

GENERAL ASPECTS REGARDING LABOR INSPECTORS AND THE ATTRIBUTIONS OF LABOR INSPECTION

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Abstract

Labor inspection exercises control over the unitary enforcement of legal dispositions within the compatible areas in the public, mixed or private units to the local and central public administration authorities, judicial people, individuals, and non-governmental organizations as well as in other employer categories. Its main purpose is to ensure the fulfillment of legal obligations by employers regarding labor relations as well as labor conditions, the protection of life, body integrity and health of employees and other participants in the labor process while performing activities.

The present material briefly presents elements referring to the notion of labor inspection and its general and specific attributions as well as the rights and obligations of labor inspectors as public and independent clerks.

Keywords: *labor inspection, general attributions, specific attributions, labor inspectors.*

Introductory considerations regarding labor inspection and its attributions

Regardless of how the state interferes or not within the sphere of labor relations, the Labor Inspection is an indisputably necessary administrative organ. It is true that without the organization and development of Labor Inspection a normal evolution of labor relations, as well as the protection of employees' interest, could not be conceived. [1, 160]

The institution also existed during the interwar period through the Law regarding the organization of the labor inspection service but during that time Labor Inspection did not have a self-standing judicial personality and was integrated within the Ministry of Labor and there were no inter-county Inspectorates on a local level.

Labor Inspection is a specialized organ of the central public administration subordinated to the Ministry of Labor and Social Protection that has judicial personality. [2, Art. 1] Through its attributions of authority in the state are exercised within the labor domain, labor relations, labor security, and health, specifically controlling the unitary application of legal dispositions within its competence domains in its units of the public and private field as well as other categories of employers.

The Labor Code also regulates Labor Inspection; according to the Code "the application of general and special regulation within labor relations, labor health and security is controlled by Labor Inspection is a specialized organ of the central public administration, with judicial personality, that is subordinated to the Ministry of Labor and Social Protection". [3, Art. 237]

According to the dispositions of the specialized legislation, this organ is lead by a general inspector of state who represents Labor Inspection in relations with the public administrative authorities, with individuals and judicial people; he has two general inspectors of state deputies and a control group for the quality of the inspection. [2, Art. 10 - 12] and [4, Art. 6 - 14, 20]

Labor Inspection exercises the control of the unitary application of legal dispositions within its competence fields, in its public and private units, ensuring the fulfillment of legal obligations by the employers regarding labor relations, labor conditions, the protection of life, body integrity and health of employees as well as of other participants to the labor process. [1, 86]

Labor Inspection has as subordinates the territorial Labor Inspectorates, judicial units that are organized in every county and Bucharest.

1. Attributions

Labor Inspection has a series of attributions provided by the law for the foundation and organization of Labor Inspection as well as by the Regulation for its functioning and organization, approved by Governmental Decision no. 488 of July the 13 th 2017.

The general attributions of Law Inspection are the following: [2, Art. 6 Alin. (1)]

- controlling the application of general and specific legal provisions within labor relations, labor health and security and supervising the product market of the competence field;
- informing the employers and employees of the means of applying the legal provisions within the competence field;
- informing the competent authorities on the deficiencies or abuse regarding the application of the legal dispositions in forcé;
- performing services that are specific to its activity field;

- Initiating proposals for the improvement of the legislation for its activity fields that are forwarded to the Ministry of Labor, Family and Social Protection.

The ones provided by the Regulation for its functioning and organization are added as follows: [4, Art. 12 Alin. (1) pct. A]

- develops and applies annual actions for implementing the politics of the Ministry of Labor and Social Justice within the competence field of the Labor Inspection;
- coordinates, guides, and controls the activity of the territorial labor inspectorates and the other subordinate institutions;
- represents the Ministry of Labor and Social Justice as a specialized organ in the international cooperation relations within its competence field during the mandate granted by the Minister of Labor and Social Justice;
- ensures the representation, on behalf of the Romanian State and Government, both internally and externally, in the cooperation relations with national and international institutions and organs within its competence fields, during the mandate granted by the Ministry of Labor and Social Justice;
- elaborates unitary control methodologies and procedures within its competence field;
- controls the keeping of employment criteria in special conditions and the means for normalizing labor conditions enforced by the employer;
- fulfills attributions according to the legal regulations in force regarding the training and its perfection for its staff;
- cooperates both internally and externally within its competence fields with similar institutions, inspections from other fields, private or public institutions, organizations of social partners and with any other organization that is founded and is functioning according to law;
- earns income by performing services, calculated based on the rate approved by the order of the Minister of Labor and Social Justice as well as other income obtained under legal provisions that become part of the state budget according to art. 7 of Law no. 108/1999 for founding and organizing Labor Inspection, republished with ulterior modifications;

- solves, within legal competence, the petitions of individual or judicial people;
- ensures the Exchange of information with central and local public administration authorities as well as with individuals or judicial people, according to law;
- manages the budgetary funds that are at its disposal as well as the state goods of the public or private field that are in its management and/or usage;
- elaborates the annual budgetary plan that is subjected to the approval of the Minister of Labor and Social Justice and ensures the financial-accounting exercise of the institution under the law;
- organizes the informational system that is necessary to its activity and manages the electronic registries of its competence field;
- Initiates proposals for the improvement of the legislation regarding the activity fields which are forwarded to the Ministry of Labor and Social Justice.

