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# OFFENCES AND THEIR SANCTIONING REGARDING THE LABOR RELATIONSHIPS BASED ON THE CHANGE BROUGHT BY THE GOVERNMENT EMERGENCY ORDINANCE NO. 53/2017 OF THE LABOR CODE

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## Abstract

*The present study aims at briefly introducing the recent changes of the Labor Code by the Government Emergency Ordinance no. 53/2017 for the its modification and completion regarding the minor offences and their sanctioning that apply both to the employers and their employees in the event of their failure to comply to the legislation regarding the labour relationship. Thus, the article also provides a summary of the number of checking and the penalties based on the categories of offences in the district of Suceava during August – September 2017 in order to identify both the offences done by the labour relationship parties within the district of Suceava and to inform the readers on the pecuniary consequences as a result of the intentional failure to comply to the labour legislation or by being guilty of it.*

## Keywords:

*minor offence, contraventional sanction, labour inspector, individual employment contract*

**Classification JEL: J51, J52, J 53**

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## **1. INTRODUCTORY ASPECTS ON THE MINOR OFFENCES REGARDING THE LABOR RELATIONSHIPS AND THE AUTHORITY THAT IDENTIFIES AND SANCTIONS THEM**

According to Act no. 108/1999, the Work Inspection Authority is the national control authority in the field of work, security and health relationships that controls the territorial labour inspectorates from each and every district including Bucharest. It controls the employers on applying the legal provisions in the field of work relationships. Paragraph „X” of the Labor Code refers to the Work Inspection Authority by specifying its fundamental role of controlling the putting into practice of the general and special regulations in the field of labor relationships, health, and work security. It controls the labor inspectorates. The Work Inspection Authority has as its main goal the control of putting into practice the employers’ legal duties in the field of labor relationships as well as the labor conditions, defending life, body integrity and the employees’ health during their activities [2].

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’ [1].

In the event the employers violate a part of the provisions of the Labor Code and jeopardize not only the employees’ moral or physical but also the pecuniary security, one can talk about the existence of minor offences. According to the law regarding the judicial status of the offences, the offence is defined as „the act that was done with guilt, was established and sanctioned by law, ordinance, by the government’s decision, or by the decision of the village, town , city , local , district councils or by Bucharest’s General Council.” [5] Thus, it is not protected by the criminal law as it has a more diminished degree of social risk than the offence itself.

## **2. THE ENUMERATION OF THE MINOR OFFENCES ESTABLISHED BY THE LABOR CODE**

The Labor Code regulates, within article 260 of the Labor Code, paragraphs 1 – 5, both the facts that stand for the offences and the sanctions

that may be applied by the labor inspectors regarding the labor relationships. These are briefly as follows:

a) failing to comply to the provisions regarding the guarantee of payment of the minimum national gross salary – a 300 to 2000 lei fine;

b) the employer's failure to comply to the provisions of article 34 paragraph 5 is sanctioned with a fine starting from 300 lei to 1000 lei.

The above mentioned article refers to the duty of the employer to issue a document that proves the work done by the employee or a former employee; the duration of the work, the salary, the length of work and the type of work itself. In the event this duty is violated, the offence that is established by the labour inspector ranks from 300 lei up to 1000 lei.

c) the hindering or forcing, through threats or violent acts, of an employee or of a group of employees to take part in a strike or work during the strike will be fined starting from 1500 lei to 3000 lei;

d) the stipulation in the individual employment contract of certain provisions that are in contradiction to the legal provisions will be fined starting from 2.000 lei to 5.000 lei. For example, a salary that is less than the minimum wage or an illegal probation period, the 7 or 8 work time for young people up to the age of 18, i.e. over the approved limit of 6 hours etc.

e) allowing a person to work without having an individual employment contract according to article 16 paragraph 1 is sanctioned with a 20.000 fine lei for each person; Article 16, paragraph 1: „The individual employment contract is signed based on the consent of both parties, in writing, in Romanian language, prior to the beginning of the employee's work. It is the employer's duty to sign the individual work contract in writing.”

e<sup>1</sup>) the permission to work of an employee by failing to register the work report in the general registry of employees at latest in the day prior to the start of work is fined 20.000 lei for each identified person;

e<sup>2</sup>) the permission to work of an employee within a period during which the individual employment contract was suspended is fined 20.000 lei for each identified person;

e<sup>3</sup>) the permission to work of an employee after the work schedule that was established as part of the individual part – time employment contract is fined 10.000 lei for each identified person;

f) the work done by a person that does not have a signed individual employment contract is fined anywhere between 500 lei and 1000 lei;

g) the violation by the employer of the provisions of articles 139 and 142 is fined from 5000 lei to 10.000 lei.

