LABOUR CRIMINAL LAW EVOLUTION IN ROMANIA

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ABSTRACT: *Labour Law is basically the labour contract's law, and a specific work cannot be performed without respecting the safety norms.*

Labour Criminal Law is not recognized in every state by the scholars, further being established a border line between these two law fields (Germany, Japan).

The European Union member states have shown reluctance towards inserting sanctions displaying punishment features in the Union laws.

In various European countries, a new law discipline has emerged and developed in the doctrine - the Labour Criminal Law. Regarded as a genuine Criminal Law (sub) branch, similar with financial tax criminal law, environmental criminal law, it has developed mostly in the last two decades playing a crucial role in the relation between criminal law and social law

The Labour Code, the Criminal Code and other Special Laws stipulate offenses regarding labour relations

KEYWORDS: *labor criminal law, business criminality, Labor Code, Criminal Code*
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According to the European Council Ministries Committee's Recommendation nr. R/81/12 from June 25 1981, "business criminality" comprises "violations of the prescriptions regarding safety and work health by the company, financial crimes and tax frauds committed by the company concerning social contributions". The same recommendation provides that this criminality form must be annihilated by way of civil, commercial, labour or administrative law measures and, where necessary, these measures must be assisted by criminal law sanctions.

Labour Criminal Law has emerged and developed in those countries where traditionally existed a certain sensibility towards work safety and work health issues (France, Italy, Belgium) as a result of development and increasing importance of social and human relations that influence the working system[1].

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[1] A. Coeuret, E. Fortis, Droit pénal du travail, Ed.Litec, Paris, 2003, pag. 4.

The questionable efficiency of Labour Law rules gradually led over the time towards the use of criminal law sanctions. This inefficiency of civil and disciplinary sanctions was revealed over time when labour law prescriptions multiplied and became more elaborated. Therefore, in order to control an essential law branch, the legislator increasingly used criminal law sanctions. In order to correctly analyze all the implications of the criminal law sanctions, scholars have taken in debate the possibility to recognize the existence of labour criminal law[2].

Labour Law is basically the labor contract's law and a specific work cannot be performed without respecting the safety rules.

When essential human values such as life, health or body integrity were harmed, it became clear that sanctions provided by labour law where insufficient to accomplish either the prevention or the punishing task. Therefore, criminal law liability institution was to be established.

The Labour Criminal Law is not recognized in every state by scholars, further being established a border line between the two law branches (Germany, Japan).

European Union member states have shown reluctance towards insert in the Union laws sanctions displaying punishment features.

The national legal systems of the European Union member states present differences in the criminal law area - a delicate legislative matter, not allowing the European Union to interfere. In the E.U. social legislation there are no provisions that stipulate criminal law sanctions. Exceptionally, other domains have descriptions of acts characterized as offences (for ex. CEE 91/308/ Directive regarding money laundering and Convention no. 316 from November 27, 1995 regarding the protection of the European Community's financial interest).

The International Labour Organization through its conventions has approached and clarified a number of vital problems occurring in work relations such as: equal retribution for female and male employees for the same activity, right to associate, freedom and protection of the union rights, forced labour interdiction, labour force employment policy, minimum employment age, wages lower limits, etc. but not mentioning in even one of its regulations about the incrimination of acts related to work relations. It has only established the legal frame within work relations must be carried out, leaving it up to the ratifying states to set up the sanctioning manner according to their particularities.

In various European countries, a new law discipline has emerged and developed in the doctrine - the Labour Criminal Law. Regarded as a genuine Criminal Law (sub) branch, like financial tax criminal law, environment criminal law, it has developed mostly in the last two decades playing a crucial role in the relation between criminal law and social law.[3] In the French doctrine they go even further, considering labour criminal law as being part of the business criminal law conglomerate[4].

On the other hand, other states, regardless of their legal system did not developed in their legal doctrine a labour criminal law (Germany, Holland, U.S.A., Japan, and Canada).

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[2] R. R. Popescu, Labour criminal law, Ed. Wolters Kluwet, Bucureşti, 2008, pag. 54.
[3] R. R. Popescu, Labour criminal law, Ed. Wolters Kluwet, Bucureşti, 2008, pag. 57.
[4] V. M. Delmas-Marty, Ed. Economica, Paris, 1989.

