



**„NICOLAE TITULESCU” UNIVERSITY  
LAW SCHOOL  
DOCTORAL SCHOOL**

**DOCTORAL THESIS**

**THE PROCEDURE OF ENGAGING IN CONTRAVENTIONAL  
LIABILITY - EVOLUTION, CHARACTERISTICS, PERSPECTIVES  
- ABSTRACT -**

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## **1. The research topic and its scientific significance**

The procedure for instituting contraventional liability is one of the most important legal structures in Romanian law, not only in terms of its relevance, which coincides with the dawn of human civilization, but also due to its sinuous historical evolution, and especially due to its immanence and proverbial recurrence, which gives it a distinct and highly current legal profile.

Given the fluid dynamics of contraventional procedural rules, which can even take on particular forms in Romanian legislation, the elaboration of this thesis was all the more necessary. It required the highlighting of the complex legal dimensions of the legal mechanism for holding the guilty accountable in a structured and logical manner, so that every legal professional, as well as a novice in the field, could find in this thesis an instrument of inspiration and profound analysis of the concealed springs of the institution under discussion.

There is abundant practice in the field of contraventions, often dissonant and uncorrelated, which makes it necessary to clarify the internal mechanisms of the contraventional procedure by highlighting the constituent elements and the correct and correlated interpretation of the current legal norms. This confers a form marked by a certain proximity to all the constituent elements of the contraventional procedure.

The constituents, form, and structure of this type of procedure are distinct, ingenious, and, at the same time, perennial in Romanian law, which justifies the challenge of conducting a thorough and coherent analysis of the values, as well as the legal effects of this complex mechanism of holding those who intend to violate the rules of social organization accountable, whose application is ensured by the imposition of deterrent sanctions.

The importance of the analyzed topic also emerges from the imperative to reveal the hidden implications of the new decisions on the interpretation of contravention norms and to ensure a unified judicial practice, as pronounced by the High Court of Cassation and Justice, as well as the legislative changes recently adopted by the legislator at various normative levels, which constitute a challenge for any legal professional in terms of unveiling the components of the contravention procedure.

## **2. The purpose and objectives of the research**

The present thesis aims, with the force of a primordial desideratum, to conduct an in-depth analysis of the contravention procedure, targeting a comprehensive overview of all inherent levels involved in the enforcement mechanism of contravention penalties. This entails following well-defined legislative rules, which

are essential for the fair resolution of the legal conflict arising from the commission of an illicit act classified as a contravention.

In this regard, we have thoroughly analyzed the new regulations specific to the field, which introduce a novel element to the overall mechanism of reestablishing legal order by adhering to legal frameworks prominently highlighted by the provisions of Government Ordinance no. 2/2001, as the general basis for contravention liability procedures, as well as by special legislation in the field.

These regulations offer a multitude of doctrinal challenges, particularly concerning their fair and correlated interpretation, which has been the central focus of the epistemological efforts pursued and achieved through the elaboration of this work.

An important objective pursued in this work has been the integration of the body of contravention procedure from Romanian law into the broader European and even global legislative framework. This has been achieved through a comparative analysis of relevant legal institutions regulated by both domestic and international legislation.

A significant aspect of this thesis has been the effort to outline the highly complex yet pertinent legal vision of the two European judicial bodies, namely the European Court of Human Rights and the Court of Justice of the European Union. These bodies, through their integrated approach to the analysis and synthesis of the relevant legislative framework, while considering the specificities and particularities of national legislation and interpretation of normative provisions, have provided valuable and indispensable legal tools for an in-depth analysis of contravention liability.

This has unequivocally been due to the unique specificity of the contravention procedure, aimed at establishing a naive liability for those responsible for committing this type of illicit act, termed as a contravention. Its sanctioning, from an internal perspective, exhibits a strong administrative trait, following the Romanian legislator's choice to decriminalize the correlating form of liability. However, in the view of the aforementioned European courts, it represents a genuine „criminal charge”.

From this perspective, the challenge of developing a thesis that rigorously and comprehensively captures the mechanism of establishing contravention liability necessitated a careful analysis and selection of relevant decisions from the European Court of Human Rights and the Court of Justice of the European Union, pertinent to the subject under investigation.

However, this approach, although correct, is not sufficient since the two courts do not have global jurisdiction. Therefore, a comparative approach within the thesis, covering legislations and judicial practices from legal systems worldwide, was necessary to capture the full complexity and all relevant and essential aspects of the contravention liability procedure.

From this angle, we conducted an in-depth analysis of the specific legislation of legal systems across six continents, highlighting both the unique elements of these legislations and the ubiquitous aspects that reflect a modern and advanced perspective on the procedure for establishing contravention liability.

### **3. Research Methodology**

Through a natural relation of the means of analyzing the institutions specific to the contravention procedure, structured in correlation with the proposed goals and objectives, the thesis employs a series of diverse but closely correlated research methods. Among these, distinguished by their importance and relevance, are the historical-legal method, the logical method, quantitative and qualitative examination methods, the comparative method, and the systematic and teleological analysis method.

Regarding the historical method, it was extensively used in the first part of the thesis to reveal the evolutionary dynamism of the contravention procedure, which initially was indistinguishable from the criminal procedure. This conceptual coexistence is not at all surprising, as, for most of human history, a contravention was considered merely a form of crime, a notion that has persisted to this day. Thus, in many legal systems worldwide, a contravention constitutes a simple aspect, an alternative and subdivisional variant of crime. This approach, however, was abandoned in Romanian legislation starting in the sixth decade of the last century.

