PENALTIES IMPOSED BY THE LABOR INSPECTORS WITHIN THE INSPECTION ACTIVITY CARRIED OUT BETWEEN 2008-2012 IN THE COMMERCIAL UNITS OF ROMANIA

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Abstract

As a result of recent EU directives adoption concerning measures taken by Member States in order to eliminate the “illegal work” but also the need to protect the interests of the employees.

Labour Inspection represents within the area of labor relations, the administrative control body on application of general or specific regulations, necessary and without of which the labor relations cannot take place in a normal and correct legal frame. But in practice of the employment relationships are often found violations of the legal norms which are punishable by the civil law Labour Inspection.

The purpose of this article is to capture the offenses covered by the Labour Code which can be committed by the employers and the coercive measures that can be applied by the labour inspectors without neglecting a brief review of the sanctions from the field of labour relations in Romania between 2008-2012.

Keywords:

penalties, Labour Inspection, labour relations, employers.

Classification JEL: J51, J52, J53
I. INTRODUCTION

Regardless of the extent in which the states intervenes or not—through mandatory rules or dispositions—in the sphere of labor relations, the Labor Inspectorate imposes itself as an administrative control authority, without which it cannot be conceived the normal labor relations, the elimination of undeclared employment and the defense mainly of the employees interests.

The Labor Inspectorate arises from the fact that Romania has ratified the two Conventions of the International Labour Organisation, namely: Convention no. 81 (1947) on Labour Inspection in Industry and Trade and Convention no. 129 (1969) regarding labor inspection in agriculture.

The requirements concerning the organization of the Labour Inspection constitutes an important milestone also in a number of EU documents. Moreover, in the states of the EU are organized authorities for inspection and control upon the way in which labor laws are applied and respected, in what concerns the employed persons. In the Labor Code, Title X on Labour Inspection, is based only on the essential task of control and application of the specific or general regulations in the field of labor relations, labour health and safety and the fact that it has in charge labor inspectorates.

Labour Inspection is the main body of the state which keeps track and controls the work reports (without having direct responsibilities in the collective negotiation or solving of the rights interests or conflicts).

The Labour Inspectorate has been established under Law no. 108 of 1999, and was organized and functioned under GD. 767 of 1999 in accordance with the stipulations of the Convention no. 81 of the International Labour Organisation. In November 2009, the GD. No 767 of 1999 was repealed and replaced by the GD. 1377 of 2009 through which to the Labour Inspectorate return the exercise of state authority in the field of social work and social inclusion.

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7 Government Decision no 767 of 1999 regarding the approval of the organization and functioning of the Labour Inspectorate published Official Gazette no. 464 of 24 September 1999, modified and completed by G.D no.252 of 2001 and G.D no.537 of 2001concerning the establishment of professional training Centre of Labour Inspection).
Through its central and local structures, the Labour Inspectorate supervises the unitary application of the legal provisions in its fields of competence of the public, mixed and private sector units, to the public administration authorities both local and central, the natural and legal persons and non-governmental organizations and the other categories of employers. In its current activity, Labour Inspectorate aligns to the European initiatives in the field and organises control and awareness campaigns on topics of interest identified at Community level, ensuring the use of methods for testing and training tools for labour inspectors, in line with those used by the labour inspection authorities in the Member States.

II. AN OVERVIEW OF THE CONTRAVENTION MEASURES WHICH MAY BE APPLIED BY THE LABOUR INSPECTORS.

The stopping in any way by an employer, which is natural or legal person, of the labour inspectors in order to exercise control within the legal limits constitutes a contravention and is punished by a fine. The refusal of an employer, legal or natural person, in order to carry out compulsory measures taken by the labour inspector at the established deadlines, in the limits and with the legal compliance, constitutes an offense and is punished by a fine.

The main contravention sanctions which can be applied by the labour inspectors are the warning and the fine. Between these two options, the warning is exceptional, being applied only in the situations when the deed is of low gravity, presenting a minor social danger. Depending on the nature and seriousness of the offense, the labour inspectors can apply one or more complementary contravention sanctions such as: cancellation or withdrawal of the authorization for operation in terms of security and health at work place, ceasing of the activity or removal of the work equipment when there is a state of imminent threat for injury or occupational disease with the measurement to cease the activity in the examiner certificate.

The inspectors may lodge complaints to the authorities of criminal prosecution regarding the cases of misconduct prescribed by law as being crimes and requests for cancellation of the legal entity from Trade Registry if committed repeatedly by the employers of some serious breaches from the provisions of Labour Law or the rules of safety and health at the work place. Given the legal nature of the Labour Inspection, this shows that the measures taken by the labour inspectors are administrative acts (individual) of some public authority (art. 48 para. 1 of Romanian Constitution). As a result, the possibility to be

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10 Art. 20 of Law no. 108 from 1999 for the establishment and organization of Labour Inspection.
11 Art. 21 of Law no. 108 din 1999 for establishment and organization of Labour Inspection.
challenged on judicial or administrative ways prescribed by the law entails an administrative contentious action\textsuperscript{12}.