Regardless if a state has adopted or not a Labour Code, regardless of the way it is conceived, there are certain actions in connection with work relations that are incriminated by the legislator (ex. violation of right to free association in a union).

The Labour Code, Criminal Code and other Special Laws stipulate offense regarding labour relations.

1. CORRELATION BETWEEN LABOUR LAW AND CRIMINAL LAW

The correlation between labour law and criminal law is revealed by the existence of a legal liability specific for labour law – disciplinary liability. This liability form is closely connected to criminal liability, because of their common elements, representing species, categories or forms of legal liability. This connection is materialized in the influence exerted by one on the other. Accordingly, criminal liability of an employee biases his disciplinary liability, either by the suspending effect of the criminal investigation over the disciplinary procedure, either by the contributory character of the judicial decision, in some situations, over the disciplinary punishment (ex. work contract disciplinary dissolution).

Disciplinary and patrimonial liability as forms of legal liability in labour law are closely connected with criminal liability

Therefore:

· criminal liability once triggered will post pond the disciplinary procedure. Cumulating criminal and disciplinary liabilities is possible as a result of their independence (specific areas of social relations) but only subsequently, first criminal then disciplinary. When an employee is investigated for an offense or on trial before the court, the criminal case will hold the disciplinary procedure[5];

· the criminal court's decision, in some situations, will condition the dissolution of the individual work contract [Labour Code, art.56 , g) and i)];

· an important correlation refers to the application and execution of a punishment at the working place. In this situation, the work contract of the offender will be suspended when the punishment is executed at the same working place[6] and will end when the punishment is executed in a different working place. In both hypotheses the convicted, based on the court's decision, will fulfill all of the duties required.

· labour law contributes, in certain situations, to the correct application of criminal law regulations. In particular, it establishes, according to the specific work activities, the daily tasks as conditions for defining certain acts as offenses during the work or in relation with work;

· several regulation acts regarding work relations (such as Law no. 319/2006 concerning work safety and work health[7] or Law no. 168/1999 concerning the work disputes[8] etc.) stipulate and regulate sanctions for felony acts.

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[5] I.T. Ştefănescu, Consequences of employee refusing the payment , Law Revue, nr.1/2004.

[6] Art. 56, g) Labour Code (Law nr. 53/2003, published in Official Gazette no. 72 from February5, 2003).

[7] Law no. 319/2006 regarding worksafety and work health, published in Official Gazette. no. 646 from July 26, 2006, subsequently modified and complemented.

[8] Law no. 168/1999 regarding the settlement of the work disputes published in Official Gazette. no. 582 from 29 November 1999, subsequently modified and complemented.

In the labour legislation a tendency to classify as felonies various acts occurring within work relations can be observed. It is clearly visible the legislator's tendency to incriminate, in the present socio-economic situation, different human actions not incriminated or considered as misconducts in the previous legislation.

In 1990 the following 15 felonies related to work relations were stipulated:

· not taking one of the measures regarding work safety, prescribed by legal provisions, by the person whose duty was to take those measures and if by this an imminent danger situation able to cause a work accident or professional illness was created (Law no. 5/ 1965, art. 21) [9];

· not taking one of the measures regarding work safety, prescribed by legal provisions, by the person whose duty was to take those measures in a high risk working place and if by this the possibility of a work accident or professional illness was created (Law no. 5/ 1965, art.22);

· noncompliance shown by any person towards the measures established concerning work safety if by this conduct an imminent danger situation able to create a work accident or professional illness was created (Law no. 5/1965, art.23);

· noncompliance shown by any person towards the measures established concerning work safety in a high risk working place and if by this conduct a possible danger situation able to cause a work accident or professional illness was created (Law no. 5/1965, art. 24 as modified by Decree no. 48 from January 29, 1969);

· creating patrimonial accumulations by felony acts is sentenced with 6 month to 3 years imprisonment. If the act is a crime by itself, the rules regarding the existence of multiple felonies can be applied (Law no. 22/ 1969, art. 35 [10]);

· omission to declare in writing, in the legal term, by the administrator, the accumulations in quantity and value he knows about, resulted in any other way than shown in article 35, is sentenced with 1 month to 1 year of imprisonment. If the act had serious consequences, the penalty is from 6 month to 3 years of imprisonment (Law no. 22/1969, art. 36);

· alienation of the goods representing warranty according to article 10, without declaring the act in advance to the public company, authority or public institution is sentenced with 6 months to 1 year of imprisonment (Law no. 22/1969, art.37);

· work book counterfeiting by faking the writing, underwriting or its altering by any method performed by the owner or other person [Decree nr.92/1976, art.22, par. (1) regarding the work book] [11];

· inserting in the work book untrue information [Decree nr.92/1976, art.22, par.(2)];

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[9] Law no. 5/1965 regarding work safety was abolished by work safety Law no. 90/1996, abolished at its turn by work safety and work health Law no. 319/2006.

