

THE JOINT INVESTIGATION PROCEDURE OF WORK ACCIDENTS

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Abstract

The criminal liability related to employment is regulated by means of a special chapter in the Labor Code². There are also special regulations, other than the ones mentioned in Romanian Labor Code, that are applicable to the participants of an employment relation in case a criminal activity is involved. These special provisions relate also to the applicable obligations arising out of the health and safety regulations where a special importance is given to the analysis of the compliance of the employers with their duties in the field of protection of their employees.

Keywords: labor law, Romanian Labor Code, work accidents, criminal liability, employment relation.

JEL Classification: K31

1. Introductory considerations

The activities considered as criminal offense related to the health and safety obligations are regulated through Law no. 319/2006. They can be divided into two main categories:

- criminal offenses committed by the persons with attributions in implementing and enacting the health and safety measures;
- criminal offenses that can be committed by any other person, including the employees.

For these special types of criminal offenses the special juridical object is represented by the social relations at the workplace protected by the legal provisions ensuring the protection of all the participants in an employment relation or in connection with the performance of a labor relation so that the activity in question is performed in an environment that is free of any work accident or professional disease.

2. The joint investigation procedure of work accidents

A special attention must be given to the work accidents where one or more of the participants fall victim of an accident. Such an event entails a complex analysis into the causes of the accident and the liable persons and/or entities by both Labor Inspection and criminal investigation authorities.

Each authority performs its own investigation with its own results.

In practice such a course of actions may lead to different interpretation of the same facts and causes confusion in terms of challenging the results, procedure to be followed and order in which the courts should analyze the contestation related to the causes of the accident and the persons that may be liable for it³.

The investigation of the work accident is finalized by⁴:

- a Minute issued by Labor Inspectorate attesting the causes of the accident;
- a Minute issued by Labor Inspectorate imposing a fine to the person and/or entity that is found as bearing the liability for the accident;

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² Chapter V. articles 164-265 of Romanian Labor Code.

³ See Ion Traian Ștefănescu, *Tratat teoretic și practic de drept al muncii (Theoretical and practical labor law treaty)*, 4th edition, revised and supplemented, Universul Juridic Publishing House, Bucharest, 2017, p. 384 et seq.; Alexandru Țiclea, *Tratat de dreptul muncii. Legislație. Doctrina. Jurisprudență (Labor law treaty. Legislation. Doctrine. Jurisprudence)*, Universul Juridic Publishing House, Bucharest, 2016, p. 367 et seq.

⁴ See Claudia-Ana Moarcăș Costea, Ana-Maria Vlăsceanu, *Dreptul individual al muncii. Analize teoretice și studii de caz (Individual labor law. Theoretical analyses and case studies)*, C.H. Beck Publishing House, Bucharest, 2010, p. 125; Magda Volonciu, in Alexandru Athanasiu, Magda Volonciu, Luminita Dima, Oana Ileana Cazan, *Codul muncii. Comentariu pe articole (Labor Code. Comments on articles)*. Volume II, C.H. Beck Publishing House, Bucharest, 2010, p. 437; Lavinia Onica Chișea, *Dreptul muncii. Curs universitar (Labor Law. University Course)*, Pro Universitaria Publishing House, Bucharest, 2013, p. 132; Septimiu Panainte, *Dreptul individual al muncii (Individual Labor Law)*, Hamangiu Publishing House, Bucharest, 2017, p. 261.

- the Ordinance issued by the Prosecutor office analyzing the criminal liability of the person and/or entity that is found as bearing the liability for the accident.

The results of the findings of the public authorities may be challenged in front of the courts. However, there is no unitary process for challenging the above-mentioned results as each document is subject to a special procedure and competence before the courts of law.

As such the Minute issued by Labor Inspectorate attesting the causes of the accident represents an administrative act subject to the provisions and procedure set out in Law no. 554/2004. As such, the conclusions of the Labor Inspectorate concerning the causes of the work accident must be challenged following the procedure set out in art. 7-21 of Law no. 554/2004 deferring the case in front of the administrative contentious court.

The Minute issued by Labor Inspectorate imposing a fine to the person and/or entity that is found as bearing the liability for the accident can be challenged following the procedure set out in Government ordinance no. 2/2001. This represents a special and different procedure and competence than the one used for the challenge of the Minute attesting the causes of the work accident.

The results of the criminal investigation are subject to the special procedure and competence set out in the Criminal Code.

In practice the solutions of the courts are not unitary in terms of the limits of each different competent court in its analysis of the sanctions and caused of the work accident.

One of the most disputed aspects is related to the limits of the competence of the court vested with the analysis of the legality of the Minute issued by Labor Inspectorate imposing a fine to the person and/or entity that is found as bearing the liability for the accident. There is no clear legal limit nor case law defining the competence of the court with respect to the possibility to analyze the legality of the procedure in which the causes of the accident were established.