According to article 139 paragraph 1 of the Labor Code, the employer must provide paid holidays during which any type of work is forbidden. These are as follows:

- January 1<sup>st</sup> and 2<sup>nd</sup>;
- the 1<sup>st</sup> and 2<sup>nd</sup> Easter days;
- January 24<sup>th</sup> – The Day of the Union of the Romanian Principalities;
- May 1<sup>st</sup>;
- Monday of the Holy Spirit and 1<sup>st</sup> Tuesday after Pentecost;
- June 1<sup>st</sup>;
- The Dormition of Virgin Mary;
- November 30<sup>th</sup> – Andrew the First Called Apostle the Protector of Romania;
- December 1<sup>st</sup>;
- The first and the second day of Christmas;
- two days for each and every three annual religious celebrations that are declared by the legal religious cults, other than the Christian ones for the persons that practise these religions.

Article 142 of the same code regulates the duty of the employer to ensure the work for the employees that work in hospitals, commercial units and those facilities where the work cannot be interrupted, the compensation of free time or a bonus to the base salary that cannot be less than 100% of the base salary corresponding to the work during the regular work time. The compensation in the form of free time will be paid in the next 30 days. In case, due to justifiable reasons, no vacation days are granted, the employees benefit from this as a bonus to their salary.

Thus, the violation of these duties that were mentioned in paragraph g is subject to sanctioning with a fine that starts from 5000 lei to 10.000 lei.

h) the violation of the duty stipulated in article 140: „On the basis of the government’s decision, adequate programs designed for the health units and commercial units to ensure the health assistance and supply the population with the basic food necessities are strictly mandatory” is fined from 5000 lei to 20000 lei;

i) the violation of the provisions regarding the overtime hours is fined from 1500 lei to 3000 lei;

j) the violation of the legal provisions regarding the weekly rest days will get a 1500 lei up to 3000 lei fine;

k) the failure to offer the indemnity specified at article 53 paragraph 1 in case the employer ceases temporarily his activity by maintaining his labor relationships will be fined from 1.500 lei to 5000 lei. According to article 53 paragraph 53, the employer will have to pay an indemnity of at least 75% of the base salary. This is paid out of the salary funds that correspond to the specific positions to those employees that do a reduced or interrupted type of work and who no longer are active throughout the whole period of cutting down the work hours/or the temporary cease of the work. The exception to this rule are those situations when there are temporary cutting down periods of activity based on economic, technological, structural or similar reasons throughout 30 working days when the employer will be able to cut down the working days from 5 to 4 days a week. As a consequence, there will be a corresponding reduction of the salary until the situation is sorted out. This will be done prior to a discussion with the company's union representative or the employees' representatives;

l) the violation of the legal provisions that refer to the nightshifts will be fined from 1.500 lei to 3.000 lei;

m) the violation by the employer of the provision specified at article 27 paragraph 1 that states the fact that a person can solely be hired based on a medical notice stating that that person is capable of doing that specific type of job will be fined from 1.500 lei to 3.000 lei;

The same situation applies to the employer's violation of the provisions from article 119 of the Labor Code that refer to keeping track of the daily work hours of each and every employee by highlighting the starting time and the finishing time of the schedule and the failure to provide the labor inspectors that list whenever they ask for it;

n) the violation of the legal provisions that refer to the registering by the employer of the employee's resignation will be fined from 1.500 lei to 3.000 lei;

o) the violation of the temporary hiring agent of the provision stated in article 102 of not charging the temporary employees any kind of tax in exchange for their recruitment or for a temporary work contract will be fined between 5000 lei to 10.000 lei for each and every identified person without exceeding 10.0000 lei cumulative value;

p) according to article 16 paragraph 3, the employer must hand in the employee a copy of the individual employment contract prior to the beginning of the employee's activity. The violation of this provision will be fined from 1.500 lei to 2.000 lei;

r) the employer must keep in the company a copy of the individual employment contract for every employer who works in that company. The violation of the provisions stated in article 16 paragraph 4 will get a 10.000 lei fine.

