

THE JUDICIAL RESPONSIBILITY REGARDING WORK SAFETY

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Abstract

Violation of the pre-established regulations through an inappropriate behaviour triggers the responsibility of the guilty person forcing them to bear the most different consequences of his act.

Judicial responsibility is both a kind and an integral part of social responsibility whose singularity consists in the act that it derives from violating a law regulation that incubates. The compulsoriness of bearing a constraint has the sole reason of deviation from the judicial regulation. By triggering the responsibility and bearing the consequences devolving from it the violated law order is established.

In the content of the present article there will be approached specific aspects of the kinds of judicial responsibility within the labour law, their features as well as their sanction system.

Keywords: disciplinary responsibility, patrimonial responsibility, contraventional responsibility, criminal responsibility

Judicial responsibility is an institution of the labor law that sanctions the violation of the laws in force by the employer, employees and other participants to the labor process.

The types of judicial responsibility regarding the labor law are:

- disciplinary responsibility;
- patrimonial responsibility (of the employees and employers);
- contraventional responsibility;
- Criminal responsibility.

Disciplinary responsibility

Disciplinary responsibility is a type of judicial responsibility, it specifies the labor law and interferes when a person working in a unit is guilty of committing a deviation from the job obligations mentioned in the labor agreement.[1]

The features [2] of disciplinary responsibility:

- it has contractual nature because it is part of a person's duty by including him in the labor collective of an employer, by closing the individual labor agreement;
- it has a strictly personal character therefore it can be engaged by every employee;
- it has a system of laws that regulate the behaviour of the employees while developing the labor process;
- it is transposed in a patrimonial or moral restraint;
- it has autonomous character;
- it functions on the ground of the employee's subordination towards the employer;
- It exercises both a sanctioning function and a preventive and educational one.

Disciplinary sanctions are a type of restraint provided by law having the purpose of defending the disciplinary order, the development of the responsibility spirit for conscientiously fulfilling labor duties and respecting the behaviour rules as well as the prevention of indisciplinary acts. They are specific measures to the labor law regarding the execution of the individual labor agreement.[3]

The labor law states that the disciplinary sanctions that the employer can apply in the case of the employee's disciplinary deviations are:

- warning letter

This type of responsibility consists of warning the employee, in a written manner, by the employer, about the committed deviation and the consequences occurred during the labor process.

According to the Labor Law the warning letter is the only disciplinary sanction applicable by the employer without prior disciplinary investigation.

- Demoting in function and giving the salary of the function to which the employee is demoted, for a period of maximum 60 days.

Demotion in function or category is the most severe sanction that can be applied while keeping the labor rapport. This is for people who are not at their first disciplinary

deviation and that bring considerable moral and material prejudice to the unit where they develop their labor process in certain circumstances that make the act very dangerous. The demotion must be effective, implying not only the diminution of the salary but also the temporary transition to another duty. For it to be legal, the demotion must be applied on a period of maximum 3 months.[4]

- reduction of the basic salary on a period of 1-3 months by 5-10%

This sanction targets only the basic salary not the allowances, increases or other salary additions. The legality of the sanction is ensured by the limits established by law, namely: the term of 1-3 months and the salary reduction procedure by 5-10%.

- reduction of the basic salary and/or, as appropriate, of the management increase on a period of 1-3 months by 5-10%

This sanction is exclusively applied to the management staff.

- the disciplinary termination of the individual labor agreement

It is the maximum disciplinary sanction, the most severe that implies the termination of the labor agreement of the guilty employee through the unilateral will of the employer.

The employer can dismiss the employee that has committed a serious deviation or repeated deviation from the labor discipline rules or from those established by the individual labor agreement, the applicable collective labor agreement or the internal regulations.

The disciplinary vindication of the employee is regulated by the Labor Law. The disciplinary sanction is cleared within 12 months from its application if the employee is not applied another disciplinary sanction within this term. The clearance of the disciplinary sanctions is stated by the written decision of the employer.

Stating the employee's guilt, after the prior investigation, the employer establishes the disciplinary sanction according to the dispositions of the Labor Law regarding:

- the circumstances in which the act was committed;
- the guilt degree of the employee;
- the consequences of the disciplinary deviation;
- the general behavior of the employee at work;

— The possible disciplinary sanctions that the employee might have suffered.

