, obviously, to give it an independent character. Although it enjoys its own regulation, the contravention is still marked by the influences of the old regulations, in which it was assimilated to criminal matters, and the current normative framework is supplemented with the imperatives of the Civil Code, the Criminal Code, but also those of the Code of Civil Procedure. Thus, located at the border of several branches of law, a state of ambiguity was created, which was reflected in a non-unitary application of the law by the courts. In judicial practice, when the nullity of the record of finding and sanctioning the contravention was invoked, the solutions given were divergent, not only regarding the nature of the nullity that operates, but also regarding the imperative of showing an injury that can only be removed by annulment of the act. Consequently, the present study aims to analyze the conditions in which the record of finding the contravention is sanctioned with the nullity and influence of other branches of law on them, as well as the difference between the annulment of an administrative act that harms a right or a legitimate interest of the person and the nullity of the legal act concluded with the non-observance of the legal conditions provided for his validity.

Keywords: *contravention, annulable act, nullity, injury.*

JEL Classification: K33, K34

1. Introduction

Although the intention of the legislator to establish by enacted normative acts, a certain delimitation, between the two notions, is obvious, both the contravention and the crime can, in principle, be analyzed from the point of view of the constitutive elements, similarly².

If the criminal law³ aims to sanction the deeds expressly provided in its contents, which were committed with guilt, unjustified and imputable to the person who committed it (art. 15, Penal Code), the contravention law, although it will protect the same values as and the criminal law, will sanction only those deeds that are not criminally sanctioned. In the event that the social values will be, simultaneously, both object of criminal, contravention or civil protection, then the incriminated deed will be sanctioned according to its nature, so that when an act meets the elements of a criminal and contravention norm, it will be sanctioned exclusively criminally⁴, the illicit deed cannot be included in both institutions at the same time.

Our current legal system offers the contravention not only a clear and predictable legal framework, but also an extremely clear and comprehensive definition, which is regulated as: “the deed committed with guilt, established and sanctioned by law, ordinance, Government decision or, as the case may be, by decision of the local council of the commune, city, municipality or sector of Bucharest, of the county council or of the General Council of the Municipality of Bucharest ”and whose declared purpose aims to defend“ social values that are not protected by criminal law”. The regulation is inserted in the content of art. 1 of the Government Ordinance no. 2/2001 on the legal regime of contraventions, which is the main normative act, of a general nature, in contravention matters (Contravention Law).

By reference to the jurisprudence of the ECHR, where our country has suffered important convictions before the European court, the option of the Romanian legislator to attribute to the

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² Ana Mocanu Suciu, *Noţiunea de contravenţie. Elementele contravenţiei*, „Lucian Blaga” University of Sibiu.

³ Art.1, paragraph (1) of the Criminal Code “The criminal law provides for the facts that constitute crimes”.

⁴ Hotca Mihai Adrian, *Regimul juridic al contravenţiilor*, Ed. C.H.Beck, Bucharest, 2012, p. 5.

contravention a different legal regime than the criminal one, has often been criticized as deficient.

The structuring of the contravention procedure on an administrative regime, completed with civil matters⁵, was viewed with skepticism, because internationally the contravention is assimilated only to criminal matters. However, the Court shared the opinion of the Romanian Government, admitting that, when the act in question falls within the scope of the legislation on contraventions, it can be removed from the scope of criminal law⁶, because in Romanian legislation, as in that of other European states example: Germany, the Czech Republic and Slovakia, contraventions have been removed from criminal law and subject to an administrative regime⁷.

Being subject to an administrative regime, supplemented by the Civil Code and the Code of Civil Procedure, an equivocal situation was created, which resulted in a general state of confusion, reflected in a non-unitary application of the law by the courts.

Even if about the post-December paradigm, which intervened on the Romanian legal system, it can no longer be stated that it is at the beginning of the road, still the legal nature of the contravention remains a controversial element, not only in doctrine but also in jurisprudence.