A comparison of the Labor Code's provisions, the version that was not changed through the government's urgency ordinance no. 53/2017 [4], shows that for the article no. 260 paragraph 1 letter e there is sole offence that refers to „allowing up to 5 persons to work without having an individual employment contract according to article 16 paragraph 1” that gets a 10.000 lei up to 20.000 lei fine for each identified person. It is part of the criminal law allowing more than 5 persons to work regardless of their citizenship, without signing an individual work contract and which sentenced from 1 to 2 years to jail or gets a criminal fine.

The present alternative removes from the criminal sector allowing a person to work without the pre – existence of an individual employment contract. We still notice the fact that the fine was established in a fixed amount of 20.000 lei for each identified person. Thus, at present, in case 6 employees who do not possess such a contract, the employer will get a 360.000 lei fine (6 employees \*20000 lei= 360.000 lei) and no jail sentence as it used to be during 2011 –July 2017.

### **3. FINDING AND SANCTIONING THE OFFENCES REGARDING THE LABOR RELATIONSHIPS**

Finding the offences and enforcing the sanctions are done by the labor inspectors. The procedure of establishing and sanctioning the offences is described within article 260 paragraph (1<sup>1</sup>) which stipulates the fact that the offender is allowed to pay in 48 hours at the latest from the day the minutes was written or, if need be, at the date it was made known, half the fine that is indicated in paragraph 1 letter e)-e<sup>3</sup>). The labor inspector needs to specifically mention this possibility in his minutes.

Paragraph 4 of article 260 stipulates using a complementary sanction for the offences that are mentioned at point e(- e<sup>3</sup>) that is the cease of work under control according to the cessation procedure developed by the Work Inspection Authority and approved through the Labor and Social Justice minister's ordinance that is published in Romania's Official Gazette, Part I after a prior consultation of the representative national union and employers' federations.

The employer can resume to doing business after acquitting the contravention fine and after he demonstrates the fact that he took care of the deficiencies that led to the cessation of activity by signing the individual employment contract with the employees, by reporting the work hours in the general registry of the employees, or, if it is the case, by cancelling the suspension of the individual employment contract and paying the social contributions corresponding to the salary income for the employees during which they did an undeclared work.

#### **4. THE ANALYSIS REGARDING THE ACTIVITY OF THE TERRITORIAL LABOR INSPECTORATE OF SUCEAVA FOCUSSING ON EMPLOYERS' SANCTIONING OFFENCES CARRIED OUT BETWEEN AUGUST – SEPTEMBER 2017**

According to the press release of the Territorial Labor Inspectorate of Suceava regarding „the synthesis of the activities and the inspection activities in the field of work – security and health relationships in the month of September 2017” throughout September 1<sup>st</sup>, 2017 – September 30<sup>th</sup>, 2017, the Inspectorate’s activity was mainly focussed on putting into practice „The Territorial Labor Inspectorate’s activities in 2017”, the objectives that were established according to Law 108/1999 republished, Law 53/2003 republished as well as Law 319/2006 with its future changes and completions [3].

Between August 1<sup>st</sup> – August 31<sup>st</sup>, 2017 there were 270 inspection activities that were carried on, out of which 195 took place in the field of the labor relationships and 83 in the field of labor security and health. In the event where several deficiencies were found, a number of 177 penalties worth of 118.300 lei were registered.

During September 2017, the labor inspectors from the Territorial Labor Inspectorate of Suceava did 296 inspection activities, out of which 205 were in the field of labor relationships and 91 in the field of labor security and safety. In the event where several deficiencies were found, a number of 176 penalties worth 262.500 lei were registered.

There is a + 144.200 lei rise of the total number of penalties for the month of September 2017.

Chart 1 as well as the above mentioned figures show that the most inspection activities were made in the field of **labor relationships** (205 inspection activities during the month of September 2017 and 195 inspection activities during the month of August 2017) during which



penalties worth 74.800 lei for the month of August 2017 and 238.500 lei for the month of September 2017 were registered. One can notice the fact that, even though the number of inspection activities in the field of labor relationships were no more than 7 more in the month of September 2017 in comparison with the month of August 2017, their equivalent is approximately 3 times higher in the month of September than in the previous month. This data confirm putting into practice the legislation that specifies the use of higher penalties, starting from August the 1<sup>st</sup>, 2017 for the same offences in comparison to the previous months.