The sanctioning decision is the unilateral act through which the employer states the disciplinary sanction of the employee that committed a disciplinary deviation. The sanctioning decision is communicated to the employee within 5 calendar days from the date of the emission and is effective from the communication date. The communication is personally given to the employee with the signature of receipt or, in the case of its refusal, by registered letter at the employee's home or residence. The sanctioning decision can be contested at a court found in the region of the employee's residence within 30 days from communication.

According to the Labor Law, under the sanction of absolute nullity, the decision must contain:[5]

- the description of the act that constitutes the disciplinary deviation;
the precision of the provisions of the personal status, internal regulations, individual labor agreement or collective labor agreement applicable that were violated by the employee;
- the reasons for eliminating the employee's defense during the prior disciplinary investigation or for not conducting an investigation;
- the grounds of the law according to which the disciplinary sanction is applied;
- the term during which the sanction can be contested;
- The court where the sanction can be contested.

Patrimonial responsibility

According to the dispositions of art. 269 of the Labor Law the employee is obliged, on the grounds of the rules and principles of the civil contractual responsibility, to compensate the employee if he has suffered a material or moral prejudice because of his employer during the fulfillment of the labor duties or related to the job, and art. 270 align. 1 provides that employees have patrimonial responsibility, on the grounds of the rules and principles of the civil contractual responsibility, for the material damage the cause to the employer because of and related to their work.

From the conjunction of these two articles there results that the regulation of patrimonial responsibility within the Labor Law is applied to both the employers and the employees.

The employees' patrimonial responsibility is a type of judicial responsibility that consists of their obligation to repair the material damage done to the employer because of and related to their work. [6]

They are not responsible for the damage caused by major force or other unexpected causes that could not be eliminated and for the damage that are part of the normal risk of the job.

The employer's responsibility has the following features: it is contractual, having the foundation in the individual labor agreement; it is reparatory; the prejudice is related to the job; the same laws are applied as in the case of civil contractual responsibility etc. [7]

Due to the fact that it is related to a specific principle of the bilateral obligations and because the compensations paid by the unit are retrieved from the guilty ones, the employer's responsibility is regulated in the same title as the patrimonial and disciplinary responsibility of the employees. [8]

According to the dispositions of art. 253 of the Labor Law, the employer can be obliged to:

- damage – interest for the prejudice caused to the employee by inexcusably delaying the payment of the salary or by not paying it;
- Paying compensations in case of cancellation of dismissal as well as in the case of acquitting the person suspended from function; for covering the prejudices caused to victims of labor accidents.

The patrimonial responsibility of the employer [9] can also occur in the following cases:

- the employee, without being dismissed, is prevented from working;
- the appropriate measures are not taken for ensuring the security of the clothing of the personnel that uses work equipment and therefore it is stolen or degraded;
- the employee suffers from a prejudice because of the discrimination he is subjected to;
- the legal term of forwarding the pensioning file is exceeded or the emission of the necessary documents for pensioning are delayed;
- the emission of the certificates completed incorrectly;

- The employer does not emit or delays the emission of the employment record at the termination of the labor relations and the delay of this document causes damage to its holder.

The employers are patrimonial responsible for the prejudices caused to the victims of the labor accidents or professional illnesses when the damages are not entirely covered by the public social insurance.

The main conditions for the patrimonial responsibility of the employees to exist are:

- the person who produced the damage to the employer is his employee;
- the illegal and personal act of the employee committed in relation to his work;
- the prejudice caused to the patrimony of the employer;
- the causal relation between the illegal act and the prejudice;
- The guilt of the employee.

A particular type of patrimonial responsibility occurs when the employee has received an unjustified sum or goods that he did not deserve from the employer. If the goods received in this way cannot be returned in their nature or if the employee received services he did not have access to, the employee is obliged to return their countervalue. The countervalue of the goods or services concerned is established according to the value they had on the day of the payment.[10]

These sums can be retained in monthly rates from the employee's salary. The rate cannot be higher than 1/3 of the monthly net salary without exceeding along with the other retentions that the one concerned would have of that salary.

The contraventional responsibility

The contraventional responsibility of the Labor Law is defined as the type of judicial responsibility that consists of sanctioning the contraventions of the people (physical or judicial) guilty of violating the legal provisions that prevent and sanction contraventions.[11]

The contravention is an illegal act committed with guilt that represents a lower danger to the society than other acts, the consequences being more restrained and constituting the ground of the contraventional responsibility.

The subject of the contraventional responsibility of the Labor Law is always the employer.