By virtue of these controversies, the ÎCCJ was notified with an appeal in the interest of the law regarding the consequences of non-compliance with the requirements regarding the completion of the record of finding the contravention, registered in the Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved with modifications by Law no. 180/2002, with subsequent amendments and completions. The Court decided at that time that: *“In relation to this imperative-limiting character of the cases in which the nullity of the report concluded by the agent ascertaining the contravention is also taken into account ex officio, it is required that in all other cases of non-compliance which such an act must meet, including that relating to the separate recording of the offender's objections to its content, the nullity of the record of the finding of the contravention may not be invoked unless the party has suffered an injury annulment of that act”*.

Given that the decisions of the ÎCCJ are binding, the civil courts have resolved the misdemeanor complaints as a result of that decision, the claims being rejected because the interested party did not prove an injury that can only be removed by annulling the act. However, even if the two notions are similar from a phonetic point of view, between the nullity of the legal act as a sanction of concluding the legal act in disregard of legal regulations and the annulment of the administrative act that infringes the rights or legitimate interests of the person, there are obvious fundamental differences, what not can be neglected or confused.

In civil matters, disregard of the conditions imposed by law for the valid conclusion of an act, will permanently entail as a sanction the nullity of the act and its lack of effects, regardless of whether or not that act causes harm to the rights or legitimate interests of the parties.

Therefore, the admission of misdemeanor complaints in cases concerning the finding of nullity of the record of finding the misdemeanor cannot be conditioned by proof of injury that can only be removed by annulling the act, the interested party only having to show how they the imperative conditions of the law were violated, for its valid conclusion. Proof of a civil injury does not have as a consequence the annulment of the act, but will have the effect of involving civil liability, according to art. 1349 et seq. of the Civil Code.

The annulment of an administrative act remains inextricably linked to the proof of an injury that is brought in a legitimate right or interest of the person contesting the respective act, the injury being the basis of the birth of new legal reports, but the non-observance of the validity conditions of the legal act, will always have the effect of abolishing a pre-existing legal relationship. The administrative act can be annulled if there is an injury caused to the person in his right or in a legitimate interest. The legal act, on the other hand, will be sanctioned with nullity, for non-compliance with the validity conditions imposed for its valid conclusion, regardless of whether or not

⁵ Art. 47 of Government Ordinance 2/2001 specifies that: “The provisions of this ordinance shall be supplemented with the provisions of the Criminal Code and the Code of Civil Procedure, as the case may be”.

⁶ Case *Ioan Pop v. Romania*, Collection of ECHR jurisprudence - vol. 3, Bucharest 2012, p. 38.

⁷ Decision no. 318 of September 9, 2003, regarding the exception of unconstitutionality of the provisions of art. 12 para. (1) of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved with modifications by Law no. 180/2002.

an injury has been caused to the parties.

Located under the incidence of several branches of law, the contravention deed, as well as the minutes of its contestation, remain an inexhaustible source of controversial solutions and legal opinions.

2. The legal nature of the contravention in the Romanian legal system

In order to understand the legal nature of the contravention, I chose as a starting point for my study, the regulations contained in the old Penal Code (also called "Code of 1936" or "Carol II Criminal Code"), avant-garde document of those times, which consisted of three parts, structured in general provisions, provisions on crimes and offenses and provisions on contraventions.

The Penal Code from 1936 worked until 1969 when it was replaced by a new Penal Code, as a result of new national communist tendencies⁸. Within it, the tripartite division of offenses has been abandoned and important criminal law institutions have been introduced, such as the plurality of offenses or cases that remove the criminal nature of the act. In this document, the notion of crime was defined for the first time in Romania, as "*The deed that represents a social danger, committed with guilt*". Therefore, the matter of sanctions has also undergone some changes, the criminal law sanctions being systematized in punishments, security measures and educational measures.

According to art.17, the essential features of the crime were established, this being defined as: "the deed that presents social danger, committed with guilt and provided by the criminal law". The crime therefore remains the sole basis of criminal liability.

