

Incrimination and Forensic Investigation of the Crimes Committed Against Safety and Health at Work in Romanian Legislation

Adrian Cristian Moise

*Associate Professor, PhD, Spiru Haret University of Bucharest, Bucharest, Romania
adriancristian.moise@gmail.com*

ABSTRACT: The study makes a detailed analysis of the main aspects related to the incrimination and the forensic investigation of the crimes committed against safety and health at work in Romanian legislation. Thus, the study first analyzes the offences against safety and health at work contained in the Romanian Criminal Code: the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code and the offence of non-compliance with the legal measures of safety and health at work, stipulated by Article 350 of the Romanian Criminal Code. The study also presents and analyzes the provisions of Article 264 and of Article 265 of the Romanian Labour Code, which refer to crimes in the field of labour relations, safety and health at work. Moreover, the article analyzes and presents some aspects related to Law no. 319/2006 on safety and health at work. This study presents and analyzes several aspects related to the investigation of crimes against safety and health at work, such as: the main issues that need to be clarified by investigating an accident at work and the disposition and conduct of some criminal prosecution acts.

KEYWORDS: crimes committed against safety and health at work, incrimination, forensic, investigation; work accident, criminal prosecution act, Romanian Criminal Code, Romanian Labour Code, Law no. 319/2006

Introduction

The development of labour relations, through the relations between the employee and the employer, presupposes the existence of some rights and obligations of the persons engaged in the labour relations. The rights and obligations of the parties involved in labour relations are regulated by the Romanian Labour Code.

The labour relations are based on the principle of consensuality and good faith.

According to the provisions of Article 5 (n) from Law no. 319/2006 on safety and health at work, *the safety and health at work* means „a set of institutionalized activities aimed at ensuring the best conditions in the work process, defense of life, physical and mental integrity, health of workers and other persons participating in the work process”.

Article 3 of the Romanian Labour Code stipulates the following: “Freedom of labour is guaranteed by the Constitution. The right to work cannot be restricted. Everyone is free to choose the job and profession, trade or activity he/she is to perform. No one may be compelled to work or not to work in a particular job or profession, whatever that may be. Any employment contract that is concluded in non-compliance with the provisions of Article 3 of the Romanian Labour Code is null”.

The forced labour is prohibited. In accordance with the provisions of Article 4 of the Romanian Labour Code, “the term *forced labour* means any work or service imposed on a person under threat or for which the person has not freely expressed his or her consent”.

The principle of equal treatment of all employees and employers works in labour relations. Thus, according to the provisions of Article 5 (2) of the Romanian Labour Code, “any direct or indirect discrimination against an employee, discrimination by association, harassment or victimization, based on the criteria of race, nationality, ethnicity, color, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic

non-contagious disease, HIV infection, political choice, family situation or responsibility, membership or trade union activity, membership in a disadvantaged category, is prohibited”.

Discrimination refers to any behaviour that consists in ordering, in writing or verbally, a person to use a form of discrimination, which is based on one of the criteria stipulated in Article 5 (2) of the Romanian Labour Code, against one or more persons.

We would like to point out that exclusion, distinction, restriction or preference in respect of a particular job does not constitute discrimination where, by the specific nature of the activity in question or the conditions under which the activity is carried out, there are certain essential and decisive professional requirements, provided that the purpose is legitimate and the requirements are proportionate.

It constitutes direct discrimination any act or deed of distinction, exclusion, restriction or preference, based on one or more of the criteria stipulated in Article 5 (2) of the Romanian Labour Code, which have as purpose or effect the non-granting, restriction or removal of the recognition, use or exercise of the rights provided in the labor legislation.

Indirect discrimination constitutes any provision, action, criterion or apparently neutral practice that has the effect of disadvantaging a person over another person based on one of the criteria stipulated in Article 5 (2) of the Romanian Labour Code unless that provision, action, criterion or practice is objectively justified, by a legitimate aim, and if the means to achieve that aim are proportionate, appropriate and necessary.

According to the provisions of Article 5 (5) of the Romanian Labour Code, harassment “consists of any type of behavior based on one of the criteria stipulated in the Article 5 (2) of the Romanian Labour Code, which has as its purpose or effect the damage of a person's dignity and leads to the creation of an intimidating, hostile, degrading, humiliating or offensive environment”.

