

CHALLENGES AND PREDICTABILITY OF THE FIELD OF CRIMINAL LIABILITY IN LABOR AND SOCIAL SECURITY LAW IN ROMANIA

Summary: The basis of criminal liability in labor law and social security is the illicit act, the crime, provided as such in the Labor Code or in the normative acts belonging to the field. It harms social values and social relations that arise and develop in connection with certain essential aspects of labor law, namely the conclusion, execution and termination of the individual labor contract, labor conflicts, occupational safety and health, etc. At the same time, criminal liability presupposes the commission of such an illicit act by the person who was obliged to comply with the norm of conduct imposed by the normative act and who commits the act, under the conditions provided for by the incrimination norm.

Criminal liability in the field of occupational safety and health is regulated by the Criminal Code, which provides for distinct offenses, which according to the specialized literature¹ can be classified according to their subject matter into two categories: offenses committed by persons who have the obligation to take occupational safety and health measures; and offenses committed by persons who have the obligation to comply with these measures.

Keywords: criminal, labor, security, social, predictability.

1. PRELIMINARY

The concept of legal liability² has its origins in Roman law. Here the term *respondeo* had the meaning of a bond established in the *verbis contract* between

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1 C. Casian, *Accidentul de muncă: realități și perspective*, Universul Juridic Publishing House, București, 2023, 327–336.

2 I. Vida, I. Vida, *Teoria generală a dreptului: university course*, Universul Juridic Publishing House, 2016, 175. The notion of liability also means to pay, settle, fulfill an obligation. See, in this regard, A. Popescu, *Teoria dreptului*, Foundation Publishing House „România de Măine”, București, 1999, 175.

creditor and debtor in which the parties are obliged to respond to the accusations brought against them.

The specificity of legal liability, in comparison with other forms of social liability³, is that it refers to the obligation to answer for the violation of the rule of law. The only basis for legal liability is the violation of the provisions of legal norms. Violation of legal norms also entails the legal liability established by them.

Legal liability is the most important within social liability⁴, due to the possibility of applying, if necessary, state coercion, that is, judicial intervention.

Liability and sanctioning are not (and cannot be) in any case forms of blind liability, but methods of legal reward (according to the deed and reward! – say the people), of repairing the violated order, of reintegrating a damaged patrimony and of social defense⁵.

2. GENERAL CONSIDERATIONS

Social criminal law⁶ represents the totality of criminal provisions that regulate serious violations of legal norms in the field of social law, giving the latter notion its broader meaning, which includes both labor law and social security law.

The basis for criminal liability in labor law is the unlawful act, the crime, provided for as such in the Labor Code or in the normative acts belonging to the field. It affects social values and social relations that arise and develop in connection with certain essential aspects of labor law, namely the conclusion, execution and termination of the individual labor contract, labor conflicts, occupational safety and health, etc. At the same time, criminal liability presupposes the commission of such an unlawful act by the person who was obliged to comply with the norm of conduct imposed by the normative act and who commits the act, under the conditions provided for by the incrimination norm⁷.

As a basis for legal liability, criminal liability arises when the act committed is incriminated as a crime, committed in the exercise of duties deriving from the employment (service) relationship⁸.

3 G. Boboș, *Teoria generală a dreptului: course notes*, Ardealul Printing House, Cluj-Napoca, 1993, 185.

4 H. A. Bodea, I. Bodea, S. Culda, *Compendiu juridic*, Eikon Publishing House, Cluj-Napoca, 2009, 151.

5 N. Daghie, *Rezoluțiunea și rezilierea contractelor*, 2nd edition – revised and added, Universul Juridic Publishing House, București, 2016, 6, apud N. Popa (coord.), *Teoria generală a dreptului. Seminar notebook*, All Beck Publishing House, București, 2011, 215.

6 P. Buneci, I. Dumitru, *Drept penal social: analiza infracțiunilor din domeniul muncii și securității sociale*, Universul Juridic Publishing House, București, 2016, 13.

7 Ș. Boboc, *Răspunderea penală în dreptul muncii*, Sitech Publishing House, Craiova, 2013, 36.

8 M. Tofan, M. B. Petrișor, *Dreptul muncii. University course*, Hamangiu Publishing House, 2013, 189–190.

The new Romanian Criminal Code⁹ gives a new definition of the crime, this being according to art. 15 paragraph (1), the act provided for by the criminal law, committed with guilt, unjustified and attributable to the person who committed it. Thus, in the context of the new regulation of the crime, the justifying causes are circumstances that remove one of the essential features provided for in art. 15 of the New Criminal Code, namely the unjustified nature of the committed act.

In addition to the justifiable causes, the legislator also regulates in the New Criminal Code the non-imputable causes. The latter remove the imputability, which represents another essential feature of the crime, unlike the justifiable causes that remove its unjustified character¹⁰.

3. APPLICABLE COMPLEMENTARY OFFENSES AND PENALTIES, PROVIDED FOR BY LAW NO. 53/2003 LABOR CODE AND OFFENSES RELATED TO LABOR LAW IN SPECIAL LAWS

3.1. Offences provided for by Law No. 53/2003 – Labor Code and applicable complementary penalties

3.1.1. Offenses provided for by Law No. 53/2003 Labor Code

The following crimes are criminalized in the Labor Code:

It constitutes a crime and is punishable by imprisonment from one month to one year or a criminal fine for the person who, repeatedly, establishes salaries for employees employed under an individual employment contract below the level of the minimum gross salary per country guaranteed in payment, provided for by law¹¹.