Previously, in 1954, the Decree with no. 184⁹ which separately regulated the sanctioning of contraventions. Article 1 of this document also stated that "*Acts which by their lower degree of social danger do not constitute crimes and are sanctioned by normative acts of the popular councils or of the central or local bodies of the state administration, constitute contraventions*".

At an interval of only a few months, but since the promulgation of the 1968 Penal Code, the Great National Assembly, the supreme body of state power, since that time, has adopted Law no. 32 of November 12, 1968, regarding the establishment and sanctioning of contraventions, which is subsequently published in B. Of. no. 148 of November 14, 1968. In its content, in art. 1, the notion of contravention is explicitly and independently defined, as: "*the deed committed with guilt, which presents a lower social danger than the crime and is provided and sanctioned as such by laws, decrees or by normative acts of the bodies shown in the present law*".

However, although by promulgating this normative act the contravention acquires its own legal regime, individualized in relation to that of the crime, it remains under the incidence of the criminal law.

Although this code survived for almost half a century, until 31 January 2014, it underwent numerous changes, especially after 1989, which were fundamental in the context of the establishment of the new democratic society. The Explanatory Memorandum to the preamble to this document expressly states that: "*the new criminal code restricts the scope of coercion by criminal sanctions. Thus, many deeds incriminated in the past as crimes are eliminated from the penal code, others are declared contraventions, and some of them will not be punished by the criminal law when they are committed for the first time*".

The year 2001 brings, however, a radical paradigm shift, in terms of contravention, through the promulgation of O.G. no. 2 on the legal regime of contraventions. According to art. 1 of the Ordinance: "The contravention law protects social values, which are not protected by criminal law." Consequently, with the entry into force of the new normative act, according to the regulation

⁸ Art. 1 of the Law no. 30 of 12 November 1968 for the implementation of the Criminal Code of the Socialist Republic of Romania, of 21 June 1968, published in B. Of. no. 147/13.11.1968, expressly repealed the Criminal Code 1936.

⁹ Decree no. 184 of May 14, 1954, for the regulation of the sanctioning of contraventions, Published in the Official Gazette no. 25 of May 21, 1954.

contained in art. 51¹⁰, Law no. 32/1968 regarding the establishment and sanctioning of contraventions was expressly repealed.

Law no. 180/2002 on the legal regime of contraventions, approving with amendments O.G. 2/2001, constitutes the framework law in this matter, which is completed with other laws and normative acts which outline and delimit a particularly important institution of administrative law, namely the institution of contravention and contravention liability.

As it appears from the content of the ordinance on the legal regime of contraventions, their source of law belongs to administrative law¹¹, but depending on the gravity of the sanctioned act and the nature of the contravention, thus acquiring a criminal nature (see *Greucu v. Romania*¹²), respectively a civil nature (*Anghel v. Romania* case¹³).

3. Nullity of the record of finding the contravention

The contravention will be ascertained by concluding a report by the representatives of the public authorities, exhaustively listed in the normative act, generically called ascertaining agents¹⁴. They have the obligation, if the normative act of establishing and sanctioning the established contravention is not provided otherwise, to establish the sanction applicable to the contravention.

The legal nature of the record of finding the contravention, represented a controversial subject in the doctrine, in some opinions it being considered by “*the nature of a true administrative act, more precisely of an administrative act of finding*”¹⁵, or as a “*procedural act, reflected in an authentic official document, because it is drawn up by a public agent, as a representative of the state and produces full effects, no formality, approval or confirmation being required*”¹⁶.

¹⁰ Government Ordinance no. 2/2001, Article 51: (1) This ordinance shall enter into force within 30 days from the date of its publication in the Official Gazette of Romania, Part I. (2) On the same date, Law no. 32/1968 on the establishment and sanctioning of contraventions, published in the Official Gazette, Part I, no. 148 of November 14, 1968, as subsequently amended and supplemented, as well as any other provisions to the contrary.