Some courts have considered that their analysis on the legality of the application of the fine implies automatically an analysis of the legality of the procedure establishing the causes of the accident. In augmenting their interpretation, the courts have considered that it is not possible to determine if a fine has been lawfully imposed in the absence of an analysis of the merits of the legal relation/conflict that lead to the application by the authority of the fine.

Other courts, on the contrary have considered that their analysis is subject to a special procedure and limitation of competence imposed by Government Ordinance no. 2/2001 which does not allow them to perform the analysis of the legality of an administrative act which is of the competence of the specialized courts mentioned in art. 10 of Law no. 554/2004.

It is important to note that the competence of the courts in these cases is of public order and there is no possibility given for the court to extend the limits of their competence.

As such the Minutes issued by Labor Inspectorate should follow the precise procedure regulated by both Government Ordinance no. 2/2001 and Law no. 554/2004.

However we cannot oversee the argumentation of the court vested with the analysis of the legality of the fine imposed by the labor authority which requires not only an analysis on the legality of the procedure to apply the fine but also a determination on the causes of the accident and the persons that are considered liable for the accident.

Given the above, the correct solution should be to suspend the analysis performed by the court in the limits imposed by Government Ordinance no. 2/2001 until a final solution is reached by the court vested with the analysis of the administrative act concerning the causes of the accident.

In support of the above interpretation it is important to note that Law no. 319/2006 no longer stipulates expressly the competence of the courts in analyzing the contestation filed against the minutes attesting the causes of the work accident as it was the case in the prior legislation represented by Law no. 90/1996⁵.

As a consequence, the competence of the courts must be established strictly based on the legal provisions regulating the legal regime of the contested act.

⁵ Which referred the analysis to the first courts.

The investigation performed by Labor Inspectorate has the purpose of establishing the causes that lead to the accident, the legal obligations that were breached, the liabilities for all persons involved and the required measures for preventing any similar situations from reoccurring.

Labor Inspectorate is an authority that functions in a public power regime and the measures imposed by its inspectors represent administrative individual acts with public power.

Given its legal nature any analysis of the causes of the work accident must follow the procedure provided by Law no. 554/2004 that provides for the competence of specialized courts different from the ordinary first court vested with the analysis of the fine imposed by the same authority.

For the same arguments the administrative contentious court is not competent to analyze the legality of the fine imposed by the labor inspectors.

A more complex situation can be in case the work accident involves a possible criminal investigation performed by the Prosecutor office which must be performed in accordance with the provisions of the Criminal Code and should cover an investigation by the authority of any and all aspects including causes of the accident and liabilities of the persons involved.

There are no legal provisions establishing the order of the investigation to be performed by Labor Inspectorate and Prosecutor Office nor a cooperation between the two authorities. As such there is a theoretical possibility that the conclusions of the two public authorities to be different.

In practice there have been cases where Labor Inspectorate concluded to the existence of the fault of the employer by report to the failure to implement the proper health and safety measures while the criminal investigation procedure did not lead to a conviction of the same employer.

Such a situation may be explained by the different object of the investigations performed by the two authorities and the different perspective on which they analyze the chain of events that lead to the accident.

Nevertheless the obligations that befall on the employer and the persons with responsibilities for health and safety of the employees and the liabilities that ensue for failure to observe their obligations should be analyzed in a harmonized procedure and based on the cooperation between the public authorities with control attributions in this field.

3. Conclusions

The same problem has been under analysis in the United Kingdom and the solution reached by the authorities came under the form of a cooperation protocol between the Health and Safety Agency and the investigation authorities.

The interlinking and overlapping responsibilities require close co-operation and liaison between the different agencies that are involved. To ensure that investigations into work-related deaths allow all the agencies to fulfil their roles, a protocol which deals in greater detail with each stage of the investigation, has been drawn up in the United Kingdom whereby Health and Safety Agency (HSE), ACPO (Association of Chief Police Officers), BTP (British Transport Police), the CPS, the LGA (Local Government Association), ORR (the Office of Rail and Road), the Maritime and Coastguard Agency (MCA) and the Chief Fire Officers' Association (CFOA) are signatories to it.

The Protocol is not intended to replace the instructions contained in the operational procedures, and HSE staff should continue to follow the procedures. For example, the Protocol does not seek to set down whether or not any particular death is investigated but does set down the framework for liaison with other organizations in those cases where we do decide to investigate⁶.

Decisions relating to investigation/prosecution will be coordinated in accordance with the protocol. It is complemented by the Work-related Deaths Investigators' Guide, which provides helpful practical guidance on following the principles of liaison set out in the protocol.

⁶ <https://www.hse.gov.uk/enforce/enforcementguide/wrdeaths/investigation.htm>, consulted on June 1, 2020.

A similar approach should be considered in Romania as well as it would lead to a unitary investigation of work accidents with clear benefits in a thorough analysis of the causes of the accident and required measures in order to prevent similar accidents from happening.

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7. Romanian Labor Code.