[10] Law no. 22/1969 regarding the administrator, warranty deposits and the liability in case of administration of public companies, authorities or public institutions, published in Official Gazette no. 132 from 18 November 1969, with subsequent modifications.

[11] Decree no.92/1976 regarding the work book, published in Official Gazette no. 37 from 26 April 1976, with subsequent modifications is valid until 1 of January 2009 according to Labour Code, art. 298.

· leaving without supervision industrial equipment with permanent exploitation regime by the personal who is directly in charge with the operation of that equipment [Decree nr.400/1981, art.18, par. 1, a)][12];

· leaving the place of work without prior approval from the foreman [Decree no. 400/1982, art. 18, par. 1, b)];

· cease of activity prior to installation delivery to the following shift [Decree no. 400/1982, art. 18, par. 1, c)];

· lack of assurance for high exploitation equipment at the end of the working hours in case the handing over to the next shift is not mandatory [Decree no. 400/1982, art. 18, par. 1, o)];

· smoking or the introduction of cigarettes, lighters, materials or products that might cause a fire or an explosion in the no smoking working areas [Decree no. 400/1982, art. 18, par. 2, a)];

· introduction or consumption of alcohol in the working unit or attendance to work under the influence of alcohol [Decree no. 400/1982, art. 18, par. 2, b)].

After 1990 the following offences have been added to the already existing ones that we have presented in the previous paragraphs, offences that are still in force today:

· the act of not adopting the measures prescribed by the provisions regarding work security and work health by the person obliged to adopt measures of this sort at the working place, if by this lack of action a great and imminent danger of a work accident or a work disease is created (Law no. 319/2006 regarding work security and health, art. 37);

· the act of not adopting either one of the measures prescribed by the provisions regarding work security and work health by the person obliged to adopt such measure at the working place, if by this lack of action some unusual consequences are produced (Law no. 319/2006 regarding work security and health, art. 37, par. 2);

· the act of recklessly not adopting the measures prescribed by the provisions regarding work security and health at the working place by the person obliged to adopt measures of this sort at the working place, if by this lack of action a great and imminent danger of a work accident or a work disease is created (Law no. 319/2006 regarding work security and health, art. 37, par. 3);

· the act of recklessly not adopting either one of the measures prescribed by the provisions regarding work security and health by the person obliged to adopt such measure at the working place, if by this lack of action some unusual consequences are produced (Law no. 319/2006 regarding work security and health, art. 37, par. 3);

· the noncompliance of any person to the work security and health related obligations and measures, if by this act of noncompliance a great and imminent danger of a work accident or work related illnes is created (Law no. 319/2006 regarding work security and health, art. 38, par. 1).

· the noncompliance of any person to the work security and health related obligations and measures, if by this act of noncompliance some unusual consequences are produced (Law no. 319/2006 regarding work security and health, art. 38, par. 2).

[12] Decree no. 400/1981 concerning the establishment of regulations regarding the operation and maintenance of equipments, machineries and installations, to strengthen the work order and discipline within the units with permanent activity or with equipment generating high risk was revoked through Law no. 319/2006 regarding work security and work health (Official Gazette no. 646 from 26 July 2006).