The penalty provided for in art. 264 paragraph (1) of Law no. 53/2003 Labor Code also sanctions the crime consisting in the unjustified refusal of a person to present legal documents to the competent bodies, in order to prevent checks regarding the application of general and special regulations in the field of labor relations, safety and health at work, within a maximum period of 15 days from the receipt of the second request.

The offense provided for in art. 264, paragraph (2) of Law no. 53/2003 Labor Code „unjustified refusal of a person to present legal documents to the competent bodies, in order to prevent checks regarding the application of general and special regulations in the field of labor relations, safety and health at work, within a maximum period of 15 days from receipt of the second request” is sanctioned

9 Law no. 286/2009, published in the *Official Gazette of Romania* no. 510 of 24 July 2009.

10 M. N. Radu, M. D. Radu, *Cauzele justificative în noul Cod penal român*, *Society, Culture, Value*, vol. 1, edited by *Academia Română*, George Barițiu Institute of History, Department of Socio-Human Research, coordinator Călina Jugastru, Argonaut Publishing House, Cluj-Napoca Branch, 2011, 378–383.

11 Art. 264 paragraph (1) of Law no. 53/2003 Labor Code.

with the punishment provided for in art. 264, paragraph (1) of the Labor Code, namely imprisonment from one month to one year or a criminal fine.

We are in the presence of the crime and in a situation where the refusal to provide documents concerns only some of the documents requested by the labor inspectors, it being not necessary that this refusal concerns all the requested documents. Also, the refusal to allow labor inspectors access does not have to concern the entire company's premises, but may concern only a part of it, even a single room¹².

The penalty provided for in art. 264 paragraph (1) of Law no. 53/2003 Labor Code also sanctions the crime of preventing in any form the competent bodies from entering, under the conditions provided for by law, the premises, premises, spaces, land or means of transport that the employer uses in carrying out his professional activity, in order to carry out checks regarding the application of general and special regulations in the field of labor relations, safety and health at work.

Employing a minor without respecting the legal age requirements or using him to perform activities in violation of the legal provisions regarding the work regime of minors constitutes a crime and is punishable by imprisonment from 3 months to 2 years or a fine.

Hiring a person residing illegally in Romania, knowing that they are a victim of human trafficking, constitutes a crime and is punishable by imprisonment from 3 months to 2 years or a fine.

If the work performed by the persons provided for in art. 265 paragraph (2) of Law no. 53/2003 Labor Code or in art. 264 paragraph (4) of the same normative act is likely to endanger their life, integrity or health, the punishment is imprisonment from 6 months to 3 years.

The employer may resume the activity only after paying the contravention fine, under the terms of the law, and only after having remedied the deficiencies that led to the cessation of the activity by concluding the individual employment contract, transmitting the elements of the individual employment contract to the general register of employees or, as the case may be, ending the suspension of the individual employment contract and presenting the documents proving the payment of social contributions and income tax related to the salary income due to the worker for the period in which he performed undeclared activity.

Resumption of activity in violation of the provisions of art. 260, paragraph (5) of the Labor Code constitutes a crime and is punishable by imprisonment from 6 months to 2 years or a fine.

3.1.2. Applicable complementary penalties

In the event of the commission of one of the offenses provided for in art. 265 para. (2) and (3) of Law no. 53/2003 Labor Code and in art. 264 para. (4) of the same normative act, the court may also order the application of one or more of the following complementary penalties¹³:

12 Ș. Boboc, *op. cit.*, 63.

13 Art. 265 paragraph (4) of Law no. 53/2003 Labor Code.

- a) total or partial loss of the employer's right to benefit from public benefits, aid or subsidies, including European Union funds managed by the Romanian authorities, for a period of up to 5 years;
- b) prohibition of the employer's right to participate in the award of a public procurement contract for a period of up to 5 years;
- c) full or partial recovery of public benefits, aid or subsidies, including European Union funds managed by the Romanian authorities, awarded to the employer for a period of up to 12 months before the commission of the crime;
- d) temporary or permanent closure of the workplace or workplaces where the offence was committed or temporary or permanent withdrawal of a license to carry out the professional activity in question, if this is justified by the seriousness of the violation.

In the event of the commission of one of the offenses provided for in paragraphs (2) and (3) of art. 265 of Law no. 53/2003 Labor Code and in art. 264 paragraph (4) of the same normative act, the employer will be obliged to pay the amounts representing¹⁴:

- a) any outstanding remuneration due to persons employed illegally. The amount of remuneration is presumed to be equal to the average gross wage in the economy, unless either the employer or the employee can prove otherwise;
- b) the amount of all taxes, duties and social security contributions that the employer would have paid if the person had been legally employed, including late payment penalties and corresponding administrative fines;
- c) expenses determined by the transfer of outstanding payments to the country to which the illegally employed person has voluntarily returned or has been returned under the terms of the law.