¹¹ Article 8.1. *The contravention fine shall be of an administrative nature.*

¹² In the case of *Greucu v. Romania*, we note from the Court's reasoning that: “53. Domestic law (see points 35 and 37 above) does not expressly qualify as a “criminal offense” non-declaration - punishable by art. 37 para. (1) of the Decree no. 210/60 - currency held in a foreign account, which brought the applicant a fine with a confiscation of his currency. In the present case, it was a sanction which, by its nature and gravity, was undoubtedly related to criminal matters, and Article 6 was therefore applied in criminal matters. 54. In the light of the criteria set out in the Court's settled case-law, see, inter alia, *Ezeh and Connors v. The United Kingdom* (GC), Nos. 39665/98 and 40086/98, § 120, ECHR 2003 -X), the Court considers that, despite the pecuniary nature of the sanction actually applied to the applicant, the procedure in question can be assimilated to a criminal procedure, given the sanction applied for the acts for which his liability was incurred under art. 37 of the Decree no. 210/1960. In that regard, it should be noted that the acts attributed to the applicant were likely to be punishable by imprisonment for a term of six months to five years (see paragraph 35 above). 55. In the present case, it was a question of a sanction which, by its nature and gravity, was undoubtedly related to criminal matters, and Article 6 was therefore applied in criminal matters.”

¹³ In the case of *Anghel v. Romania*, the representative of the Government stated, with regard to the alleged violation of Article 6 of the Convention, that: “45. The Government acknowledges that Government Ordinance no. 2/2001 does not contain specific rules on the burden of proof but emphasizes that none of the applicable provisions require the applicant to prove his innocence. Article 34 of the ordinance obliges the court to verify whether the complaint was filed within the legal deadline, to hear its author as well as the other persons cited and present, to order the administration of any other evidence provided by law, necessary to verify the legality and validity of the report. contravention, and determine the punishment. This provision is corroborated by the rules of the Code of Civil Procedure, the most important of which in the matter of evidence is expressed by the Latin saying *onus probandi incumbit actors*, according to which the burden of proof falls on the person who submits a claim to court. 46. The Government submitted that the principles of civil law should be interpreted in the light of the particularities of those minor offenses. By way of example, he points out that the principle of ‘availability’, according to which the parties are in charge of conducting civil proceedings, is not strictly applicable in the case of infringements: the court seised of an appeal against a contravention report must verify *ex officio* if the minutes are not struck by absolute nullity; she is also required to cite the eyewitnesses mentioned in the minutes, as well as any other person who may contribute to the discovery of the truth.”

¹⁴ The following may be ascertaining agents: mayors, officers and non-commissioned officers of the Ministry of Interior, specially qualified persons, persons empowered for this purpose by ministers and other leaders of central public administration authorities, prefects, presidents of county councils, mayors, the mayor general of Bucharest municipality, as well as other persons provided in special laws. Officers and non-commissioned officers from the Ministry of Interior find contraventions regarding: defending public order; traffic on public roads; general trade rules; sale, circulation and transport of food and non-food products, cigarettes and alcoholic beverages; other fields of activity established by law or by Government decision.

¹⁵ Podaru O, Chiriță R., *Regimul juridic al contravențiilor*, Ed. Hamangiu, Bucharest, 2011, p.146; Săraru Cătălin-Silviu, *Drept administrativ. Probleme fundamentale ale dreptului public*, Ed. C.H Beck, Bucharest, 2016, p. 225.

¹⁶ Hotca Mihai Adrian, *op. cit.*, p. 293.

Therefore, considering those presented, when we talk about the nullity of the record of the contravention, it can be analyzed under three distinct aspects, namely the nullity (annulment) of the administrative act, according to the rules inserted in law 554/2004¹⁷, the nullity of criminal acts as established by the Code of Criminal Procedure (art. 280, respectively 281 on relative nullity) and the regime of nullity in civil matters, as they are established by the Civil Code.

