

THE REGIME OF CONTRAVENTION SANCTIONS IN THE FIELD OF LABOUR RELATIONS ACCORDING TO THE PREVENTION LAW no. 270/2017

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Abstract

Known in the project stage as the "Prevention Law", the Prevention Law no. 270/2017 entered into force on January 17, 2018, and could not be enforced because the list of contraventions to which the prevention applies was not published in the Official Gazette. Initially, Law no. 270/2017 contained, in its draft form, a list of numerous fines in the field of labour relations for which prevention was to apply.

In essence, the provisions of this normative act take into account the fact that no fines will be applied at the first finding of a contraventional act but will be given to those who should be sanctioned a term in which to correct the irregularities found and to comply with the legal provisions.

The preventive functioning mechanism requires that the inspector who finds the contravention attach the minutes and a remedial plan, which will include the issues to be corrected, as well as the compliance deadline, which according to art. 2 lit. c of the normative act is of maximum 90 calendar days.

In view of the concrete social danger of the deed, situations are established where the determining agent does not draw up a remedial plan but will apply the sanction directly, such as the use of undeclared work or the payment of a lower salary than the minimum.

Being conceived, as art. 10, as a derogating regime from the provisions of GO 2/2001 on the legal regime of contraventions, preventive measures can only benefit once for each deed, within a period of 3 years, according to art. 9 par. 1.

As the purpose of this regulation, as stated in art. 1 is to prevent contraventions, its future application will confirm this.

Keywords: *contravention; the law of prevention; remedial plan; working relationships.*

JEL Classification [K31]

1. Introduction

Known in the project stage as the "Prevention Law", the Prevention Law no. 270/2017¹ entered into force on January 17th 2018, and without being able to be applied because the list of contraventions to which the prevention applies was not published in the Official Gazette. Initially, Law no. 270/2017 contained, in its draft form, a list of numerous fines in the field of labour relations for which the prevention was going to be applied.

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¹ Published in the Official Gazette of Romania, Part I, no 1037 from December 28th (2017).

On February 5th 2018, it was published in the Official Gazette, the Government Decision no. 33 / 2018 regarding the setting of the offences falling under the Prevention Law no. 270/2017, as well as the model for the remedial plan², which contains in Schedule no. 1, the list of sanctions falling within the scope of this law.

2. Contraventional acts in the field of labor law

Among the over 300 offences mentioned, there are also some that strictly target employers, such as the following:

- Violation of the provisions of art. 23 from Law no. 279/2005 on apprenticeship at the workplace³, regarding the employment of apprentices (art. 5), non-compliance with the duration (Țop 2015) of the apprenticeship contract, failure to comply with the apprenticeship training provisions and their guidance by the apprentice coordinator (Ștefănescu 2017), failure to comply with the duration of the apprenticeship contract corresponding to the qualification levels, failure to include the time for theoretical training in the normal work schedule, violation of the rights of the apprentice according to the Apprentice Statute (Țiclea 2015), the failure to comply with the right of access of the apprentice to the theoretical and practical training; If he disregarded such provisions, the employer would face fines of 10000 lei.

- Violation of the provisions of Law no. 62/2011 of the social dialogue⁴, provided by art. 217 (1) (c), respectively the failure to publish the collective labour contract, by the signatory parties, at the level of a group of units or sector of activity. Both signatory parties have the quality of offender (Țiclea 2015), so remediation of the situation by one of the parties will benefit also to the other party.

- Failure by the assignor or assignee to comply with the obligations stipulated in Law no. 67/2006 on the protection of employees' rights in case of transfer by the company, unit or parts of it⁵. It was mentioned that Law no. 67/2006 regulates only one (Ștefănescu 2017) contravention act, the above mentioned, provided by Article 13, which is supplemented by the provisions of the Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and completions by Law no. 180/2002⁶, the finding of contraventions and the application of the fine (Țiclea 2015) being the responsibility of labour inspectors (Țop 2015).

- Violation of the provisions of art. 113 of Law no. 76/2002 regarding the unemployment insurance system and the stimulation of employment⁷ regarding: the non-communication of the vacancies on a monthly basis, the

² Published in the Official Gazette of Romania, Part I, no 107 from February 5th (2018).