In accordance with the provisions of Article 5 (6) of the Romanian Labour Code, discrimination by association “consists of any act or deed of discrimination committed against a person who, although not part of a category of persons identified according to the criteria stipulated in Article 5 (2) of the Romanian Labour Code, is associated or presumed to be associated with one or more persons belonging to such a category of persons”.

Therefore, Article 5 (7) of the Romanian Labour Code defines the notion of victimization, which is “any adverse treatment that arises in response to a complaint or legal action for breach of the principle of equal treatment and non-discrimination”.

According to Article 5 (g) of the Law no. 319/2006 on safety and health at work, the work accident means “violent injury to the body, as well as acute occupational intoxication, which occur during the work process or in the performance of duties and which cause temporary incapacity for work for at least 3 calendar days, disability or death”.

In essence, the specialty literature supports the theory that the accident at work is an unexpected event, caused by a violent injury of a person participating in the production process, likely to interrupt the normal work and cause physical, moral and material damage to the victim, as well as the unit in which it took place (Stancu 2010, 654).

Thus, we are of the opinion that the violent, unexpected occurrence of a work accident should not be confused with what is unpredictable, fortuitous, work accidents being in most cases possible to predict and, therefore, prevent, essential aspect for establishing legal liability.

The classification of work accidents is made according to several criteria, according to the provisions of Article 31 of the Law no. 319/2006, respectively that of the consequences produced and the number of injured persons. Thus, work accidents are classified into: accidents that cause temporary incapacity for work of at least three calendar days; accidents that cause disability; fatal accident; collective accidents, when at least three people are injured at the same time and for the same reason.

The registration of the work accident is made on the basis of the search investigation report. The work accident registered by the employer is reported by him to the territorial labour inspectorate, as well as to the insurer, according to Article 32 (1) (2) of the Law no. 319/2006 on safety and health at work.

The offences committed against safety and health at work contained in the Romanian Criminal Code are the following: the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code and the offence of non-compliance with the legal measures of safety and health at work, stipulated by Article 350 of the Romanian Criminal Code.

The legal text of the 349 of the Romanian Criminal Code states: “(1) Failure to take any of the legal measures for safety and health at work by the person who had the duty to take such measures, if an imminent danger of an accident at work or occupational disease is created, shall be punished by imprisonment from six months to three years or with a fine. (2) The deed provided by para. (1) committed through guilt shall be punished by imprisonment from three months to one year or by a fine”.

The legal text of the 350 of the Romanian Criminal Code states: “(1) Failure by any person to comply with the obligations and measures laid down in respect of safety and health at work, if this creates an imminent danger of an accident at work or of an occupational disease, shall be punishable by imprisonment from six months to three years or with a fine. (2) The reinstatement of the installations, machines and equipments shall be sanctioned with the same penalty, before the elimination of all deficiencies for which the measure of stopping them has been taken. (3) The facts stipulated by para. (1) and para. (2) committed through guilt shall be punished by imprisonment from three months to one year or with a fine”.

The offences in the field of labour relations, safety and health at work are contained in Article 264 and Article 265 of the Romanian Labour Code.

The legal text of Article 264 of the Romanian Labour Code states: “(1) It constitutes an offence and is punishable by imprisonment from one month to one year or by a criminal fine for the act of the person who repeatedly establishes for employees employed under the individual employment contract salaries below the minimum gross country wage guaranteed in payment, provided by law. (2) With the punishment provided by para. (1) the offence consisting in the unjustified refusal of a person to submit legal documents to the competent bodies, in order to prevent checks on the application of general and special regulations in the field of labour relations, safety and health at work, within a maximum of fifteen days from the receipt of the second request. (3) With the punishment provided by para. (1) shall also be sanctioned the offence consisting in preventing in any form the competent bodies from entering, under the conditions provided by law, in areas, premises, spaces, lands or means of transport that the employer uses them in carrying out his professional activity, for to carry out checks on the application of general and special regulations in the field of labour relations, safety and health at work”.

The legal text of Article 265 of the Romanian Labour Code states: “(1) The employment of a minor with non-compliance with the legal conditions of age or his use for the performance of activities in violation of the legal provisions regarding the employment of minors is a crime and is punishable by imprisonment from 3 months to 2 years or a fine. (2) The employment of a person in a situation of illegal residence in Romania, knowing that he/she is a victim of human trafficking, constitutes a crime and is punishable by imprisonment from 3 months to 2 years or a fine. (3) If the work performed by the persons stipulated by para. (2) is likely to endanger their life, integrity or health, the punishment is imprisonment from 6 months to 3 years. (4) In case of committing one of the offences stipulated by para. (2) and para. (3), the court may also order the application of one or more complementary penalties”.