The nullity of administrative acts reveals a series of similarities in principle, with that of civil law, but a number of fundamental differences can also be noticed.

Based on them, the doctrine considered that "*any theory of the nullity of administrative acts, must start from the reality that the defects that affect their legality are not all of equal value*"¹⁸, the issue of nullity of administrative acts being put "*in other terms than in civil law because there are several categories of interests: the general interest (of the state), the local interest (of counties, cities, communes) and the individual interest (of those administered)*"¹⁹.

Administrative law does not distinguish between the nullity of administrative acts in terms of the interest protected by the contested act, the current regulations using mainly the general term "annulment", the interested party, being according to art.1 of Law no. 554/2004: "*any person who is considered harmed in his right or in a legitimate interest, by a public authority, by an administrative act or by the failure to resolve a request within the legal term, he may address the competent administrative contentious court, for annulment of the act, recognition of the claimed right or legitimate interest and reparation for the damage caused to him*".

Therefore, the person concerned, when claiming the annulment of an administrative act, will first have to prove the damage caused by the contested administrative act, otherwise the action will be rejected. Admission of the action for annulment will have the effect of annulling the act, recognizing the claimed right or legitimate interest and repairing the damage caused to him by an injured party.

Therefore, the fundamental feature regarding the nullity of the administrative act, based on the regulations enacted in law 544/2004²⁰, remains the damage, because the initiative of the judicial action in annulment of the administrative act is inextricably linked to its proof.

In criminal matters, the legal regime of nullities is established in the Code of Criminal Procedure, with obvious reference to procedural and procedural acts, specific to this branch of law. According to art. 280 para. (1) of the Code of Criminal Procedure, "*violation of the legal provisions governing the conduct of criminal proceedings entails the nullity of the act under the conditions expressly provided by this code*".

Unlike the nullity of the administrative act, which is only annulable, on the act of criminal procedure, both absolute nullity can intervene, which operates in cases expressly provided by law²¹ and which is found ex officio or upon request, can be invoked, in principle in any state of the criminal process, with the exceptions provided by law, as well as the relative nullity²², which occurs in case of violation of any other legal provision, other than those provided in case of absolute nullity.

¹⁷ Law no. 554 of December 2, 2004, of the administrative contentious, published in the Official Gazette no. 1154 of December 7, 2004.

¹⁸ Antonie Iorgovan, *Tratat de drept administrativ*, 3rd ed., vol. II, Ed. All Beck, Bucharest, 2002, p. 70.

¹⁹ V. Prisăcaru, *Actele și faptele de drept administrativ*, Ed. Lumina Lex, Bucharest, 2001, p. 91.

²⁰ According to art. 8 of Law no. 544/2004 may claim the annulment of the act, the person who: is dissatisfied with the answer received to the preliminary complaint or who did not receive any answer within the term provided in art. 2 para. (1) letter h), or who has been harmed by the failure to resolve in time or by the unjustified refusal to resolve a request, as well as by the refusal to carry out a certain administrative operation necessary for the exercise or protection of the right or legitimate interest.

²¹ Art. 281 regarding the regime of absolute nullity in the Code of Criminal Procedure specifies that: (1) The application of nullity always determines the violation of the provisions regarding: a) the composition of the panel; b) the material competence and the personal competence of the courts, when the judgment was performed by a court inferior to the legally competent one; c) publicity of the court hearing; d) the participation of the prosecutor, when his participation is obligatory according to the law; e) the presence of the suspect or the defendant, when his participation is mandatory according to the law; f) the assistance by the lawyer of the suspect or the defendant, as well as of the other parties, when the assistance is obligatory.

²² The Code of Criminal Procedure establishes in art. 282 that the relative nullity occurs at: (1) The violation of any legal provisions other than those provided in art. 281 determines the nullity of the act when the non-observance of the legal requirement has caused a damage to the rights of the parties or of the main procedural subjects, which cannot be removed otherwise than by the annulment of the act.