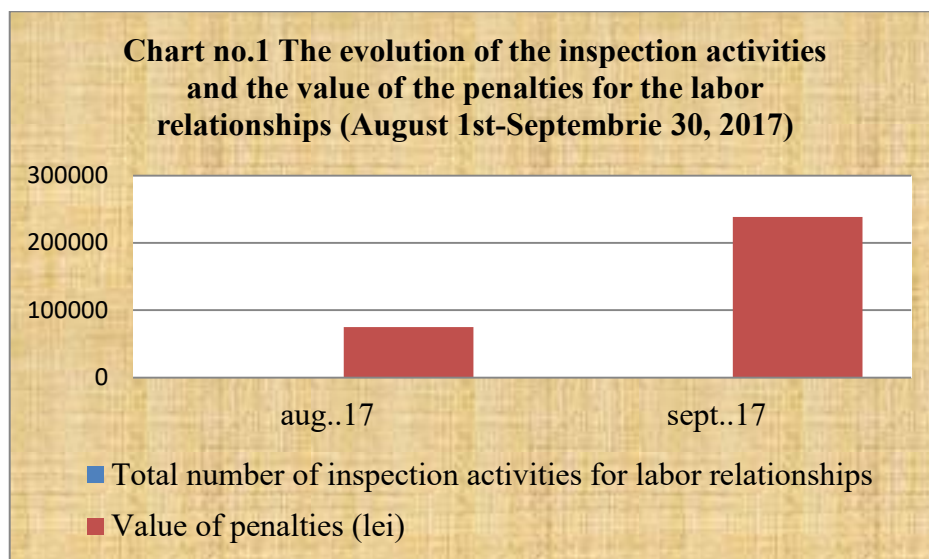
During the month of September, 2017 there were 48 persons who did an undeclared type of work as compared to the month of August, 2017 when 39 persons were registered.

Out of those 48 persons that were found at fault in September:

- 22 persons had individual employment contracts that were registered in the general employees' registry without complying to the legal term;
- 23 persons, who did not have legal employment papers, were working for 11 employers. The value of the penalties was 190.000 lei;
- 2 persons worked full –time instead of part – time as it was stipulated in the employment contract;
- a person that was not registered in the general employees' registry had already showed up for his first day of work.

Out of those 39 persons that were found at fault in the month of August 2017:

- 30 persons had individual employment contracts that were registered in the general employees' registry without complying to the legal term;
- 9 persons did not have legal employment papers and were working for 8 employers.



According to the official source of the inspectorate, other frequent deficiencies regarding the labor relationships during the month of September 2017 in the district of Suceava refer to:

- the failure to sign the individual employment contracts prior to the beginning of the labor relationships;
- the failure to legally report the individual employment contracts in the general employees' registry;
- failure to specify the changes in the general employees' registry;
- failure to comply to the legal provisions regarding the overtime;
- failure to comply to legal provisions regarding the duty to quantify the extra work hours for each and every employee;
- failure to comply to legal provisions regarding the vacation time;
- failure to comply to legal provisions regarding the weekly rest.

## CONCLUSIONS

As a result of the above mentioned debates on the issues of offences in the field of labor relationships as well as the value of the legal penalties, we noticed that the labor legislation has changed continuously both from the point of view of the illegal deeds that are considered offences and also from the point of view of the value of penalties.

The year 2017 had major legislative changes not only from the point of view of the rise of the minimum wage, but also from the point of view of

the changes regarding the diversification of the offences as well as the rise of the value of the fines for the employers that failed to comply to a series of compulsory provisions in their relation to their employees.

The microanalysis from point 4 of the present study is a practical proof in putting into practice of the contraventional sanctions. In the district of Suceava, during the above mentioned months, the number of inspections did not significantly rise whereas the number of registered penalties doubled or tripled for the same period. This data are red flags for the people of Suceava (and not only for them) and we hope that the educational role of the penalties will show up in the future reports of the Territorial Labor Inspectorate of Suceava that will hopefully find a decreased number of them. This is closely linked to the employers' awareness of the risks they expose themselves to and also to the social, economic, moral and security effects of their employees.

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