The pre-existing conditions of the offences committed against safety and health at work contained in the Romanian Criminal Code

In the case of the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code, in the structure of the incrimination there is a typical criminal variant and an attenuated variant. The difference between the two variants is given by the form of fault with which the deed is committed. The typical variant from the point of view of the subjective side presupposes the form of fault of the intention, while for the attenuated variant the form of fault is the guilt.

In the case of the offence of non-compliance with the legal measures of safety and health at work, stipulated by Article 350 of the Romanian Criminal Code, in the structure of the incrimination there is a typical criminal variant, an assimilated variant and a common attenuated variant. In the case of the common attenuated variant, the form of fault is the guilt.

The special legal object of the offence of not taking the legal measures of safety and health at work and of the offence of non-compliance with the legal measures of safety and health at work consists of the social relations that are formed and developed in connection with labour protection, whose existence is conditioned by the taking and observance of legal measures of safety and health at work by the persons who organize, lead and control the work process (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 790).

The material object of the offences contained in Article 349 and in Article 350 of the Romanian Criminal Code could be the body of a person who suffers an accident at work or an occupational disease as a result of failure to take the legal measures for safety and health at work or non-compliance with the legal measures of safety and health at work.

However, the majority opinion in the specialty literature, in the case of these two crimes is that the material object is missing, only in exceptional cases the crimes contained in Article 349 and in Article 350 of the Romanian Criminal Code could have as material object the body of a person suffering physical injury, without being met the conditions for the existence of other offences such as, for example, the crime of bodily injury, or the crime of hitting or other violence (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 790).

The active subject of the crime of not taking the legal measures of safety and health at work stipulated by Article 349 of the Romanian Criminal Code is qualified, as this crime can be committed only by any person who had the task according to the law to take the legal measures of safety and health in the work process. Usually the physical person is the active subject of this crime, because it leads and controls the work process, having clear responsibilities in taking occupational safety and health measures.

However, we are of the opinion that the legal person may also be an active subject of the offence provided by Article 349 of the Romanian Criminal Code. The criminal participation is possible in all its forms, co-author, incitement and complicity, only if the condition regarding the special quality required by law is met.

The active subject of the crime of non-compliance with the legal measures of safety and health at work stipulated by Article 350 of the Romanian Criminal Code can be a physical person, ie a person who has the status of employee or worker and can also be a legal person who has the status of employer, being in employment or service relations with a certain employee and who manages that enterprise. The criminal participation is possible in all its forms, co-author, incitement and complicity.

The passive subject of the crime of not taking the legal measures of safety and health at work and of the crime of non-compliance with the legal measures of safety and health at work it is always the Romanian state. The two offences from the Romanian Criminal Code can also have a *secondary passive subject*, only in the situation when the physical persons are injured by the committed deeds.

The constitutive content of the offences committed against safety and health at work contained in the Romanian Criminal Code

The material element of the objective side, in the case of the crime of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code consists in an inaction, respectively in the omission to take the legal measures regarding safety and health at work by the person who has these attributions at work, only if this conduct creates an imminent danger of an accident at work or of an occupational disease.

We emphasize that the failure to take these legal measures of safety and health at work can be achieved by a total omission, when the active subject does not take any legal measures of safety and health at work to ensure the conditions for safe work or by a partial omission, in the situation where the active subject has taken at least a measure of labour protection, but has not taken all the measures of labour protection that from the point of view of the labor legislation had to take, having this obligation.

By way of example, according to the provisions of Article 7 (1) of Law no. 319/2006 on safety and health at work, the employer has the obligation to take the necessary measures to: ensuring the safety and protection of workers' health; occupational risk prevention; informing and training workers; ensuring the organizational framework and the means necessary for safety and health at work. The employer has the obligation to follow the adaptation of these listed measures, taking into account the modification of the conditions, and to improve the existing situations.

The employer is also obliged to implement these measures on the basis of the following general principles of prevention: assessment of unavoidable risks, risk avoidance; combating risks at source; adapting work to man, in particular as regards the design of jobs, the choice of work equipment, working and production methods, in order to reduce the monotony of work, the work at a predetermined pace and reduce their effects on health; adaptation to technical progress; replacing what is dangerous with what is not dangerous or with what is less dangerous; developing a coherent prevention policy that includes technologies, work organization, working conditions, social relations and the influence of factors in the work environment; the adoption, as a matter of priority, of collective protection measures over individual protection measures; providing appropriate instructions to workers.