³ Republished in the Official Gazette of Romania, Part I, no 498 from August 7th (2013).

⁴ Republished in the Official Gazette of Romania, Part I, no 625 from August 31st (2012).

⁵ Published in the Official Gazette of Romania, Part I, no 276 from March 28th (2006).

⁶ Published in the Official Gazette of Romania, Part I, no 268 from April 22nd (2002).

⁷ Published in the Official Gazette of Romania, Part I, no 103 from February 6th (2002).

non-use of the Classification of Occupations in Romania, the failure to comply with the obligation to communicate within a three-day legal term that it hired beneficiaries of the unemployment indemnity, failure to communicate the data and information requested in writing by the National Agency for Employment for the performance of its duties. In compliance with the law, vacancies are jobs available as a result of termination of employment or employment relationships, as well as newly created jobs. Employers' announcement of job vacancies as well as their employment are made on paper, according to the law, on standard forms available on the National Employment Agency's website.

- Non-compliance with the provisions of art. 9 of the Law no. 467/2006 regarding the setting of the general framework for informing and consulting employees⁸, namely, the employer's violation of the obligation to send to the representatives of the employees the information provided by the law, the transmission in bad faith of inaccurate or incomplete information, which does not allow the representatives of the employees the formulation of an appropriate point of view for the preparation of further consultations and the failure to comply with the employer's obligation to enter into consultations (Țop 2015);

- Violation of the provisions of art. 35 (1) of Law no. 335/2013 on the performance of the internship for graduates of higher education⁹, on the use of trainees for the performance of other activities and / or the exercise of tasks other than those stipulated in the job description and in the traineeship agreement, the coordination of the mentor of more than 3 trainees (Ștefănescu 2014), the failure to draft the assessment report in due time before the end of the traineeship or failure to issue the certificate of graduation of the traineeship, failure to notify the trainee of the report drawn up by the assessment committee, failure to release within 5 days of the certificate of completion of the traineeship or not having it approved by the Territorial Labour Inspectorate, failure to conclude the traineeship contract at the same time as the individual employment contract, non-compliance with the basic salary provisions or the duration of the work program, failure to conclude the additional act regarding the obligations following the completion of the traineeship; Ignoring such legal requirements may make it possible to apply fines between 1000 and 2000 lei.

- Non-compliance with the provisions of the Law on work safety and health no. 319/2006¹⁰, sanctioned according to art. 39, of which the most important are (Țop 2015): not obtaining the operating authorization for work safety, failure to provide the protection food, not reporting the work accidents, change of the state of fact resulting from the occurrence of a fatal or collective accident; the failure to secure work equipment without jeopardizing the safety and health of workers; non-implementation of the measures taken by labour

⁸ Published in the Official Gazette of Romania, Part I, no 1006 from December 18th (2006).

⁹ Published in the Official Gazette of Romania, Part I, no 776 from December 12th (2013).

¹⁰ Published in the Official Gazette of Romania, Part I, no 646 from July 26th (2006).

inspectors, the absence of a risk assessment for work safety and health, the failure to adapt the decision on the protection measures that have to be taken and, where appropriate, on the protective equipment to be used, the failure to adapt the work equipments starting from the stage of research, design and performing the constructions and the failure to adapt the manufacturing technologies to eliminate or diminish risks, the failure to set for the workers, in the job description, their tasks and responsibilities in the field of work health and safety, the failure to develop own instructions; non-setting up, non-organization and non-functioning of health and safety committees at work, training at the expense of workers, non-declaration of acute professional intoxication, etc.

- Violation of the provisions of Law no. 200/2006 on setting and use of the Guarantee Fund for the payment of salary claims¹¹ regarding the failure to communicate the data and information requested in writing by the territorial agencies for the fulfilment of the statutory tasks or the communication of incomplete or erroneous data and information (Țop 2015).

3. The remedial plan

In essence, the provisions of this normative act take into account the fact that no fines will be applied at the first finding of an act of contravention but will be given to those who should be sanctioned a term in which to correct the irregularities found and to comply with the legal provisions.