So, in order for a procedural or procedural act to operate nullity, it is necessary to meet cumulatively, three essential conditions, namely: violation of legal provisions governing the conduct of criminal proceedings, either by action or inaction of the judiciary; causing a procedural injury; the damage caused can only be removed by annulling the act.

As it can be noticed, the existence of nullity in the Romanian criminal procedural law, as well as in the administrative law, remains categorically closely related to the existence of an injury, an injury that must have occurred by drawing up an act in illegal conditions²³.

Although injury is the central element on which the whole theory of nullity is based, in the administrative litigation procedure as well as in the criminal procedure, it does not yet enjoy a legal definition, the notion being explained to us by doctrine, as that "*touch brought to the fundamental principles of the criminal process from which results the possibility of not achieving its purpose*"²⁴.

The nullity will therefore not produce *ope legis* effects, but the one who invokes it will have to prove the existence of the injury, which will be ascertained by the criminal investigation body, the judge of rights and freedoms or by the preliminary chamber or court.

Consequently, in criminal proceedings, "*the cases in which relative nullity can be invoked are, in theory, very numerous, being represented by all violations of criminal procedural provisions, other than those for which absolute nullity can be invoked*"²⁵, but only under the imperative condition, inserted in the content of art. 282, which establishes that the relative nullity will occur "*when the non-observance of the legal requirement has caused an injury to the rights of the parties or of the main procedural subjects, which cannot be removed otherwise than by the annulment of the act*".

The nullity in the matter of civil law, regulated by the Civil Code at art.1246 establishes that any legal act concluded with the non-observance of the conditions required by law, is eminently sanctioned with nullity²⁶.

The effects that the sanction of nullity will produce on the legal act concluded with disregard of the law, are, however, indestructibly related to the interest protected by the violated norm. Thus, the legislator enacted a clear distinction between the types of nullity, unequivocally establishing its separation into absolute²⁷ and relative nullity²⁸.

However, regardless of the type of nullity, it will intervene when the legal act ends with the "*violation of a legal provision*", without the need to show an injury, but only to show the violation of the legal provision.

Therefore, even if no harm is caused to the person concerned, violation of a legal provision, the act will be liable to be sanctioned with annulment. Violation at the conclusion of the legal act, of a rule of law established for the protection of a general interest, will sanction the act with absolute nullity, it being declared null. The nullity in this case is imprescriptible and can be invoked by any interested person by way of action or by way of exception (parts of the legal act or their successors or by interested third parties), and the court is obliged to invoke it *ex officio*, in order to restore the violated rule of law. The legal act struck by absolute nullity is not susceptible of confirmation, except in the specific cases provided by law.

Relative nullity will intervene to sanction the legal act concluded in disregard of a legal provision established for the protection of a particular interest. This sanction may be invoked only by the person concerned, is prescriptive and is subject to express or tacit confirmation, by the definite will of the parties to waive the right to invoke the nullity.

When the interpretation of the legal norm cannot clearly determine the type of nullity, respectively as a general one, of public order, or a particular interest, of private order, the presumption

²³ I. Neagu, M. Damaschin, *Tratat de procedură penală. Partea generală*, 2nd ed., Ed. Universul Juridic, Bucharest, 2015, p. 719.

²⁴ Grigore Gr. Theodoru, *Tratat de drept procesual penal*, Ed. Hamangiu, Bucharest, 2007, p. 501.

²⁵ Decision of the Romanian Constitutional Court no. 302/2017 published in the Official Gazette number 566 of July 17, 2017.

²⁶ Art.1246 Civil Code: "(1) Any contract concluded in violation of the conditions required by law for its valid conclusion is subject to nullity, unless the law provides for another sanction."

²⁷ Art. 1247 of the Civil Code, regulates absolute nullity, as follows: (1) The contract concluded in violation of a legal provision established for the protection of a general interest is null and void.