Quantitative and qualitative analysis procedures were intensively used to uncover practical aspects of the issues under analysis, especially to exemplify the close connection and the individualization elements between contravention norms and those specific to other branches of law.

The comparative method of analyzing the various legal institutions under discussion proved extremely useful and efficient in revealing the normative diversity, determined by the natural differences existing between the various legal systems from different parts of the world, each with its unique vision and approach.

The methods of systematic analysis and teleological examination helped conceptualize the manner of operationalizing the legal precept of contravention liability by approaching an integrated system of rules and legal forms intended to restore the legal order established by the national normative ensemble, an order disrupted by the commission of a contravention.

### **4. Thesis Structure**

The organization of this thesis is characterized by a clear and coherent structure, divided into three main titles, which are further subdivided into chapters and subchapters. This structure forms an elaborate, balanced, documented, and

coherent plan of analysis, designed to efficiently fulfill the objectives of this work and fully reveal the results of the current scientific research.

In this context, the thesis begins with an introductory element, presenting the concept and significance of the contravention procedure as a specific legal institution of public law. This introductory part precisely and specifically reveals the content of the topic under analysis, its current legal relevance, and the necessity of a teleological approach in line with the research objectives and methodology.

The thesis then presents the elements of scientific structure that are of interest for a configurative analysis of the specific concepts of the contravention procedure. This approach involves following strict rules of cohesion, fluency, and logic in the epistemic effort made within the thesis, requirements that facilitate an easy analysis of the content by any interested person, whether they are a legal specialist or a novice in the field.

**Title I**, entitled „*Contravention Norms*”, includes six chapters aimed at precisely framing the current contravention procedure within the historical mechanism of evolution and structuring of this highly significant area in the activity of state authorities, as well as correlating the contravention procedure norms with the national and international normative ensemble. These operations are indispensable for a complete and correct understanding of the subject.

- **Chapter I** presents a historical and legislative connectivity vision of the contravention procedure, detailing the evolution of this institution from ancient times and the strong connections between contravention norms and those specific to other branches of law, driven by their common, integrated, and correlated course.
- **Chapter II** focuses on disseminating the indispensable and inexorable qualities of contravention provisions.
- **Chapter III** aims to highlight the functional relationship between contravention norms and other relevant norms, particularly those belonging to criminal, administrative, and civil law, with all their practical implications.
- **Chapter IV** addresses the issue of interdependence between contravention procedure norms and those specific to civil and criminal procedure, revealing the opportunities and proper order of correlation between these legal provisions.
- **Chapter V** examines, as elements of synergistic analysis, the quality requirements of contravention procedure provisions and the mechanism for integrating this subject into the European normative structure.
- **Chapter VI** details the guiding principles of the contravention procedure, essential for preserving the fairness and impartiality of this liability mechanism as a distinct form of "criminal accusation."

**Title II**, named „*Extrajudicial (Non-Contentious) Contravention Procedure*”, rigorously and demonstratively analyzes the eclectic but coherent structure of the

contravention procedure in its entirety, conducting an in-depth study of the activities of state authorities legally competent in this field.

- **Chapter I** deals with analyzing the distinctive elements of the notification and ascertainment procedure for contraventions, unveiling the inherent stages of this area.
- **Chapter II** aims to reveal the legal and jurisprudential challenges related to the stage of concrete sanctioning of antisocial behavior of a contraventional nature.

**Title III**, named „*Judicial (Contentious) Contravention Procedure*”, focuses on analyzing alternative concepts for verifying the ascertainment act, the procedural rules for notifying the court, resolving the contravention process (aimed at judicially verifying the sanctioning act prepared by the ascertaining agent), and enforcing contraventional sanctions.

- **Chapter I** addresses the issue of simplified procedures for controlling the sanctioning act, materialized in generally optional mechanisms available to interested parties, suitable for a fair and accelerated verification of the contravention report.
- **Chapter II** aims to outline the exercise requirements of the contravention complaint.
- **Chapter III** focuses on revealing the elements that integrate the object of the complaint.
- **Chapter IV** deals with unveiling the structure and legal effects of the contravention complaint, with all associated implications.
- **Chapter V** provides an in-depth analysis of the inherent rights of the contravenor in the contravention process and formulates appropriate proposals de lege ferenda.
- **Chapter VI** structures the characteristic elements of the contravention complaint trial procedure, highlighting all elements of symbiosis with the general rules of civil procedure, as well as extensively noting the aspects that deviate from general concepts.
- Finally, the last chapter addresses the issue of enforcing contravention sanctions, with rich references to applicable legal norms in this area.

The final part of this thesis is reserved for iterating comprehensive and coherent general conclusions regarding the results of the scientific research conducted over more than three years of intense activity, culminating in the elaboration of this doctoral thesis.

In this regard, we have revealed the main legal issues discussed in the thesis and for whose fair resolution we undertook a rigorous epistemological and legal interpretation effort. Additionally, we have formulated extensive proposals de lege ferenda aimed at improving the internal normative ensemble and aligning it with international legal sources ratified by the Romanian Parliament, as well as offering a new perspective on the contravention procedure, one that is modern, progressive, and adapted to the needs of contemporary Romanian society.