According to the provisions of Article 7 (4) of Law no. 319/2006, taking into account the nature of the activities of the enterprise and/or unit, the employer has the obligation: to assess the risks to the safety and health of workers, including the choice of work equipment, chemicals or preparations used and the arrangement of workplaces; the prevention measures, as well as the working and production methods applied by the employer to ensure the improvement of the level of safety and protection of workers' health and to be integrated into all the activities of the enterprise and/or unit concerned and at all hierarchical levels; to take into account the worker's safety and health capabilities at work when entrusting him with tasks; to ensure that the planning and introduction of new technologies are the subject of consultations with workers and/or their representatives regarding the consequences for workers' safety and health, determined by the choice of equipment, conditions and working environment; take appropriate measures to ensure that, in high and specific risk areas, access is allowed only to workers who have received and mastered the appropriate instructions.

Another condition for the fulfillment of the material element of the crime contained in Article 349 of the Romanian Criminal Code is that this crime must be committed only at the workplace, which may be located in the premises of the enterprise or elsewhere in the area of that enterprise where the employee has access to the work process.

The material element of the objective side, in the case of the crime of non-compliance with the legal measures of safety and health at work provided by Article 350 of the Romanian Criminal Code consists in an inaction, respectively in the omission to comply with the

obligations and measures established in respect of safety and health at work, if such non-compliance creates an imminent danger of an accident at work or of an occupational disease. The omission may be total when the active subject does not comply with any measure or obligation, or partly when the active subject has not fulfilled or has complied with one or more established obligations or measures regarding safety and health at work (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 794).

We note that non-compliance with the obligations and measures established with regard to safety and health at work can also be done through an action, ie through the option provided by Article 350 (2) of the Romanian Criminal Code, which refers to the reinstatement of the installations, machines and equipments, before the elimination of all deficiencies for which the measure of stopping them has been taken.

Another condition for the fulfillment of the material element of the crime stipulated by Article 350 of the Romanian Criminal Code is that this crime must be committed only at the workplace, which may be located in the premises of the enterprise or elsewhere in the area of that enterprise where the employee has access to the work process.

The immediate consequence, in the case of the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code consists of an imminent danger of an accident at work or an occupational disease (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 791).

We consider that the existence of the crime contained in Article 349 of the Romanian Criminal Code is not conditioned by the occurrence of an accident at work or an occupational disease, being sufficient to create an imminent danger of injury. In accordance with the provisions of Article 5 (l) from the Law no. 319/2006 the notion of serious and imminent danger of injury is defined “as the concrete, real and current situation which lacks only the triggering opportunity to cause an accident at any time”.

If, after committing the deed contained in Article 349 of the Romanian Criminal Code, there is also a physical injury of the employee, then the rules of the competition of offences under Article 38 of the Romanian Criminal Code will be applied.

According to Article 5 (g) of Law no. 319/2006, the work accident represents “the violent injury of the organism, as well as the acute professional intoxication, which take place during the work process or in the performance of work duties and which cause temporary incapacity for work of at least 3 calendar days, disability or death”.

Moreover, Article 5 (h) of Law no. 319/2006 defines the notion of occupational disease as “a condition that occurs as a result of the exercise of a mystery or profession, caused by harmful physical, chemical or biological agents characteristic of the workplace, as well as by overloading various organs or systems of the body in the work process”.

The immediate consequence, in the case of the offence of non-compliance with the legal measures of safety and health at work stipulated by Article 350 of the Romanian Criminal Code consists of an imminent danger of an accident at work or an occupational disease (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 795). And in this situation, we believe that the existence of the crime contained in Article 350 of the Romanian Criminal Code is not conditioned by the occurrence of an accident at work or an occupational disease, being sufficient to create an imminent danger of injury.

We emphasize that if, after committing the deed contained in the text of the Article 350 of the Romanian Criminal Code, a physical assault occurs, then the rules of the competition of offences under Article 38 of the Romanian Criminal Code will apply.

In the case of the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code, as well as in the case of the offence of non-compliance with the legal measures of safety and health at work stipulated by Article 350 of the Romanian Criminal Code there must be a *causality link* between the activity of the offender and the consequence produced, which usually results from the materiality of the act.