²⁸ Art. 1248 of the Civil Code, regulates the relative nullity, as follows: (1) The contract concluded in violation of a legal provision established for the protection of a particular interest is voidable.

established by art. 1252 Civil Code, which operates in favor of relative nullity ("the contract being voidable").

4. Conclusions

It is obvious that the record of finding the contravention will be able to be annulled on the ground of nullity, so from the perspectives presented, corroborated with the clarifications contained in OG2/2001, we have to further analyze how the nullity will operate on this legal act so controversial.

In a decision of the ÎCCJ²⁹, the supreme court deliberating on the appeal in the interest of the law regarding the consequences of non-compliance with the requirements inscribed in art. 16 para. (7) of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved with modifications by Law no. 180/2002, as subsequently amended and supplemented, stated that: *"In connection with the establishment of this obligation, the non-observance of which entails the sanction of nullity of the minutes, it should be noted that, in relation to the nature of the interest protected by the provision inscribed in art. 16 para. (7) of Government Ordinance no. 2/2001, such nullity cannot be absolute, not susceptible to be covered in any way, but only relative. In this sense, it should be noted that in art. 19 of the Government Ordinance no. 2/2001 there are certain specific requirements that must be met, in certain situations, the report concluded by the agent ascertaining the contravention, it is true, without mentioning that their non-compliance would invalidate the act.*

Or, the situations in which the non-observance of certain requirements always attracts the nullity of the act drawn up by the agent ascertaining the contravention are strictly determined by the regulation given in the content of art. 17 of the ordinance.

Thus, this text of law stipulates that "the lack of mentions regarding the name, surname and quality of the ascertaining agent, the name and surname of the offender, and in the case of the legal person the lack of his name and seat, the deed to the ascertaining agent draws the nullity of the minutes", specifying that only in such situations "the nullity is also ascertained ex officio".

In relation to this imperative-limiting character of the cases in which the nullity of the report concluded by the agent ascertaining the contravention is also taken into account ex officio, it is necessary that in all other cases of non-compliance with the requirements that such an act must meet, including the one regarding the distinct recording of the offender's objections to its content, the nullity of the record of finding the contravention may not be invoked unless the party was caused an injury that can only be removed by annulling that act".

Compared to the given decision and based on the analyzed ones, we can notice some controversial aspects.

First, the ÎCCJ magistrates rule that, regardless of whether the nullity of the legal act can be express or virtual, they state that absolute nullity will operate exclusively in the cases expressly listed under the statement that "nullity is also established ex officio" (because only absolute nullity enjoys this benefit of the law), following that in the case of the other mentions omitted by the ascertaining agent at the conclusion of the minutes, also imperatively imposed by law, to operate only the relative nullity³⁰.

At the same time, the motivation of the solution given in this case is based, as it appears from the operative part of the Decision, on the fact that: "such nullity cannot be absolute, not susceptible to be covered in any way, but only relative", leaves much to be desired, because decisive in

²⁹ Decision No. XXII, of March 19, 2007, published in the Official Gazette of Romania, part I, no. 833/05.12.2007.

³⁰ Respectively, when the place where the contravention report is concluded is not specified, the quality and institution of which the ascertaining agent belongs, the offender's domicile, the description of the contravention deed indicating the date, time and place where it was committed, as well as the circumstances they can be used to assess the gravity of the act and to assess the possible damages caused; indication of the normative act by which the contravention is established and sanctioned; the indication of the insurance company, in case the deed resulted in a traffic accident; the possibility of paying, within 15 days from the date of handing over or communicating the minutes, half of the minimum fine provided by the normative act; the time limit for bringing an appeal and the court to which the complaint is lodged, the name, surname and domicile of the parents or other representatives or legal guardians of the minor offender or the agent does not inform the offender that he has the right to object or not recorded separately in the minutes under "Other entries".

determining the manner of nullity can not be considered the ability of the parties to cover or not disregard the imperatives imposed by a rule of law. The possibility of confirming the legal act rests with the parties, only as a consequence, when the conclusion of the act was made in violation of provisions established for the protection of their interests, in particular. On this basis, the legislator allowed the interested party to have the option to repeal or maintain the act, this interest not for the company in general, but the parties in particular. Absolute nullity, however, cannot be covered in any way, because, at the conclusion of the legal act, the parties considered a norm of general interest, i.e. a law, a normative act that includes general-mandatory rules, which protect general, public interests, therefore the act concluded in this way acquiring an obvious illicit character.