The object of the contravention is constituted by values, social relations, legal goods or interests protected by the rules of the contraventional law that are damaged or endangered by committing the act.[12]

The establishment of the contraventions of the labor law is the attribution of the work inspectors. The contraventionally sanctioned people can file a complaint against the minutes of establishing the contravention within 15 days from the date of communication at the court near which the contravention has been committed.

Criminal responsibility

The criminal responsibility in the labor law is not only about the offenses incriminated in the Labor Code. The special part of the Criminal Code regulates several types of offense regarding the job.

The criminal responsibility implies committing an illegal act with the main feature that it has to be an illegal act, namely an offense.

The subjects of the criminal offense are on one side the state and on the other the offender.

The state represents the active subject that exercises judicial restraint by applying and ensuring the fulfillment of the judicial sanction and the offender, who is called the passive subject, must suffer the consequences of the criminal act, namely the application and execution of the sanction.

The content of the judicial report of criminal responsibility consists of the correlative sanctions and obligations of the parts.

The object of the criminal responsibility report consists of the sanction that the state applies to the person that committed the illegal act.

Criminal responsibility has the following features:[13]

- it is individual and personal (it cannot be transmitted through files amongst the living or because of decease, with onerous or free title);
- the guilty person is responsible for himself (the responsibility for another's act is excluded);

- Its establishment triggers the application of a sanction from those provided by law.

According to the Labor code the following criminal acts committed by employers are offenses:

- not executing a final court order regarding the payment of the salaries within 15 days from the date of the execution request addressed to the employer by the interested part is an offense sanctioned by 3 to 6 months in prison or by fine (art. 277);
 - not executing a final court order regarding the reintegration in labor of an employee is an offense sanctioned by 6 months to a year in prison or by fine (art.278);
 - the act of the person that repeatedly establishes for the employees with an individual labor agreement salaries under the value of the minimum gross salary of the country provided by law is an offense sanctioned by 6 months to a year in prison or with criminal fine (art. 2791, align. (1));
 - the repeated refusal of a person to allow, according to law, the access of the work inspectors in any of the unit's spaces or to provide them the requested documents, according to law is an offense sanctioned by 6 months to a year in prison or by criminal fine (art. 2791 align. (2));
 - employing more than 5 people, regardless their citizenship, without closing an individual labor agreement is an offense sanctioned by 1 to 2 years in prison or by criminal fine (art. 2791 align. (3));
 - employing minors without respecting the legal age conditions or using them for activities that violate the legal provisions about the labor regime of the minors is an offense sanctioned by 1 to 3 years in prison (art. 2801 align. (1));
 - employing a person who is illegally staying in Romania, knowing that the person is a victim of the human trafficking is an offense sanctioned by 6 months to 3 years in prison (art. 2801 align (2));
 - The labor performed by a person who is illegally staying in Romania, knowing that this person is a victim of human trafficking or the labor performed by maximum 5 people, regardless their citizenship, without closing an individual

labor agreement that endangers their lives, integrity or health is an offense sanctioned by 6 months to 3 years in prison (art. 2801 align. (3)).

For the offenses presented above the employer can be obligated by court, according to art. 2801, align. (5), to pay sums that represent:

- any remaining remuneration owed to the illegally hired people. The amount of the remuneration is presumed to be equal with the medium gross salary, if the employer or the employee cannot prove otherwise;
- the amount of all taxes and social insurances contribution that the employer would have paid if the person would have been legally hired, including the delay penalties and the appropriate administrative fines;
- The expenses determined by the transfer of the remaining payments to the country where the illegally hired person has willingly returned or was returned according to the law provisions.

Law nr. 319/2006 of labor security and health regulates the following offenses:[14]

- not taking one of the legal measures of labor security and health by the person who had to take these measures, if there is a serious and imminent danger of labor accident or professional illness is sanctioned by 1 to 2 years in prison in the case of the simple version of the offense; by 1 to 3 years in prison or by fine, if the offense has produced serious damages; by 3 months to a year in prison or with fine or by 6 months to a year in prison or by fine in the case that the offense was guiltily committed;

- not respecting the obligations and measures by any person regarding the labor security and health if by this a serious and imminent danger of a work accident or professional illness is created is sanctioned by: for the simple version, 1 to 2 years in prison or fine; if the offense has produced serious damages, 1 to 3 years in prison or fine; and in the case in which the offense has been guiltily committed, 3 months to a year in prison or fine or 6 months to a year in prison or fine (art. 38).

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