In the event of the commission of one of the offenses provided for in art. 265 para. (2) and (3) of Law no. 53/2003 Labor Code and in art. 264 para. (4) of the same normative act, by a subcontractor, both the main contractor and any intermediary subcontractor, if they were aware of the fact that the subcontractor employer was employing foreigners in a situation of illegal residence, may be obliged by the court, jointly with the employer or in place of the subcontractor employer or of the contractor whose direct subcontractor is the employer, to pay the amounts of money provided for in par. (5) letters a) and c) of art. 265 of Law no. 53/2003 Labor Code.

3.2. Crimes related to labor law, provided for in special laws

Doctrine¹⁵ highlights, in addition to the offenses provided for in the Criminal Code and the Labor Code, the existence of certain acts that are sanctioned in special legislation related to labor law. We will mention some of these that we

14 Art. 265 paragraph (5) of Law no. 53/2003 Labor Code, amended by Law no. 187/2012, published in the *Official Gazette of Romania* no. 757 of 12 November 2012.

15 See, for detailed analysis, V. Dinu, *Răspunderea penală în dreptul muncii*, C. H. Beck Publishing House, București, 2023, 371 and so on.

consider the most important and with greater practical applicability, namely those provided for in Law no. 367/2022 on social dialogue, Law no. 346/2002 on insurance for work accidents and occupational diseases, Law no. 22 of 18 November 1969 on the employment of managers, the establishment of guarantees and liabilities in connection with the management of the assets of economic agents, authorities or public institutions and Law no. 241 of 15 July 2005 on the prevention and combating of tax evasion.

3.2.1. Offences provided for by Law No. 367/2022 on social dialogue

It is a crime and is punishable by imprisonment from 3 months to 2 years or a fine for the act of a person who, through threats or violence, prevents or forces an employee/worker or a group of employees/workers to participate in a strike or to work during a strike.

Conditioning or coercion, in any way, with the aim of limiting the exercise of the duties of the elected members of the governing bodies of trade union organizations constitutes a crime and is punishable by imprisonment from 3 months to 2 years or a fine.

Declaration of strike by organizers in violation of the conditions provided for in art. 156 paragraph (1)¹⁶ of the Law on Social Dialogue or in art. 170–173¹⁷

16 Participation in the strike is free. No one may be compelled to participate or not to participate in the strike.

17 Art. 170 The following may not declare a strike: prosecutors, judges, military personnel and personnel with special status within the Ministry of National Defense, the Ministry of Internal Affairs, the Ministry of Justice and the institutions and structures subordinated or coordinated by them, including the National Penitentiary Administration, the Romanian Intelligence Service, the Foreign Intelligence Service, the Special Telecommunications Service, personnel employed by foreign armed forces stationed on Romanian territory, as well as other categories of personnel who are prohibited from exercising this right by law.

Art. 171 Personnel in air, naval, land transport of any kind cannot participate in the strike from the moment of departure on the mission/trip until its completion.

Art. 172 Personnel embarked on merchant marine vessels under the Romanian flag may declare a strike only in compliance with the norms established by international conventions ratified by the Romanian state, under the conditions of art. 171.

Art. 173 (1) In health and social assistance units, telecommunications, public radio and television, in units of the national energy system, operational units in the nuclear sectors, in railway transport units, in units that ensure public transport and sanitation of localities, as well as the supply of the population with gas, electricity, water and heat, a strike is permitted provided that at least one third of the normal activity is ensured, distributed over the entire duration of the day, which does not endanger the life and health of the population and/or the operation of the installations in complete safety.

(2) The organizers of the strike shall notify both the employer or, as the case may be, the employers' organization, and the territorial labor inspectorate or, as the case may

of the same normative act, if people's lives or health have been put in imminent danger, it constitutes a crime and is punishable by imprisonment from one month to one year or a fine.

Violation of the provisions of art. 159 paragraph (2)¹⁸ of the above-mentioned law, constitutes a crime and is punishable by imprisonment from one month to one year or a fine¹⁹.

3.2.2. The offense provided for by Law No. 346/2002 on insurance for work accidents and occupational diseases

Insurance for work accidents and occupational diseases is a personal insurance, is part of the social insurance system, is guaranteed by the state and includes specific reports that ensure the social protection of employees against the reduction or loss of work capacity and their death as a result of work accidents and occupational diseases.

The act of a person using the amounts intended for insurance against work accidents and occupational diseases for purposes other than those provided for by law constitutes a crime and is punishable by imprisonment from 6 months to 2 years or a fine.

3.2.3. Offences provided for by Law No. 22 of 18 November 1969 on the employment of managers, the provision of guarantees and liability in connection with the management of the assets of economic agents, authorities or public institutions²⁰

According to art. 4 of the above-mentioned law, a person convicted of committing any of the following crimes cannot be managed:

- a) intentional crimes against property;
- b) corruption and official offenses;
- c) forgery crimes;
- d) the offenses provided for by Law No. 31/1990 on commercial companies, republished, with subsequent amendments and completions;
- e) the offences provided for by Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the establishment of measures to prevent and combat the financing of terrorist acts, republished;

be, the ministry responsible for social dialogue, at least 24 hours prior to the start of the strike, regarding the modalities established for fulfilling the obligations provided for in paragraph (1).

18 The employer cannot hire staff to replace those on strike.

19 See art. 176 of Law no. 367/2022 on social dialogue, published in the *Official Gazette of Romania* no. 1238 of December 22, 2022.