III. SPECIFIC AREAS IN WHICH CAN BE APPLIED CONTRAVENTION SANCTIONS IN THE SPHERE OF LABOUR RELATIONS.

Specific areas in which contravention sanctions may be applied are the following\textsuperscript{13}:

- **Labour Inspectorate** is an institution which may adopt coercive measures involving state authority, in the case when the controlled entities don’t comply with legal behaviour in labour relations\textsuperscript{14}.

- **The labour inspectors** are assigned to find and penalize contraventions provided in several legislation acts of the labour relations field\textsuperscript{15}.

Also according to the general theory of Law, the legal liability is an essential institution, having the role to reflect the level of evolution of the society as a whole\textsuperscript{16}. The proclamation of some legal rules for all the society’s members involves when needed the application of the corrective force of the states\textsuperscript{17} in order to achieve them\textsuperscript{18}.

**The specific areas in which penalties are applied are the following:**

- obligations of the employer contained in the Labour Code, collective work agreements and regulations if the field of labour relations;
- registration of the individual labour contracts and deposition at the territorial inspectorates of the labour records, and the necessary documents in order to complete them.
- termination, enforcement, modification, suspension and termination of the apprenticeship contract in the workplace.
- preparation and completion of the general employees register (REVISAL);
- protection for the Romanian citizens which work abroad;
- working conditions for foreigners;
- the posting of workers within the transnational provision of services etc.

\textsuperscript{13} The Order no.2 of 2001 on the legal regime of offenses.- *Law 554 of 2004*, on administrative litigation.
\textsuperscript{14} Law no.108 of 1999 for establishment and organization of Labour Inspection.
\textsuperscript{15} G.D no. 767 of 1999 for the approval, organization and functioning of Labour Inspection (Art.17).
\textsuperscript{16} I. M. Anghel, Fr. Deak, M. Popa, *Răspundere a civilă*, Editura Științifică, București 1970, pag. 5.
\textsuperscript{17} C. Călinoiu, Răspunderea administrativ-disciplinară a funcționarilor publici, în R.R.D. muncii, nr.1 din 2002, pag. 44-45.
IV. CONTRAVENTIONS AND SANCTIONS PROVIDED IN THE LABOUR CODE\textsuperscript{19}.

- receipt of persons working without an individual contract for work- fine from 10,000 to 20,000 RON for each person identified;
- stipulation in the individual labour contract of some clauses contrary to law- fine from 2,000 to 5,000 RON.
- not giving to employee from the employer a copy of the individual labour contract, fine from 1,200 to 2,000 RON.
- breaching the provisions concerning the payment of minimum wage of the country is punished by fine from 300 to 2,000 RON.
- performing work by an individual without having a contract of employment- fine from 500 to 1,000 RON;
- violation of the provisions relating the grant of official holidays and compensation/payment of the worked official holidays-fine from 5,000 to 10,000 RON.
- failure to comply with the limits for overtime-fine from 1,500 to 3,000 RON.
- failure for compensation if the employer pauses temporarily the activity, maintaining the work reports- fin from 1,500 to 5,000 RON.
- violation of the legal provisions concerning night work- fine from 1,500 to 3,000 RON;
- failure to register the resignation by the employer- fine from 1,500 to 3,000;
- violation by the employer of the obligation to request medical certificate or to hold evidence of work hours for each employee- fine from 1,500 to 3,000.
- breaching the obligation to release to the employee a document stating his activity, seniority in occupation and speciality- fine from 300 to 1,000
- prevention or obligation, by threats or violence of a employee or a group of employees to participate in the strike or work during strike- fine from 1,500 to 3,000 RON.

\textsuperscript{19} Art. 260 of Labour Code
V. SANCTIONS AGAINST EMPLOYERS AFTER THE CHECKS CARRIED OUT BY THE LABOUR INSPECTORS DURING 2008-2012.

- Sanctions applied in labour relations

Table no. 1

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Year 2011</th>
<th>Year 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of sanctions applied:</td>
<td>82,762</td>
<td>89,398</td>
</tr>
<tr>
<td>- Number of fines</td>
<td>17,294</td>
<td>12,562</td>
</tr>
<tr>
<td>- Number of warnings</td>
<td>65,468</td>
<td>76,836</td>
</tr>
<tr>
<td>The amount of fines (RON)</td>
<td>125,545,100</td>
<td>106,746,000</td>
</tr>
</tbody>
</table>

(Own processing after [www.inspectmun.ro](http://www.inspectmun.ro))

In the year 2012 according to fig.1 and the table no.1 for the identified decisions, labour inspectors have applied 89,398 contravention sanctions with 8.02% more than the previous year, but the amount has decreased by 14.97% compared to 2011.