Regarding *the subjective side*, we note that the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code, in the case of the typical variant, is committed with the form of fault of both direct and indirect intention. In the case of the attenuated variant for the crime included in Article 349 of the Romanian Criminal Code the commission of the deed is performed with the form of fault of guilt.

As for *the subjective side*, we note that the offences of non-compliance with the legal measures of safety and health at work stipulated by the Article 350 of the Romanian Criminal Code, in the case of the typical variant and of the assimilated variant are committed with the form of fault of both direct and indirect intention. We emphasize that in the case of the common attenuated variant of the offence of non-compliance with the legal measures of safety and health at work, the form of fault is the guilt.

The forms of the offences committed against safety and health at work contained in the Romanian Criminal Code

For offences contained in Article 349 and Article 350 of the Romanian Criminal Code *the preparatory acts* and *the attempt* they are not criminalised and thus they are not punishable.

The offence of not taking the legal measures of safety and health at work stipulated by Article 349 of the Romanian Criminal Code and the offence of non-compliance with the legal measures of safety and health at work stipulated by Article 350 of the Romanian Criminal Code are both *consumed* when the material element is fully executed and the imminent danger of an accident at work or occupational disease is formed.

Therefore, the offences committed against safety and health at work contained in the Romanian Criminal Code are *consumed* when the material element is carried out and the socially dangerous result is produced.

We want to emphasize that the *exhaustion* of the offences committed against safety and health at work contained in the Romanian Criminal Code occurs at the time of committing the last act criminalised by law.

The offences committed against safety and health at work contained in the Romanian Criminal Code can be committed in continued form.

Sanctions for the offences committed against safety and health at work contained in the Romanian Criminal Code

The offence of failure to take the legal measures for safety and health at work by persons who were required to take such measures is punishable by imprisonment from 6 months to 3 years or a fine. The same deed committed with the form of fault of guilt is punishable by imprisonment from 3 months to one year or a fine.

The commission of the deeds in Article 350 (1) and (2) of the Romanian Criminal Code shall be punishable by imprisonment from 6 months to 3 years or by a fine. The offences committed with the form of fault of guilt under Article 350 (3) from the Romanian Criminal Code shall be punished by imprisonment from 3 months to one year or by a fine.

The pre-existing conditions of the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code

The special legal object of the offences in the field of labour relations, safety and health at work, stipulated by Article 264 and Article 265 of the Romanian Labour Code consists of the social relations that are formed in connection with the obligations of the employers regarding

the application of the provisions in the field of labour relations, safety and health at work (Hotca, Gorunescu, Neagu, Pop, Sitaru and Geamănu 2019, 220).

The offences in the field of labour relations, safety and health at work, stipulated by Article 264 and Article 265 of the Romanian Labour Code have no *material object*.

We emphasize, however, that there is an exception, in the case of the Article 265 of the Romanian Labour Code the material object is the body of the employed person, who is in a situation of illegal residence in Romania, being victim of human trafficking, and the work performed by this employed person endangering one's own life, integrity or health.

The active subject of the offences in the field of labour relations, safety and health at work, stipulated by Article 264 and Article 265 of the Romanian Labour Code can be any person, whether physical or legal who meets the general conditions to be criminally liable. The criminal participation is possible in all its forms, co-author, incitement and complicity (Hotca, Gorunescu, Neagu, Pop, Sitaru, Geamănu, 2019, 223).

The passive subject of the offence in the field of labour relations, safety and health at work, stipulated by Article 264 of the Romanian Labour Code it is always the Romanian state. Regarding the offence in the field of labour relations, safety and health at work, stipulated by Article 265 of the Romanian Labour Code, it has as its *main passive subject* the Romanian state.

The offence stipulated by Article 265 of the Romanian Labour Code can also have a *secondary passive subject*, only in the situation when the physical persons are injured by the committed deeds, endangering their lives, integrity or health.

The constitutive content of the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 264 (1) of the Romanian Labour Code consists in an action by which repeatedly it is established for the employees employed under the individual employment contract salaries below the minimum gross country wage guaranteed in payment, provided by law. Therefore, this act constitutes an offence only if it is committed repeatedly, at least twice. We specify that the minimum salary on gross economy in Romania is currently 2300 Romanian lions.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 264 (2) of the Romanian Labour Code consists in an action by which a person unjustifiably refuses to submit legal documents to the competent bodies, in order to prevent checks on the application of general and special regulations in the field of labour relations, safety and health at work, within a maximum of fifteen days from the receipt of the second request (Hotca, Gorunescu, Neagu, Pop, Sitaru and Geamănu 2019, 221).