In other words, employers who violate the above-mentioned obligations may initially get rid of a fine if they remedy the situation within 90 days of informing them of this.

The preventive functioning mechanism requires that the inspector who finds the contravention to attach to the minutes a remedial plan¹², which will include the issues to be corrected, as well as the compliance term, which according to art. 2 (c) of the normative act is of maximum 90 calendar days.

The model of the remedial plan to be attached to the report on the finding of contravention and the application of the sanction are set out in Schedule no. 2 of Government Decision no. 33/2018.

The responsibility for the remedy measures is the responsibility of the person who, according to the law, bears the contravening responsibility for the established deeds.

Taking into consideration the social danger of the deed, there are established situations where the determining agent does not draw up a remedial plan but will apply the sanction directly, as in the case of the use of undeclared work or the payment of a lower salary than the minimum one.

¹¹ Published in the Official Gazette of Romania, Part I, no 453 from May 25th (2006).

¹² The model of the remedial plan which is attached to the minutes of finding the contravention and applying the sanction is provided in the Government Ordinance no 33/2018.

If, during the control, the offender fulfils their legal obligation or if the offence committed is not continuous, according to art. 4 (1) from the Law on Prevention, the investigating agent no longer draws up a remedial plan, but only applies the sanction of warning, even if the sanction of warning is excluded for the offences in question.

If a person commits several offences, ascertained at the same time by the same finding agent, it draws up, as provided by art. 5 of the Law, a single report on the finding of contravention and the application of the sanction, accompanied, where appropriate, by a remedial plan.

Within a maximum of 10 business days from the expiry date of the remedial term, the public authority / institution with control duties has the obligation (Article 8 (1)) to perform the control again and to complete part II of the remedial plan attached to the minutes on finding the contravention and the application of the sanction and, where applicable, the control ledger, indicating how to comply with the remedy measures ordered.

Article 9 provides that if, within 3 years from the date of concluding the minutes of the finding of the offence and the application of the sanction, the offender repeats the same contravention, the legal provisions in force regarding the detection and sanctioning of contraventions are directly applicable.

Being conceived, as stated by art. 10, as a derogation from the provisions of GO 2/2001 on the legal regime of contraventions¹³, the prevention measures can only be applied once for each deed, within a period of 3 years, according to art. 9 (1).

The application of the Prevention Act determines the importance of a document that the employer must mandatory submit to the control of the specialized control bodies, namely the control ledger, where according to Law no. 252/2003¹⁴ there are underlined all checks the employer was a subject of. Thus, the provisions of the Prevention Act will not apply in case the employer, subject to the verification, refuses to submit the control ledger, as provided by the provisions of Art. 6 (4) of Law no. 270/2017.

4. The situation of the contraventions stipulated by the Labor Code

It can be seen that none of the contraventions provided by art. 260 (1) of the Labour Code are not included in the list provided in Schedule no. 1 of the Government Decision no. 33/2018, which can only lead to the conclusion that the gravity of such acts eliminates the application of the provisions requiring remedy measures, although some of the contraventions, especially those introduced by the Government Emergency Ordinance no. 53/2017¹⁵, as is the one provided by art. 260 (1) (q) sanctioning the act of an employer who does

¹³ Published in the Official Gazette of Romania, Part I, no 410 from July 25th (2001).

¹⁴ Published in the Official Gazette of Romania, Part I, no 429 from June 18th (2003).

¹⁵ Published in the Official Gazette of Romania, Part I, no 644 from August 7th (2017).

not have a copy of the individual employment contract for employees carrying out work at a particular workplace (Țop 2017) would require the favour sanctioning treatment established by the Law on Prevention and it would be obvious that the immediate application of a sanction, which, in most cases, involves a common omission.

Conclusion

As the purpose of this regulation, as it is stated in art. 1 is to prevent the commission of contraventions, its future application should confirm this desideratum, given that the particularity of the legal regime of contraventions in labour law “refers to the possibility of restoring the deregulated order by committing that act (Țiclea 2015)”.

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