20 Published in the *Official Gazette of Romania* no. 132 of November 18, 1969.

- f) the crimes provided for by Law no. 241/2005 on the prevention and combating of tax evasion, as amended;
- g) the crimes provided for by Law no. 22/1969 on the employment of managers, the provision of guarantees and liability in connection with the management of the assets of economic agents, authorities or public institutions.

At the same time, a person against whom criminal proceedings have been initiated for committing any of the crimes provided for above cannot be hired or promoted to the position of manager.

The initiation of criminal proceedings for one of the aforementioned offenses results in the suspension of the capacity to manage²¹.

Creating surpluses in management by fraudulent means constitutes a crime and is punishable by imprisonment from 6 months to 2 years or a fine. If the fraudulent means constitutes a crime in itself, the rules regarding concurrent crimes apply.

Failure to declare in writing, within the term provided by the legal provisions, by the manager, the surpluses in his management of which he is aware, the quantity or value of which came from any other way than that indicated in article 35 of Law no. 22/1969, is punishable by imprisonment from one month to one year.

If the act provided for in the previous paragraph had serious consequences, the penalty is imprisonment from 6 months to 3 years.

No punishment shall be imposed on anyone who, before the start of any control, declares the surpluses of which he has knowledge the quantity or value.

The alienation of movable property provided as security according to art. 10 of the same normative act, without the prior consent of the legal person provided for in art. 176 of the Criminal Code, constitutes a crime and is punishable by imprisonment from one month to one year or a fine.

3.2.4. Offences provided for by Law No. 241 of July 15, 2005 on the prevention and combating of tax evasion²²

In Chapter II of the above-mentioned law, marginally called Offenses, the following acts are provided for from art. 3 to art. 9 as being offenses:

It is a crime and punishable by imprisonment from 6 months to 5 years for the taxpayer who does not restore, intentionally or through negligence, the destroyed accounting documents within the period specified in the control documents.

It constitutes a crime and is punishable by imprisonment from one to 6 years for the unjustified refusal of a person to present legal documents and assets to the competent bodies, for the purpose of preventing financial, fiscal or customs checks, within a maximum period of 15 days from the summons. It is a crime

21 On 1 February 2014, art. 4 of Chapter 2 was amended by art. 24, point 2, of Title II of Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, published in the *Official Gazette of Romania* no. 757 of 12 November 2012.

22 Published in the *Official Gazette of Romania* no. 672 of July 27, 2005.

and is punishable by imprisonment from one to 6 years to prevent, in any form, the competent bodies from entering, under the conditions provided by law, premises, premises or land, for the purpose of carrying out financial, fiscal or customs checks. The withholding and non-payment, collection and non-payment, within 60 days from the due date provided for by Law No. 241/2005, of taxes and/or contributions provided for in the annex to the said law constitute crimes and are punishable by imprisonment from 1 to 5 years or a fine.

It constitutes a crime and is punishable by imprisonment from one to 5 years or a fine for failure to withhold taxes and/or contributions provided for in the annex to the aforementioned normative act.

It constitutes a crime and is punishable by imprisonment from one to 5 years and the prohibition of certain rights to possess or put into circulation, without right, stamps, bands or standard forms, used in the fiscal field, with a special regime.

It constitutes a crime and is punishable by imprisonment from 2 to 7 years and the prohibition of certain rights to knowingly print, use, possess or put into circulation stamps, bands or standard forms, used in the fiscal field, with a special regime, that are falsified²³. It constitutes a crime and is punishable by imprisonment from 3 to 10 years and the prohibition of certain rights or a fine for the taxpayer to establish taxes, fees or contributions in bad faith, resulting in the unlawful obtaining of sums of money as reimbursements or refunds from the general consolidated budget or compensations due to the general consolidated budget. It constitutes a crime and is punishable by imprisonment from 5 to 15 years and the prohibition of certain rights or a fine for association with a view to committing the act provided for above. Attempting the acts provided above is punishable.

The following acts committed with the aim of evading tax obligations constitute tax evasion crimes and are punishable by imprisonment from 3 to 10 years and the prohibition of certain rights or a fine:

- a) concealment of the asset or taxable or chargeable source;
- b) the omission, in whole or in part, of recording, in accounting records or other legal documents, the commercial operations carried out or the income generated;
- c) highlighting, in accounting documents, in electronic invoices or in other legal documents, expenses that are not based on real operations or highlighting other fictitious operations;
- d) alteration, destruction or concealment of accounting documents, memories of electronic tax or fiscal marking devices or other data storage means, including electronic ones;
- e) execution of double-entry accounting records using documents or other means of data storage, including electronic ones;
- f) evading financial, fiscal or customs checks by failing to declare, making a fictitious declaration or making an inaccurate declaration regarding the main or secondary offices of the persons being checked;

23 See art. 7, paragraph (2) of Law no. 241/2005.

- g) substitution, degradation or alienation by the debtor or by third parties of the seized assets in accordance with the provisions of the Fiscal Procedure Code and the Criminal Procedure Code ;
- h) the taxpayer's use, in bad faith, of the national electronic invoice system RO e-Factura, in order to create the appearance of legality of fictitious operations or to conceal the real transactional circuit of goods/services;
- i) the use of electronic fiscal cash registers that are not connected to the national computer system for the supervision and monitoring of fiscal data, according to the law, or the alteration of electronic fiscal cash registers for the purpose of not transmitting fiscal data or transmitting unreal fiscal data.