We emphasize that the unjustified refusal of a person to submit legal documents to the competent bodies must be preceded by two requests from these competent bodies to verify whether the general and special regulations in the field of labour relations, health and safety at work apply, and in the situation in which a single request was made, this deed does not constitute a crime, but at most this deed is a contravention.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 264 (3) of the Romanian Labour Code consists in an action whereby the competent bodies are prevented from entering under the conditions provided by law in areas, premises, spaces, lands or means of transport that the employer uses them in carrying out his professional activity, for to carry out checks on the application of general and special regulations in the field of labour relations, safety and health at work.

In order for the offence provided by Article 264 (3) the Romanian Labour Code to exist, the competent control bodies must carry out the activity of verifying the application of general and special rules in the field of labour relations, safety and health at work only in compliance with all the legal rules in the field.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 265 (1) of the Romanian Labour Code consists in an employment action of a minor with non-compliance with the legal conditions of age or his use for the performance of activities in violation of the legal provisions regarding the employment of minors (Hotca, Gorunescu, Neagu, Pop, Sitaru and Geamănu 2019, 223).

Thus, the deed described by this rule of incrimination constitutes an offence, only if the perpetrator employs a minor under the age of 15, according to the provisions of Article 49 (4) of the Romanian Constitution, which state: “minors under the age of 15 may not be employed as employees”.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 265 (2) of the Romanian Labour Code consists in an employment action of a person in a situation of illegal residence in Romania, knowing that he/she is a victim of human trafficking.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 265 (3) of the Romanian Labour Code consists in an action whereby the persons referred to Article 265 (2) of the Romanian Labour Code perform work which is likely to endanger their life, integrity or health.

The immediate consequence, in the case of the offences in the field of labour relations, safety and health at work provided by Article 264 and Article 265 of the Romanian Labour Code consists in the non-fulfillment of the obligations by the employers regarding the application of the provisions in the field of labour relations, safety and health at work, these regulations in the field of the labour law not being applied or being illegally applied by the employers.

In the case of the offences in the field of labour relations, safety and health at work provided by Article 264 and Article 265 of the Romanian Labour Code there must be a *causality link* between the activity of the criminal of and the consequence produced, which usually results from the materiality of the act.

Regarding *the subjective* side, we note that the offences in the field of labour relations, safety and health at work provided by Article 264 and Article 265 of the Romanian Labour Code are committed with the form of fault of both direct and indirect intention.

The forms of the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code

For offences contained in Article 264 and Article 265 of the Romanian Labour Code *the preparatory acts* and *the attempt* they are not criminalised and thus they are not punishable.

The offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code are *consumed* when the material element is carried out and the socially dangerous result is produced.

We remark that the *exhaustion* of the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code occurs at the time of committing the last act criminalised by law.

The offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code can be committed in continued form.

Sanctions for the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code

The offence in the field of labour relations, safety and health at work provided by Article 264 of the Romanian Labour Code is punishable by imprisonment from one month to 1 year or a fine. The same deed committed with the form of fault of guilt is punishable by imprisonment from one month to one year or by a criminal fine.

The two simple variants of the offence in the field of labour relations, safety and health at work provided by Article 265 (1) (2) of the Romanian Labour Code are punishable by imprisonment from 3 months to 2 years or a fine. The aggravating variant of the offence in the field of labour relations, safety and health at work provided by Article 265 (3) of the Romanian Labour Code is punishable by imprisonment from 6 months to 3 years.

The forensic investigation of the crimes committed against safety and health at work

The forensic investigation of the crimes committed against safety and health at work, in its broadest sense, is an activity that differs from the investigation of other facts or events in that it is applicable not only the actual forensic methodological rules but also rules expressly provided in labour law or in other special normative acts.

In accordance with the provisions of Article 29 (1) from the Law no. 319/2006 on safety and health at work the investigation of work accidents is mandatory and is carried out as follows: by the employer, in the case of events that have produced temporary incapacity for work; by the territorial labour inspectorates, in the case of events that caused obvious or confirmed disability, death, collective accidents, dangerous incidents, in the case of events that caused temporary incapacity for work to employees at employers of physical persons, as well as in situations with missing persons; by the Labour Inspectorate, in case of collective accidents, generated by some special events, such as damages or explosions; by the territorial public health authorities, respectively of the municipality of Bucharest, in case of suspicions of occupational disease and diseases related to the profession.