In what regards the specific attributions of Labor Inspection, there are attributions regarding labor relations, attributions regarding labor health and security as well as other attributions regarding the market surveillance.

A. Regarding labor relations

- controls the application of legal regulation, both general and specific, regarding closing, execution, modification, suspension, and termination of individual labor agreements;
- controls the establishment and granting of the proper rights of employees following the law, the applicable collective labor agreement and the individual labor agreements;
- controls the application of measures regarding the keeping of equality of chance and treatment between men and women;
- ensures on a national level the records of performed labor based on the individual labor agreements through the general record book of employees as well as the record of day laborers and their beneficiary;
- controls the use of labor forc e to identify undeclared labor;

- electronically receives and transmits through the territorial labor inspectorates the data forwarded by employers and beneficiaries referring to employees and day laborers;
- ensures the registration of collective labor agreements on a unit level and verifies their provisions according to the procedure approved by the general inspector of state and reconciles labor conflicts triggered on a unit level.

B. Regarding labor security and health

- methodologically controls, coordinates and guides the application of provisions referring to labor security and health that derive from the national and European legislation and the Conventions of the International Labor Organization;
- investigates events according to competence, approves the investigation, establishes or confirms the character of the accidents, collaborates with the involved institutions regarding the record and report of labor accidents and professional diseases;
- controls the activity of instruction, information, and consultation of employees and gives information on its improvement;
- authorizes based on labor security and health the functioning of individuals and judicial people and withdraws or proposes the withdrawal of authorization according to law;
- analyses the activity of external services of prevention and protection and proposes, as appropriate, to the committee of empowerment of external services of protection and prevention and of approval of technical documentation of information and instruction about labor security and health within the territorial labor inspectorates, the withdrawal of empowerment;
- issues notices and authorizations according to the competence established by the applicable normative acts;
- orders the cessation of activity or stopping the functioning of labor equipment if there is a state of the imminent and grave danger of professional accidents or disease and notices, as appropriate, the prosecution organs;

- orders the employer to take measures, perform expertises and determination to prevent some events or to establish the cause of former events as well as to verify with the help of competent organs the inclusion of the professional emissions level within admissible limits at the workplace, the expenses being paid by the employer;

C. Regarding market surveillance

- controls the keeping of legal provisions referring to the introduction on the market of products for which it takes actions to oversee the market, according to its competence;
- restricts through legal measures established by the legislation in force the marketing of inconsistent products and disposes of measures to eliminate the observed inconsistencies;
- collects evidence and makes tests to identify the products that are believed to be inconsistent;
- collaborates with custom authorities and other organs that are responsible for custom control to Exchange information regarding the products that have utilization risks;
- Collaborate with the competent national and the European Union authorities for all market surveillance issues including in what concerns the safeguarding clause for inconsistent products.

Labor inspectors

Labor Inspection and territorial labor inspectorates' personell is made of labor inspector and other staff categories.

Labor inspectors are public clerks that are independent of any governmental change or outside influence. [2, Art.6, Alin. (3)]

The inspectors have higher education and the necessary specialization to perform the control activities according to the objectives and attributions provided by law within labor relations, labor security and health. [5, 270 – 285]

Their employment is made through an exam or contest in a report with their professional training and their skills. The labor inspector position can be held by people with a bachelor's diploma in one of the fundamental fields: engineer studies, agricultural

and forestry studies, judicial studies, economic studies or the branches: sociology, psychology, medicine, public administration, and political studies. [2, Art. 16, Alin. (4)]

1. *Obligation*

According to the legislation referring to the foundation and organization of Labor Inspection, [2, Art. 18] labor inspectors have a series of obligations, as follows:

- to not have any direct or indirect interest of any nature in the units that he controls;
- to not divulge fabrication secrets and, in general, exploitation procedures which they might acknowledge during the exercise of their function or after the termination of the individual labor agreement for any reason;
- To keep the confidentiality of any reclamation that reports not keeping of legal provisions for the field that is regulated by the present law and to not divulge to the employer of the said individual or judicial person or their representative the fact that the inspection was made due to reclamation.