If the acts provided for in art. 9 paragraph (1) of Law no. 241/2005 have caused damage exceeding 500,000 euros, in the equivalent of the national currency, the minimum limit of the penalty provided for by law and its maximum limit shall be increased by 3 years.

If the acts provided for above have caused damage exceeding 1,000,000 euros, in the equivalent of the national currency, the minimum limit of the penalty provided for by law and its maximum limit are increased by 5 years.

It constitutes a crime and is punishable by imprisonment from 7 to 15 years and the prohibition of exercising certain rights, any action or inaction committed within fraudulent schemes of a cross-border nature having as its effect the reduction of at least 10,000,000 euros, in the equivalent of the national currency, of the resources of the European Union budget, through²⁴:

- a) using or submitting false, incorrect or incomplete VAT declarations or documents;
- b) failure to disclose VAT information when this information must be disclosed according to the law;
- c) submitting incorrect VAT returns to fraudulently conceal non-payment or to establish undue rights to VAT refunds.

Attempting the above-mentioned crime is punishable.

It constitutes a crime and is punishable by imprisonment from 7 to 15 years and the prohibition of exercising certain rights, any action committed within fraudulent schemes having as its effect the reduction of at least 1,000,000 euros, in the equivalent of the national currency, of the resources of the state budget, through:

- a) using or submitting false declarations or documents, false, incorrect or incomplete electronic VAT documents;
- b) Intentionally failing to disclose VAT information when this information must be disclosed by law;
- c) submitting correct declarations, correct electronic VAT declarations to fraudulently mask non-payment or the establishment of undue rights to VAT refunds.

Attempting the above-mentioned crime is punishable.

24 See art. 9 index 1 of Law no. 241/2005.

It constitutes a crime and is punishable by imprisonment from 3 to 10 years and the prohibition of certain rights or a fine, the credit operation carried out directly or indirectly by any natural person, with the aim of making payments with sums of money that come from the omission of recording in the accounting documents the commercial operations carried out and/or the income generated by one or more taxpayers.

Chapter III of Law no. 241/2005 provides for the causes of reduction of penalties, prohibitions and forfeitures. As a legislative novelty, Law no. 126/2024²⁵ amended art. 10 of Law no. 241/2005, so that in the event of the commission of an offense provided for in art. 61, 8 or 9, if, by the expiration of a maximum period of 30 days from the completion of the control carried out by the competent bodies, following which a damage due to the general consolidated budget of up to 1,000,000 euros is identified, the damage increased by 15% of its value, to which interest and penalties are added, is fully covered, by effective payment, the act is not punished. In this case, the competent bodies do not notify the criminal prosecution bodies.

In the case of committing an offense provided for in art. 6 index 1, 8 or 9 of Law no. 241/2005, if by the first trial date the damage caused is fully covered, by effective payment, the limits of the penalty provided for by law for the committed act are reduced by half. If the damage caused and recovered under these conditions is up to and including 1,000,000 euros, in the equivalent of the national currency, a fine may be imposed. In the case of committing an offense provided for in art. 6 index 1, 8 or 9 of the same normative act, if after the first trial date and until the final judgment of the case the damage caused is fully covered, by effective payment, the limits of the penalty provided for by law for the committed act are reduced by one third. The damage will be determined on the basis of a specialized expert opinion. The suspect or the defendant has the right to participate in the expert opinion. The provisions of art. 172–180 of the Code of Criminal Procedure shall apply accordingly. The suspect or defendant, natural person or legal entity, shall be notified of the order for the expert examination, through his representative, as the case may be, giving him the time necessary to fully exercise his procedural rights.

In the event of the commission of an offense provided for in art. 6 index 1, 8 or 9 of Law no. 241/2005, which caused damage not exceeding 1,000,000 euros, in the equivalent of the national currency, if during the criminal investigation the damage caused increased by 25% of its value, to which are added the interests and penalties, is fully covered, by actual payment, the act shall not be punished, the provisions of art. 16 para. (1) letter h) of the Code of Criminal Procedure shall apply. If during the procedure of the preliminary chamber or the trial, until the delivery of a decision in first instance, the same damage increased by 50% of

25 Law no. 126/2024 on some measures to strengthen the capacity to combat tax evasion, as well as to amend and supplement some normative acts, published in the *Official Gazette of Romania* no. 437 of May 13, 2024.

its value, to which are added the interests and penalties, is fully covered, by actual payment, the act shall not be punished, the provisions of art. 16 para. (1) letter h) of the Code of Criminal Procedure. If during the appeal trial, until the pronouncement of a final court decision, the same damage increased by 100% of its value, to which interest and penalties are added, is fully covered, by actual payment, the act is not punished, the provisions of art. 16 paragraph (1) letter h) of the Code of Criminal Procedure being applied²⁶.

These provisions apply to all defendants even if they did not contribute to covering the damage provided for in art. 10, para. (1) and (2) of Law no. 241/2005.

If the person who committed one of the crimes provided for in art. 6 index 1, 8 or 9 of the above-mentioned law brings the crime committed to the attention of the criminal prosecution bodies or the tax authorities, while it is in progress or within a maximum period of one year from the date of exhaustion of the criminal activity and before the criminal prosecution bodies have been notified of it and, subsequently, facilitates the discovery of the truth and the criminal liability of one or more participants in the commission of the crime, the special limits are reduced by half.