Finally, we also note the court's assessment that: "it is necessary that in all other cases of non-compliance with the requirements that such an act must meet, including the finding of the contravention cannot be invoked unless the party has suffered an injury that can only be removed by annulling that act", the court binds the right of the interested party to invoke the relative nullity, provided the proof of an injury, which can only be removed by annulling that act.

However, in view of those presented in this study, I have shown that the obligation to prove injury lies with the interested party, in two situations, namely when challenging an administrative act, which infringes a public or private right or interest, or when the interested party is part of a criminal trial, and the procedural documents violate the legal provisions governing the conduct of the criminal trial.

Even without a well-defined statute, it is obvious that the nullity of the record of finding the contravention will not intervene according to the regulations contained in the Code of Criminal Procedure, because it is not part of and cannot be assimilated to criminal procedure acts.

However, choosing as a reference the administrative character of the sanction (art. 8 of G.O. no. 2/2001), and the status of legal act with administrative character of the record of finding the contravention, we could assume that the justification of the magistrates' decision is based on art. 1 of Law no. 554/2004. However, the procedure for resolving claims in administrative litigation presupposes that the complaint be submitted to the administrative litigation courts or to the fiscal administrative courts.

However, by Government Ordinance 2/2001, which establishes the legal regime of contraventions, a special law therefore in the matter, it is established in art.32 that: "(1) The complaint is submitted to the court in whose district the contravention was committed", by therefore, the sentences given in these cases will undoubtedly be civil sentences. Consequently, we can assume, by reduction to absurdity, that in a civil court, cases should be tried according to the rules established by the law of administrative litigation, which is clearly impossible.

Therefore, it remains only that, in addition, the rules of common law in civil matters are applicable, as specified in art. 28 of Law 554/2004³¹ and respectively the rules of civil procedure, according to art. 47 of G.O. no. 2/2001.

But in civil matters, the interested party will not have to prove, as we have shown, an injury, which can only be removed by annulling the act, but will only have to show the violation of a legal provision.

In conclusion, the courts by the power with which they were invested, will have to take into account the difference between the misdemeanor complaint by which the offender challenges the sanction or seeks annulment of the administrative act infringing a right or a legitimate interest and the nullity of the legal act concluded with violation of the provisions required by law.

In civil matters, disregard of the conditions imposed by law for the valid conclusion of an act, will permanently entail as a sanction the nullity of the act and its lack of effects, regardless of whether or not that act causes harm to the rights or legitimate interests of the parties.

Therefore, the admission of misdemeanor complaints in cases involving the finding of nullity of the record of finding the misdemeanor cannot be conditioned by proof of injury that can only be

³¹ Art. 28 states that: "The provisions of this law shall be supplemented with the provisions of the Civil Code and those of the Code of Civil Procedure, insofar as they are not incompatible with the specifics of power relations between public authorities, on the one hand, and persons injured in their legitimate rights or interests, on the other hand".

removed by annulling the act, the interested party must show only how they the imperative conditions of the law, necessary for its valid conclusion, have been violated. Proof of a civil injury does not have as a consequence the annulment of the act, but will have the effect of involving civil liability, according to art. 1349 et seq. of the Civil Code.

In conclusion, I consider that a brief review of the matter would be welcome, as it would add value to the procedural law system, a unitary practice, but also a benefit in the correct application of the law, where civil sentences are still encountered, in which, when the interested party invokes the nullity of the act for non-compliance with the imperatives of the law, they are rejected on the grounds that the interested party did not show any harm that was brought to him and that can only be removed by annulling the contested act.

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