2. *Rights*

According to the specialty legislation for the field, labor inspectors benefit from a series of rights: [2, Art. 19 alin (1)]

- to have free, permanent access within the headquarters of any employer and in any other workplace organized by individual or judicial people without previous notice;
- to identify, based on the documents that prove the identity or other documents, the people at the workplaces or in any other places that are subjected to control or investigation of the events and to impose the completion of the identification form;
- to solicit from the employer or its legal representative as well as to the employees, alone or with witnesses, the necessary documentation and information for the ongoing control or investigation of events;
- to be given access by the controlled entity to copies of documents that are related to the control or investigation of events;
- to take written statements, alone or in the presence of witnesses, from employees, employers and/or, as appropriate, their legal representatives as

well as from other people that have information regarding the object of control or the investigated event;

- to collect to analyze with the help of specialized laboratories or to administrate evidence, samples, fabricated, used, deposited and manipulated substances or materials and to notify the owner or employer of doing so;
- to order the employer to take some measures, make expertizes and determinations for preventing certain events or to establish the causes of previous events as well as the verification, with the help of authorized organs, of the inclusion of the level of professional emissions withing appropriate limits within the workplace;
- to collect the necessary product samples for which the supervise the market and, if deemed necessary, to order the destruction of discontinuation of products that have a great risk;
- to give the employer measures to repair during a limited period the observed inconsistencies;
- to order the interdiction, restriction or withdrawal of a product of the market providing the reasons for this decision;
- to order the cessation of activity or the stopping of the functioning of labor equipment if they discover a state of the imminent and grave danger of professional injury or disease and to notify, if appropriate, the prosecution organs;
- to order the suspension or withdrawal of the functioning authorization;
- to apply distinct signs with seal value, following the law, in virtue of their state authority, during and regarding the fulfillment of labor tasks;
- to notify the prosecution organs regarding the cases or situations of breaching the legal dispositions of the field when there are incriminatory clues;
- to discover contraventions and apply the sanctions provided by the legislation in force;
- To solicit and unconditionally receive support from authorities and institutions of public order and protection, as appropriate, during the control.

Referring to the right of labor inspectors to have permanent free access to the headquarters of the judicial person and in any other workplace organized by them without previous notice [2, Art. 19, lit. (A)] there has been a controversy stating that the text that highlights this aspect might be unconstitutional because „it could create a discrepancy between the attributions and the power that labor inspectors have concerning police who, to enter a headquarters or a home, must obtain approval from the court whereas labor inspectors can enter anywhere anytime they want without any approval, being able to collect statements and evidence as they please, even in the absence of a representative of the management of the controlled society". [6, 252]

The Constitutional Court has decided that the certain text does not breach constitutional dispositions, nor the ones of article 16 paragraph 1 regarding the equality of citizens (that do not have incidence in question), nor the ones of article 27, paragraphs 1-3 referring to the inviolability of the residence. [7]

In the case of industrial or commercial headquarters that are not residences at the same time, the personalization of the place is not that highlighted such that the inviolability of the headquarters is not subjected to the same rules as the actual residence, the one where the private life of the person is carried through, so the authorities can exercise in other, much more permissive, conditions. The control that Labor Inspection exercises are not of the private sphere but the public one, aiming for the protection of general interest. [8,75]

The intervention of public authorities in the field of activity of judicial people has a legitimate purpose and is necessary for a democratic society taking into account that among the objectives of Labor Inspection there is the control of applying legal provisions regarding labor relations, labor security, and health, the protection of employees who work in special conditions and the legal provision referring to social insurance. The critiqued measures provided by the law dispositions are proportionate to the legitimate pursued goal since only in this way can the optimal development of the control operation performed by the Labor Inspection be ensured, the fulfillment of their attributions, and the rights of the labor inspectors regard both the specifics of the exercised control activity and the social importance of this public order activity.

Labor inspectors are competent to observe and punish the inconsistencies provided by Law no. 108/1999 and the ones regulated by Law no. 279/2005 regarding apprenticeship at the workplace.

In the case of independent directors (national companies or societies), the request for their dissolution must be addressed to their founding authorities, not to the court of law. Based on the decision of the competent organ the radiation of the certain judicial person from the commerce registry is to take place.

The measures taken by the labor inspector can be contested through the legal or administrative means provided by law [2, Art.19, alin (2)] but this requires a series of clarifications.

It has to be stated that the measures taken by the labor inspectors while exercising their attributions are the administrative acts of a public authority. [9, Art. 48 Alin. (1)]. The possibility to be contested by the legal or administrative means provided by law are materialized by the exercise of action of the administrative legal department, according to the law regarding the administrative legal department.

Previous to the introduction of the annulment of the administrative act, the employer must request from the issuing public authority, within 30 days from the date of the communication of the act, its total or partial revocation. [10, Art. 7]

It must be mentioned that the employer (plaintiff) can ask the court of the legal department for the suspension of the execution of the act, namely the measures taken by the labor inspector „for preventing the occurrence of imminent damage". [10, Art. 14, Alin (1)]

If a fine is issued the employer can contest it only by filing a complaint with the court of law within 15 days of its issue. [11, Art. 31]

If the action of the administrative-legal department and the complaint against the fine have been filed at the same time the provisions of the civil code of conduct regarding the possibility of suspending the judgment of the complained until the irrevocable solution of the action of the administrative legal department become applicable. [12, Art. 244, Pct. 1]

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