The provisions set out in art. 10, para. (1) and (2) of the same law shall not apply if the perpetrator has previously committed an offence provided for by this law within a period of 5 years from the commission of the act for which he benefited from the provisions of para. (1) or (2) of the same normative act.

In the case of offenses provided for by Law No. 241/2005, the limitation period for criminal liability begins to run from the date of notification to the tax authority or from the date of notification to the criminal investigation authority, but no later than 10 years from the date of the commission of the offense.

In the event that an offense provided for by the aforementioned law has been committed, the taking of precautionary measures is mandatory.

Persons who have been convicted of crimes provided for by Law No. 241/2005 cannot be founders, administrators, directors or legal representatives of the commercial company, and if they have been elected, they are deprived of their rights²⁷.

3.3. Offenses traditionally provided for in the Criminal Code

Same author²⁸ shows that, apart from the crimes included in the Criminal Code²⁹, from the special legislation, several acts are also criminalized which, although they do not mainly concern the field of labor law, may also have an

26 This article provides that there is a cause for impunity provided for by law.

27 See art. 12 of Law no. 241/2005.

28 V. Dinu, *op. cit.*, 224 and so on.

29 Art. 287, para. (1), letter d) failure to enforce the court decision ordering the reinstatement of an employee.

influence on this branch of law, in certain particular situations, which is why we will only mention them because they form the object of analysis of another discipline, namely criminal law, the special part:

- *Manslaughter* resulting from failure to comply with legal provisions or precautionary measures for the exercise of a profession or trade or for the performance of a certain activity is punishable by imprisonment from 2 to 7 years. When the violation of legal provisions or precautionary measures constitutes a crime in itself, the rules on concurrent crimes apply³⁰.
- *Aggravated culpable homicide* – when the culpable homicide was committed as a result of failure to comply with legal provisions or precautionary measures for the exercise of a profession or trade or for the performance of a certain activity, the penalty is imprisonment from 6 months to 3 years or a fine³¹.
- *Abuse of office* – the act of a public official who, in the exercise of his or her official duties, fails to perform an act provided for by a law, a Government ordinance, a Government emergency ordinance or another normative act which, at the date of adoption, had the force of law or performs it in violation of a provision contained in such a normative act, thus causing damage or injury to the legitimate rights or interests of a natural person or a legal person, is punishable by imprisonment from 2 to 7 years and the prohibition of exercising the right to hold a public office.

The same penalty shall also apply to the act of a public official who, in the exercise of his/her official duties, restricts the exercise of a person's right or creates a situation of inferiority for him/her on the grounds of race, nationality, ethnic origin, language, religion, sex, sexual orientation, political

Art. 287, para. (1) letter e) failure to enforce the court decision regarding the payment of wages within 15 days from the date of the enforcement request addressed to the employer by the interested party.

Art. 349, paragraph (1) Failure to take any of the legal occupational health and safety measures by the person who had the duty to take these measures, if an imminent danger of an occupational accident or occupational disease is created, is punishable by imprisonment from 6 months to 3 years or a fine.

(2) The act provided for in paragraph (1) committed through negligence is punishable by imprisonment from 3 months to one year or a fine.

Art. 350, paragraph (1) Failure by any person to comply with the obligations and measures established regarding occupational health and safety, if this creates an imminent danger of an occupational accident or occupational disease, is punishable by imprisonment from 6 months to 3 years or a fine.

(2) The same penalty shall be imposed for the re-commissioning of installations, machines and equipment before all deficiencies for which the measure of their shutdown was taken have been eliminated.

(3) The acts provided for in paragraphs (1) and (2) committed through negligence are punishable by imprisonment from 3 months to one year or a fine.

30 Art. 192, paragraph (2) of the Criminal Code.

31 Art. 196, paragraph (3) of the Criminal Code.

affiliation, wealth, age, disability, chronic non-contagious disease or HIV/AIDS infection³².

- *Negligence in service* – the act of a public official who, through negligence, in the exercise of his/her official duties, fails to perform an act provided for by a law, a Government ordinance, a Government emergency ordinance or another normative act which, at the date of adoption, had the force of law or performs it in violation of a provision contained in such a normative act and thereby causes damage or injury to the legitimate rights or interests of a natural person or a legal person is punishable by imprisonment from 3 months to 3 years or a fine³³.
- *Sexual harassment* – repeatedly demanding favors of a sexual nature within an employment relationship or a similar relationship, if thereby the victim was intimidated or put in a humiliating situation, is punishable by imprisonment from 3 months to one year or a fine³⁴.
- *Abuse of office for sexual purposes* – the act of a public official who, in order to perform, not perform, expedite or delay the performance of an act relating to his/her official duties or in order to perform an act contrary to these duties, demands or obtains favors of a sexual nature from a person directly or indirectly interested in the effects of that official act is punishable by imprisonment from 6 months to 3 years and the prohibition of exercising the right to hold a public office or to exercise the profession or activity in the performance of which he/she committed the act.

The demand or obtaining of sexual favors by a public official who takes advantage of or takes advantage of a situation of authority or superiority over the victim, arising from the position held, is punishable by imprisonment from 3 months to 2 years or a fine and the prohibition of exercising the right to hold a public office or to exercise the profession or activity in the performance of which the act was committed.