The result of the investigation of the event will be recorded in a report, which will establish: the causes and circumstances in which the work accident took place; the provisions of the labour protection norms that were not observed; the persons who are responsible for the non-observance of the labour protection norms; the sanctions applied; the legal or physical person to whom the work accident is registered; measures to be taken to prevent other accidents.

According to the provisions of Article 29 (3) from the Law no. 319/2006, “in case of death of the injured person as a result of an event, the competent forensic institution is obliged to submit to the territorial labour inspectorate, within 7 days from the date of death, a copy of the forensic medicine report”.

According to the provisions of Article 5 (f) from the Law no. 319/2006, the *event* represents “the accident that caused the death or injury of the body, produced during the work process or in the performance of duties, the situation of a missing person or the road or traffic accident, in the conditions in which employees were involved, the incident dangerous, as well as the case susceptible to occupational or occupational disease”.

Thus, any event will be communicated immediately to the employer, by the manager of the workplace or by any other person who has knowledge about its occurrence.

According to the provisions of Article 27 (1) from the Law no. 319/2006, the employer has the obligation to communicate the events, immediately, as follows to: “the territorial labour inspectorates; the insurer, according to the Law no. 346/2002 on insurance for accidents at work and occupational diseases, as subsequently amended and supplemented,

events followed by temporary incapacity for work, invalidity or death, upon their confirmation; the criminal investigation bodies”.

Any medicine doctor, including the labour medicine doctor who has a contractual relationship with the employer, according to the legal provisions, will mandatorily signal the suspicion of occupational or profession-related disease, detected on the occasion of medical services.

We mention that this action to signal suspicions related to occupational disease will be carried out by the territorial public health directorate.

A characteristic of the forensic investigation process of crimes committed against safety and health at work is determined not only by the fact that it is carried out according to the particularities of each case, but also by the composition of the team that performs it, it has a complex composition (Newton, 2008, 65).

We specify, in addition to the competent prosecutor to carry out the criminal investigation phase in question, and to the police bodies, forensic experts, also participate specialists in the field of labour protection in which the event took place, including the forensic medicine examiner, if the accident caused injury or death to persons (Newton, 2008, 65-66).

The notification of the criminal investigation bodies, regarding the commission of crimes against safety and health at work is carried out according to the provisions of Article 288 (1) of the Romanian Criminal Procedure Code, by complaint or denunciation, and by acts concluded by other finding bodies provided by law or *ex officio* (Moise and Stancu 2017, 108).

The criminal prosecution phase in the case of the crimes committed against safety and health at work is usually carried out by the local Prosecutor's Offices, and their jurisdiction for the trial phase belongs to the Courts.

The phase of the criminal prosecution within the criminal process, in the case of crimes committed against safety and health at work, is carried out obligatorily by the prosecutor, who is the only one authorized to establish the causes and circumstances of the work accident, in order to establish whether it meets the constitutive elements of the crimes committed against safety and health at work.

The main issues that need to be clarified by investigating an accident at work are the following (Moise and Stancu 2017, 109-110): identification of the causes of the work accident; determining the circumstances in which the work accident took place; determining the consequences of the work accident; establishing the legal provisions that have been violated; identifying the persons responsible for the organization and management of the production process; initiation of measures to prevent other work accidents.

In the case of the forensic investigation of the crimes committed against safety and health at work, the most frequently ordered acts of criminal prosecution by the judicial bodies are the following: the crime scene investigation; the hearing of witnesses, suspects or defendants; the disposition and performing of the judicial expertises; performing confrontations and re-enactments; performing home searches (Scheb, Scheb II 2011, 451).

The crime scene investigation of the work accidents is a very important activity, the quality of which depends effectively on the entire resolution of the case. The crime scene investigation of accidents at work must be carried out as a matter of urgency by the crime scene investigation team, which will include the competent judicial bodies to carry out the criminal investigation.

The actual investigation of the crime scene, in the case of crimes committed against safety and health at work is to be carried out, in general, according to the forensic tactical rules of this procedural activity, going through the same phases, static and dynamic, of course, after taking the first measures and after the preliminary preparing of the crime scene investigation.