· refit of instalations, machines and equipments prior to elimination of all deficiencies that have caused any of the above mentioned s shutdown (Law no. 319/2006 regarding work security and health, art. 38, par. 3);

· reckless noncompliance by any person of the established work security and work health related obligations and measures if by this act of noncompliance a great and imminent danger of a work accident or of a occupational disease is created (Law no. 319/2006 regarding work security and health, art. 38, par. 4);

· noncompliance by any person of the established work security and work health related obligations and measures if by this act of noncompliance any unusual consequences are produced (Law no. 319/2006 regarding work security and health, art. 38, par. 4);

· reckless refit of instalations, machines and equipments prior to elimination of all deficiencies that have caused any of the above mentioned s shutdown (Law no. 319/2006 regarding work security and health, art. 38, par. 3);

· purposeful retainment and nonpayment in maximum 30 days from the expiration date of the amounts representing taxes or other contributions that are withhold at the source (Law no. 241/2005 regarding the prevention and fight against tax evasion, art. 1^{13});

· hinder the exertion of the freedom to organisation or the freedom to union association in the legal interest and legal limits [Law no. 54/2003 regarding labour unions, art. 53, a)[14]];

· the act of conditioning of constraining by any means with the intention of restricting the exercise of the duties of the labour union s management structures members [Law no. 54/2003, art. 53, b)];

· the act of providing untrue information at the moment when the labour union obtained legal personality as well as during its existence [Law no. 54/2003, art. 53, c)];

· the non-execution of a final court order issued in the matter of wage payment in a period of 15 days since the request for execution of such an order is addressed to the unit in question by an interested party (art. 277 Labour Code);

· the non-execution of a final court order issued in the matter of work reintegration of an employee (art. 278 Labour Code);

· employment of an underaged without respecting the legal requirements of age or usage of underaged persons for carrying out work activities without respecting the legal provisions concerning the working conditions of underaged persons (art. 280 Labour Code).

We would like to point out that after the year 1990 other acts concerning working realtions have been criminalized. However, along the years all of these new offences have gone through a series of changes, as follows:

a) they were either uncriminalized and represent nowadays minor offenses:

· art. 38, par. (1), Law no. 90/1996 provided as a offense the act of noncompliance by the management structure of the legal person and by the private individual to the provisions of art. 9 and art. 13 regarding the operational authorization from a work secutiry and work health point of view – at present art. 39, par. (2), Law no. 319/2006.

[13] Law no. 241/2005 regarding the prevention and fight against tax evasion, published in the Official Gazette of Romania no. 672 from July 27th , 2005.

[14] Law no. 54/2003 regarding labour unions, published in the Official Gazette of Romania no. 73 from February 5th, 2003.

b) they were either expressly abolished:

· art. 20, Law no. 130/1999 provided that the act of collecting the 1% contribution to the fund for the unemployment benefit as well as the contribution to the social health insurance fund by the employer and the non-depositing of these amounts in a period of 15 days in the assigned accounts represents an offense and is punished with prison between 3 months and 6 months or with a fine[15];

· leaving unsupervised an instalation during the working process by the operating personnel that works directly at the continous operating instalations [art. 18, par.1, a), Decree no. 400/1981];

· leaving the place of work during work time without prior approval from the foreman [Decree no. 400/1982, art. 18, par. 1, b)];

· cease of activity prior to installation delivery to the following shift [Decree no. 400/1982, art. 18, par. 1, c)];

· lack of assurance for high exploitation equipment at the end of the working hours in case the handing over to the next shift is not mandatory [Decree no. 400/1982, art. 18, par. 1, d)];

· smoking or the introduction of cigarettes, lighters, materials or products that might cause a fire or an explosion in the no smoking working areas [Decree no. 400/1982, art. 18, par. 2, a)];

· introduction or consumption of alcohol in the working unit or attendance to work under the influence of alcohol [Decree no. 400/1982, art. 18, par. 2, b)][16].

c) finally, they were either implicitly abolished and the offenses in question have been translated into subsequent legal provisions:

· art. 83, Law nr. 168/1999 regarding the settlement of labour conflicts provided that the non-execution of a final court order issued in the matter of wage payment in a period of 15 days since the request for execution of such an order is addressed to the unit in question by an interested party is punishable with prison from 3 months to 6 months or with a fine – this act is at present settled in art. 277 Labour Code.

· art. 84, Law no. 168/1999 regarding the settlement of labour conflicts provided that the non-execution of a final court order issued in the matter of work reintegration of an employee is punishable with prison from 6 months to 1 year or with a fine - this act is at present settled in art. 278 Labour Code.

· art. 146, Law no. 19/2000 regarding the public pension system and other rights to social insurances provided that the act of a person that disposes the utilization for other purposes and the non-transfer to the national social insurance budget of the social insurance contribution, after helding it back from the employees, represents an offense that is punishable with prison from 6 months to 2 years or with a fine - this act is at present settled in the provisions of art. 6, Law no. 241/2005 regarding the prevention and fight against tax evasion[17].