If the acts provided for in art. 299, para. (1) and (2) of the Criminal Code were committed by teaching staff in university or pre-university education against a pupil or student, the special limits of the punishment are increased by one third³⁵.

Author³⁶, addressing a complex topic because it involves the analysis of a „wide range of crimes” that are built directly from the regulations of Labor Law, or that are related to these regulations, it also took into account the incriminations in the Criminal Code, which provide direct protection to labor relations and occupational safety and health, as well as incriminations that are indirectly related to such relations, it fails to address a specific crime, namely the one provided for in art. 212 of the aforementioned normative act, namely the submission to forced or compulsory labor which consists of the act of submitting a person, in cases other than those provided for by the legal provisions, to the performance

32 Art. 297 of the Criminal Code.

33 Art. 298 of the Criminal Code.

34 Art. 223, paragraph (1) of the Criminal Code.

35 Art. 299 of the Criminal Code.

36 V. Dinu, *op. cit.*, XIII.

of work against his will or to compulsory labor and which is punishable by imprisonment from one to 3 years³⁷.

Criminal liability in the field of occupational safety and health is regulated by the Criminal Code which provides for distinct crimes, which according to the specialized literature³⁸ can be classified according to their subject into two categories: *crimes committed by persons who have the obligation to take occupational health and safety measures*; and *crimes committed by persons who have the obligation to comply with these measures*.

Thus, the Criminal Code³⁹ criminalizes in art. 349 the crime of failure to take measures related to occupational safety and health, which consists in the failure to take any of the legal occupational safety and health measures by the person who had the duty to take these measures, if an imminent danger of an occupational accident or occupational disease is created, is punishable by imprisonment from 6 months to 3 years or a fine. This act committed through negligence is punishable by imprisonment from 3 months to one year or a fine and art. 350 of the same Code, marginally named Failure to comply with legal occupational safety and health measures, respectively failure by any person to comply with the obligations and measures established regarding occupational safety and health, if these create an imminent danger of an occupational accident or occupational disease, is punishable by imprisonment from 6 months to 3 years or a fine.

The same penalty applies to the re-commissioning of installations, machines and equipment before all deficiencies for which the measure of their shutdown was taken have been eliminated.

The acts provided for in paragraphs (1) and (2) of Article 350 of the Criminal Code committed through negligence are punishable by imprisonment from 3 months to one year or a fine.

The same author notes that the analysis of these crimes must be done in relation to the provisions of Law No. 319/2006 on occupational safety and health⁴⁰, of Law No. 90/1996 on labor protection⁴¹, of Law No. 5/1965 on labor protection⁴² and other special normative acts regulating labor protection measures.

4. PROPOSED LAWS

We agree with the conclusions expressed in the specialized literature⁴³ among these conclusions, we present the most important one, which concerns criminal

37 N. Roş, *University course. Dreptul muncii*, ediția a V-a, revised and added, ProUniversitaria and Universul Juridic Publishing House, 2025, 494.

38 C. Casian, *op. cit.*, 327–336.

39 Published in the *Official Gazette of Romania* no. 510 of July 24, 2009.

40 Published in the *Official Gazette of Romania* no. 646 of July 26, 2006.

41 Published in the *Official Gazette of Romania* no. 157 of July 23, 1996.

42 Published in the *Official Gazette of Romania* no. 21 of December 23, 1965.

43 V. Dinu, *op. cit.*, 397–405.

liability in both the field of labor law and social security law, namely the discussion of predictability in the field of criminal law regarding the crimes of abuse of office, respectively negligence in office, the author's conclusion being that the difference made by the Constitutional Court between these latter crimes and those of failure to take, respectively failure to comply with, legal occupational health and safety measures is questionable from the perspective of the constitutionality of the phrase „legal occupational health and safety measures”.

Thus, the Court made a distinction between the aforementioned service crimes and those of labor protection in terms of the norms that may include the violated measures/obligations. In an analysis targeting the crimes of abuse of office and negligence in office, it established, by Decisions no. 405/2016 and no. 518/2017, respectively, that, in order to satisfy the foreseeability test in the field of criminal law, the violated provisions must be regulated at the level of primary legislation, meaning the law as an act issued by Parliament, as well as the Government ordinances. Despite these rulings, the Court seems to have changed its perspective in Decisions no. 69/2017 and no. 304/2020, when it showed that it cannot be required that all occupational health and safety measures be established at the level of primary legislation, given their vastness, accepting that they can also be contained at the level of secondary legislation (the Court giving examples of Government decisions in this regard).

Given these aspects, we consider that it would be appropriate for the Constitutional Court to treat the standard of foreseeability in the field of criminal law in a uniform manner, given the clear similarity between the crimes of failure to take/not comply with legal measures for occupational health and safety, abuse in office/negligence in office, but also culpable bodily harm/culpable homicide in the aggravated version in terms of the legal measures/provisions that may be violated as a consequence of meeting the constitutive elements of one of these crimes.

Regarding the existing legislative framework, the doctrine⁴⁴ argues that we can admit that it has many positive aspects. However, the legislative framework must be improved through actions by public institutions, employers and their employees, as well as through legislative amendments or additions.