It should be emphasized that one of the first issues that investigators need to pay special attention to is the determination of the changes made at the scene of the accident or

breakdown. In this regard, forensic practice has prohibited any change in the position of objects of any kind that have been involved in the work accident.

However, there is only one case in which it is possible to change the initial state of the crime scene, namely whether it could cause other accidents or endanger the life and health of people or the security of the company.

Therefore, before changing the place of the work accident, the investigators will fix with the help of the digital camera or through the video recording the whole scene of the crime, they will make sketches, which will be made available to the judicial bodies (Palmiotto 1994, 151). We point out that all these actions are taken by the crime scene investigation team in order to prevent some attempts to change intentionally the location of the event by some people working in the company.

The crime scene investigation team, in the case of the crimes committed against safety and health at work must pursue the following objectives (Moise and Stancu 2017, 111): establishing the position, initial condition of installations, machines and equipment, considering whether or not they were in operation before the accident, whether they were handled by authorized workers, whether or not anomalies were observed in operation; thorough research of the traces, for this purpose paying attention to the discovery, fixation and removal of all categories of traces in order to clarify the facts in which the work accident occurred; thorough examination of the victim, if he was not transported from the scene of the work accident, of the position report to the machines, installations or equipment involved in the work accident; verification and collection of registers, journals, records, diagrams, which may contain data on the development of the technological process, the condition of the installations, the taking of appropriate labour protection measures, their observance, the performance of revisions; clarification of any negative circumstances in the factual state of the accident site, a circumstance likely to provide indications regarding the attempt to conceal the nature of the event produced; knowledge of the specifics and peculiarities of the place where the work accident occurred; initiation of the first technical and organizational measures to prevent other events, the judicial bodies having the obligation to supervise their implementation; hearing the eyewitnesses and the victims of work accidents.

The results of crime scene investigation of the work accidents are fixed by means of the crime scene investigation report, being the main means of fixing this act of criminal investigation.

The crime scene investigation report is concluded by the criminal investigation bodies on the occasion of the investigation of the crime scene of the work accidents, in accordance with the provisions of Article 199 of the Romanian Criminal Procedure Code and with the provisions of Article 195 Romanian Criminal Procedure Code, and to which sketches, photo pictures and audio-video recordings can be attached (Buquet 2011, 271).

According to the provisions of Article 28 from the Law no. 319/2006 on safety and health at work, in the case of traffic accidents on public roads, in which among the victims are also persons performing duties, the competent traffic police bodies will send to the employers and to the territorial labour inspectorates within 5 days from the date of the request, a copy of the crime scene investigation report.

Other important criminal prosecution acts in the forensic investigation process of the crimes committed against safety and health at work are the judicial expertises: the forensic expertises and the forensic medicine expertises.

Conclusions

Considering the analysis performed on crimes committed against safety and health at work, we noticed that these crimes are not incriminated in a unitary way in the Romanian legislation, being at present too many normative acts in force in this field (the Romanian

Criminal Code, the Romanian Labour Code and the Law no. 319/2006 on safety and health at work) which contain provisions that can sometimes overlap. That is why, we propose that in the future all regulations related to the crimes in the field of labour relations, safety and health at work should be included in a single legal instrument.

We highlight the importance of the crime scene investigation, which is the most often approved and carried out criminal prosecution act during the forensic investigation process of the crimes committed against safety and health at work.

The crime scene investigation, in the case of crimes committed against safety and health at work is carried out by a complex team of investigators composed of prosecutors and specialists in various fields, such as judicial police, forensic medicine examiners, forensic experts, inspectors from the territorial labour inspectorates and from the territorial directorates of labour protection, occupational medicine doctors.

Therefore, the crime scene investigation team in the case of crimes committed against safety and health at work, consists of specialists in the fields of different sciences, which obliges them to work continuously together throughout the forensic investigation process.

The crime scene investigation team has a very important mission, that of identifying all the circumstances in which the accident at work took place in order to establish the correct legal framework of the deed, the forms of guilt and the legal or administrative liability of each person involved in the work accident. Another important mission of the crime scene investigation team is to clarify whether the accident occurred during the work process, and whether the injured person was performing his/her duties.

We want to underline that the crime scene investigation team that investigates the crimes committed against safety and health at work is not to be confused with the work accident investigation commission, appointed by the management of the legal entity, in the event of work accidents that result in the temporary disability of at least one day of an employee. Moreover, the crime scene investigation team it should also not be confused with the team investigating events such as fire or explosion damage.

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