Compared to year 2011, the control actions in labour relations led to the following results:

- The large share of the warnings emphasizes the preventive nature of the control actions carried out by the labour inspectors. Compared with 2011, the number of fines has recorded a decrease of 27.36% in 2012 and the number of warnings has grown with 17.36%. In 2012, for the cases of deviations provided by the law as being crimes were submitted to the prosecution authorities 487 complaints.

(Own processing after [www.inspectmun.ro](http://www.inspectmun.ro))

**Fig.1.** Sanctions applied in the labour relations between 2008-2012.
• **Impeding and failure to exercise control measures ordered by the labour inspectors:**

Between January and December 2012, based on Law no. 108/1999 have been sanctioned 1,976 of employers, applying 2,026 contraventions (1,092 fines and 934 warnings), of which:

- 377 sanctions for stopping labour inspectors from doing their job, of which: 251 fines (66,57) and 126 warnings (33,43);
- 1,244 sanctions for failure to carry out of the imposed measures ordered by the inspection reports of which 381 fines (30,62) and 863 warnings (69,38).
- 405 sanctions for the failure to provide to the labour inspectors as they stand in the established term of the documents needed for inspection, from which: 302 fines (74,56%) and 103 warnings (25,44%).

The amount of the fines imposed was 5,461,500 RON, of which:
- 1,625,500 RON for stopping the labor inspectors from doing their control job.
- 1,189,500 RON for failure to carry out the measures ordered by the inspection reports.
- 1,846,500 RON for failing to provide to the labor inspectors the necessary documents before the imposed deadline.

• **Sanctions applied in the field of health and security at workplace:**

Activities performed by the Labour Inspectorates in 2012 compared to the previous year for the accomplishment of the objectives and indicators in the field of security and health at the workplace which is the following:

According to table no.2 and fig.2, the number of contravention sanctions applied in 2012 was about 125,818 recording a decrease of 9.43% over the previous year. Also the amount of the penalties in reference year decreased by 47.01% compared to year 2011.

These represent a consequence of the decrease:

- of the numbers of labour inspectors with over 4%, from 561 in 2011 to 538 in 2012.
- of the control units number and controlled units in 2012 than the previous year.

Table no.2 Sanctions applied in the field of security and health in labour.

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Year 2011</th>
<th>Year 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of contraventions applied :</td>
<td>138,926</td>
<td>125,818</td>
</tr>
<tr>
<td>Number of fines</td>
<td>10,413</td>
<td>5,625</td>
</tr>
<tr>
<td>Number of warnings</td>
<td>128,513</td>
<td>120,193</td>
</tr>
<tr>
<td>The value of fines (RON)</td>
<td>58,669,535</td>
<td>31,086,700</td>
</tr>
<tr>
<td>Number of measures applied for deficiencies detected :</td>
<td>160,774</td>
<td>130,598</td>
</tr>
<tr>
<td>Number of ceased activities:</td>
<td>249</td>
<td>110</td>
</tr>
<tr>
<td>Number of work equipment stopped from functioning</td>
<td>1,058</td>
<td>450</td>
</tr>
</tbody>
</table>

In the year 2012 for noncompliance of the legal provisions by the legal or natural persons from the field of health and security in work, have been submitted to the prosecution authorities 87 notifications, a relatively low number compared to the previous years, but with 58 more notifications than 2011. (fig 3)

(Own processing after www.inspectmun.ro)

Fig.2. The number of administrative sanctions applied in the field of safety and security labour 2008-2012
Also, the labour inspectors have ordered a series of complementary contraventions (fig. 10) such as: stopping of 450 working equipment (fig. 4), with 57.47% fewer than in 2011 and the ceasing of the activity of 110 jobs (fig. 5) because of the existence of an imminent danger state of injury or occupational disease, which represents a decrease of 55.82% compared to the last year.

Fig.3. Number of notifications for criminal prosecution

Fig.4. Number of the stopped working equipment
VI. CONCLUSIONS AND SUGGESTIONS

Labour Inspection involves as an administrative control body, the state’s authority, in situation when the controlled entities do not comply with legal behavior in labor relationship. As we see in the statistics provided by this authority, the cases in which the law is broken are frequently in the Romanian units, except that once with the change of the new Labour Code (2011) the penalties are higher, up to the application of penal sanctions to the employers. Thus, since 2011 both the number and the value of the fines decreased substantially.

To continue to diminish in the future the misconduct on employment relationship, we consider the following measures appropriate from the Labour Inspection:

- to continue publishing informative materials referring to the legislative news but also on the value of the sanctions for breaches of legislation;
- publication of these materials, not only on Labour’s Inspection site, but also of interviews with the labour inspectors in national and local publications.
- more frequent and various advertising campaigns.
REFERENCES


Law no.51 of 2012 and republished.

Law no. 108 from 1999 for the establishment and organization of Labour Inspection.

The Order no.2 of 2001 on the legal regime of offenses.

Law 554 of 2004, on administrative litigation.