We agree with the author's proposal that since our country has not adopted any economic incentive system in the field of occupational safety and health, actions by public institutions with responsibilities in the field and measures to improve the existing legislative framework for Romania are necessary, in order to ensure a safe and healthy work environment, so it is proposed to adopt a set of measures to develop and strengthen the importance of promoting the basic principles and rules of occupational safety and health, by developing economic incentives to reward previous results of good occupational safety and health management, namely, previous rates of occupational accidents and specific prevention efforts aimed at reducing the number of future occupational accidents

44 C. Casian, *op. cit.*, 365–373.

and improving the health status of employees, by developing economic incentives that may include:

1. subsidies and various financing to cover the expenses of enterprises in invention projects to improve working conditions;
2. fiscal incentives, in the form of tax reductions or exemptions offered to employers who invest in safer equipment than those specified in the minimum legal requirements, in innovative equipment that reduces exposure to physical stress, noise and hazardous substances;
3. incentives regarding insurance for work accidents which may consist of establishing different contribution rates depending on the number of work accidents registered or the type of work accidents (accidents that caused temporary incapacity for work, disability, fatal or collective accidents).

We also agree with the proposal of the same author, mentioned above, who claims that since, most of the time, the investigation of work accidents involves the participation of several specialists and experts from different fields, the result being a multidisciplinary research, we can no longer speak of performing simple, forensic, medico-legal or technical expertise, but of a complex expertise.

Currently, complex expertise is not regulated by law, which is why we propose, *de lege ferenda*, the development of an autonomous normative act to regulate this category of expertise.

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PROVOCĂRILE ȘI PREVIZIBILITATEA DOMENIULUI RĂSPUNDERII PENALE ÎN DREPTUL MUNCII ȘI AL SECURITĂȚII SOCIALE ÎN ROMÂNIA

Dreptul penal social reprezintă totalitatea dispozițiilor penale care reglementează încălcările grave ale normelor juridice din domeniul dreptului social, dând acestei din urmă noțiuni înțelesul ei mai larg, care include atât dreptul muncii, cât și dreptul securității sociale.

În cadrul articolului au fost analizate următoarele infracțiuni și pedepse complementare: 1) Infracțiuni și pedepse complementare aplicabile, prevăzute de Legea nr. 53/2003-Codul muncii și infracțiuni care au legătură cu dreptul muncii în legi speciale, 2) Infracțiuni prevăzute de Legea nr. 53/2003 – Codul muncii și pedepse complementare aplicabile, 3) Infracțiuni prevăzute de Legea nr. 53/2003-Codul muncii, 4) Pedepse complementare aplicabile, 5) Infracțiuni care au legătură cu dreptul muncii, prevăzute în legi speciale.

Doctrina subliniază, în afara infracțiunilor prevăzute în Codul penal și în Codul muncii, existența unor fapte, ce sunt sancționate în legislația specială care au legătură cu dreptul muncii. Vom menționa câteva dintre acestea pe care le considerăm cele mai importante și cu aplicabilitate practică mai crescută, anume cele prevăzute Legea nr. 367/2022 privind dialogul social, Legea nr. 346/2002 privind asigurarea pentru accidente de muncă și boli profesionale, Legea nr. 22 din 18 noiembrie 1969 privind angajarea gestionarilor, constituirea de garanții și răspunderea în legătură cu gestionarea bunurilor agenților economici, autorităților sau instituțiilor publice și Legea nr. 241 din 15 iulie 2005 pentru prevenirea și combaterea evaziunii fiscale.

În afara infracțiunilor preluate în Codul penal, din legislația specială, mai sunt incriminate mai multe fapte ce, deși nu privesc în mod principal domeniul dreptului muncii, pot avea influență și asupra acestei ramuri de drept, în anumite situații particulare, motiv pentru care ne

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rezumăm doar la a le menționa deoarece formează obiectul analizei unei alte discipline, respectiv drept penal – partea specială: Uciderea din culpă; Vătămarea corporală din culpă varianta agravantă; Abuzul în serviciu; Neglijența în serviciu; Hărțuirea sexuală; Folosirea abuzivă a funcției în scop sexual; Supunerea la muncă forțată sau obligatorie.

Răspunderea penală în domeniul securității și sănătății în muncă este reglementată de Codul penal care prevede infracțiuni distincte, care potrivit literaturii de specialitate pot fi clasificate în funcție de subiectul lor în două categorii: infracțiuni săvârșite de persoanele care au obligația de a lua măsurile de securitate și sănătate în muncă; și infracțiuni săvârșite de persoanele care au obligația de a respecta aceste măsuri.

Achiesăm concluziilor exprimate în literatura de specialitate dintre aceste concluzii o prezentăm pe cea mai importantă care vizează răspunderea penală atât în domeniul dreptului muncii cât și a dreptului securității sociale, respectiv discuția previzibilității în domeniul dreptului penal referitoare la infracțiunile de abuz în serviciu, respectiv neglijența în serviciu, concluzia autoarei fiind aceea că este discutabilă diferența făcută de către Curtea Constituțională între aceste din urmă infracțiuni și cele de neluare, respectiv nerespectarea măsurilor legale de securitate și sănătate în muncă prin prisma constituționalității sintagmei “măsuri legale de securitate și sănătate în muncă”.

Cuvinte-cheie: penal, muncă, securitate, social, previzibilitate.