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[15] Art. 20 has been expressly abolished through Law no. 577/2003 regarding the approval of the Governments Emergency Decree no. 9/2003 issued for the alteration and completion of Law no. 19/2000 concerning the public pensions and other social insurance rights (Official Gazette no. 1 from January 5th 2004).

[16] Decree no. 400/1981 has been entirely abolished thorugh the provisions of Law no.319/2006.

[17] Published in the Official Gazette no. 672 from July 27th, 2005.

· art. 112, Law no. 76/2002 regarding the unemployment insurance system and the stimulation of work force employment provided as an offense the act of the employer to hold back from the employees the contributions owed to the unemployment insurance budget and the act of not tranfering these amounts in a period of 15 days in the established accounts, offense punishable with prison from 3 months to 6 months or with a fine – in this case as well this act is at present settled in the provisions of art. 6, Law no. 241/2005 regarding the prevention and fight against tax evasion;

· art. 94, law no. 150/2002 incriminated as an offense the act of a person that disposes the utilization for other purposes or the non-transfer to the fund of the health insurance contributions, offense punishable with prison from 6 months to 5 years – this act is at present settled in the provisions of art. 6, Law no. 241/2005 regarding the prevention and fight against tax evasion.

2. THE EVOLUTION OF LABOUR CRIMINAL LAW IN OUR COUNTRY

Considering the characteristic of the economy liberalization process, the sanctionatory means previously known and specific to labour law have become insufficient.

The main arisen changes:

· the replacement of the material liability of the employee with a variety of contractual civil liability having certain specific features according to which the employee in considered to be fully responsable and liable (and not only for the actual damage);

· there has been a substantial increase in the number of minor offenses in this area of labour relations (since 1990 this number has practically tripled);

· a series of actions previously regulated as minor offenses have been now settled as offenses (compared to 15 offenses stipulated until 1990, at present there are 26 criminal offenses settled in the labour criminal legislation, 1 in the Criminal Code, 3 in the Labour Code and other 22 in the provisions of special laws).

The objective existence in the romanian labour legislation of provisions that incriminate certain actions as offenses, actions that have one common sumtion, that is a legal labour relation and that assume a qualified legal subject in the person of the employee (clerk) have determined the scholarly authorities to formulate the opinion – one that we as well share – according to which in Romania a labour criminal law is outlining[18], without considering it however a distinct field of law.

In the labour law studies there has not been expressed a definite opinion wheter we can or cannot speak about the existence of a distinct field of law – labour criminal law – and in the criminal law studies this problem is merely incidentally approached. Therefore, the problem of qualifying this new legal and normative reality is still opened[19].

In the present conditions, that is those of existence of certain correlated labour and criminal provisions regarding acts of criminal nature, of labour relation violations, we can talk about the existence in Romania of a labour criminal law.

The common characteristics of all these offenses are as follows:

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[18] I. T. Ştefănescu, Labour Law Treaty, Ed. Lumina Lex, Bucureşti, 2003, pag. 115.

[19] R. R. Popescu, Labour criminal law, Ed. Wolters Kluwet, Bucureşti, 2008, pag. 220.

· the criminalised actions are in all cases founded on the existence of a labour relation;

· the existence of a qualified legal subject in the person of the employee is always assumed;

· the criminalised action usually takes place at the work place;

· between the activ subject of the offense and the passive one usually exists a subordination relation of a legal nature.

Labour criminal law must be retained as a new legal reality. This a theoretical concept that has an objective support in the fact that certain offenses stipulated in the Labour Code, in the Criminal Code and in labour legislation – they all follow the same purpose – good labour relations, a strenghtened labour discipline, and representing an expression of the natural correlation between these two fields of law – labour law and criminal law – and, in consequence has its own, specific characteristics.

In our opinion, we are in the presence of a new field of law, labour criminal law, subfield that belongs - just the same as in the case of criminal business law, criminal environmental law – to special criminal law. In no way a fragmentation of criminal law is desidered or suggeste by breaking out labour criminal law from the wider area of special criminal law.

The offenses provided through the labour legislation as well as those from the Criminal Code that imply the employee qualification, are and must be part of the criminal law.

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