



Current Issues regarding Labour Inspection

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Abstract: Objectives: Labour inspection is the most important specialized organ of the state for intervention and control in the sphere of the work relations. In any state of law, it is impossible for a labour relation to occur, to attempt the eradication of the “black work”, to protect the employees’ interests, to monitor the observance of the legal and/or contractual provisions, without regulating the institution of labour inspection. **Prior Work:** I’ve tried to find the new regulation in this domain very important for those who practice labour law. **Results:** In the Romanian legislation, the enforcement of the court decisions in the matter of labour inspection is viewed by the lawmaker with great care, in certain cases the non-execution of a court decision being considered a felony. **Value:** We think this article is a small step in the disclosure of the problem raised by the labour inspection.

Keywords: objectives, general duties, litigation, competence, hierarchical control

1. General Aspects

Moreover, the regulation of labour inspection at the national level also derives from the ratification by Romania of the two conventions in the matter of the International Labour Organization, respectively:

- Convention no. 81 (1947) regarding labour inspection in industry and commerce;
- Convention no. 129 (1969) regarding labour inspection in agriculture.

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Thus, according to the Labour Code, *“the application of the general and special regulations in the field of labour relations, labour security and health, is subjected to the control of Labour inspection, as specialized organism of the central public administration, with legal personality, in the subordination of the Ministry of Labour, Family and Social Protection”* (art. 237).

The relevant provisions in this field are represented by art. 237-240 of the Labour Code, corroborated with Law no. 108/1999 regarding the establishment and organization of Labour inspection and by the Regulation for the organizing and functioning of Labour inspection approved through Government Decision no. 1377/2009 and other dispositions from the Civil Procedure Code which, according to art. 275 of the Labour Code, constitute the common law on the matter.

According to art. 2 of the Regulation, Labour inspection exercises the control of the unitary application of the legal dispositions in its fields of competence in the units within the public, private, mixed sector, as well as with other categories of employers. The main goal of this institution is to monitor the fulfillment of their legal obligations by the employers in the field of the work relations, social security, as well as of those regarding labour conditions, the protection of the life, bodily integrity and health of the employees and of the other participants to the labour process.

2. Disputed Aspects regarding the Organizing and Functioning

Labour inspection as specialty organ of the central public administration, has legal personality, being formed of labour inspectors and other categories of personnel.

According to art. 10-12 of Law no. 108/1999, Labour inspection is managed by a state inspector general appointed through Order of the Minister of labour, family and social protection, and by two deputies, which exercise specific management public office. Apart from them, the state general inspector has under his/her subordination the **Inspection Quality Control Body**, which verified the manner in which the staff observes the legal provisions in the field.

Within Labour inspection functions the **Labour Inspection College**, as consultative organ (art. 8 of the Regulation), which is periodically reunited under the leadership of the state general inspector, in order to establish the functioning strategy and to debate a series of special problems that the institution is facing.

In each county within the country and in the City of Bucharest are established **territorial labour inspectorates**, each having legal personality, managed by a coordinating director appointed by the field ministry, at the proposal of the general inspector.

At the end of each year, the general state inspector presents to the field ministry a relation with respect to the manner in which the institution fulfilled the duties established through law.

According to art. 5 of Law no. 108/1999, republished, the main objectives of Labour inspection are the following:

- the control of applying the legal provisions regarding the work relations, the labour security and health, the protection of the employees working in special conditions and of the legal provisions referring to social security;
- the informing of the competent authorities with respect to the deficiencies related to the correct application of the legal dispositions in effect;
- the supply of information to the interested parties, regarding the most efficient means of observing the labour legislation;
- the technical assistance of employers and employees for the prevention of professional risks and social conflicts;
- the initiation of proposals addressed to the Ministry of Labour, Family and Social Protection, for the improvement of the existing legislation and the elaboration of new normative acts.

All objectives established by the Romanian legislation in the matter have as basis the provisions of the two ILO Conventions ratified by Romania (Stefănescu, 2010).

In order to achieve the objectives set by law, Labour inspection has the following duties regulated by art. 6 para. 1 of Law no. 108/1999 and by the Regulation.

General Duties

- controls the correct and unitary application of the laws and other normative acts regulating the labour relations, the labour security and health, the social protection of employees working in special conditions;
- coordinates, guides methodologically and controls the activity of the territorial labour inspectorates and of the other units under its subordination;

- controls the observance of the criteria for the classification in the workplaces with special conditions, their recording, and the manner of their execution by the economic operator of the technical-economic measures for normalization;
- controls the observance of the quality standards in the granting of the social services;
- controls the manner of establishing, granting and administering of the social contributions and of other budgetary allocations in the competence field;
- makes proposals of normative acts drafts in the field;
- organizes and controls the training and improvement activity of the own staff.

Specific Duties in the Field of Establishment and Control of the Work Relations

- controls the application of the legal, general and special regulations, with respect to the conclusion, execution, modification, suspension and termination of the individual labour contracts;
- controls the observance of the clauses comprised in the collective employment contracts also applicable in the individual employment contracts;
- controls the establishment and granting to the employees of the due rights deriving from the law, from the applicable collective employment contract and from the individual employment contracts;
- controls the observance of the principle of equal treatment;
- ensures the national records of the labour provided on the basis of the individual employment contracts;
- controls the use by the employers of the undeclared work;
- verifies the legality of the clauses recorded in the individual employment contracts, ensures and follows their recording in the employment records;
- controls if the natural and legal persons observe the legal provisions regarding the registration of the individual employment contracts;
- controls the manner of drafting the special register for the records of the personnel employed on the basis of individual employment contracts;
- supports the negotiation of the collective employment contracts.

Specific Duties in the Field of Labour Security and Health

- controls the application of the legal provisions regarding labour security and health;
- investigates the events according to the competences, approves the investigation, establishes or confirms the character of the accidents, collaborates with the institutions involved in what concerns the recording and reporting of labour accidents and of professional illnesses;
- controls the activity of training and informing of the workers and supplies information in view of its improvement;
- authorizes the functioning from the point of view of labour security and health of the legal and natural persons, by issuing the establishing certificate;
- habilitates and withdraws habilitation of the natural and legal persons for providing protection and prevention services in the field of labour security and health, as an external service of prevention and protection;
- approves the documentations with technical character of informing and training in the field of labour security and health, elaborated by natural or legal persons;
- restricts the trading of non-conform products;
- collaborates with the competent authorities in the problems related to the market supervision, including in what concerns the notification of the safeguarding clause in case of non-conform products;
- collaborates with the supervision organisms within the European Union and with the European Commission in running the market supervision community programs;
- verifies the manner of organizing and functioning of the labour security and health committees;
- controls the manner of application of the technical and organizational measures taken by the employers in view of preventing the presence above the maximum allowed limits of the chemical, physical or biological agents, in order to ensure the state of health of the employees subjected to harmful substances;
- controls observance of the legislation regarding the supervision of the workers' health, the medical examination upon employment, the periodical medical examination;
- controls the manner in which the employers organized the activity of granting first aid in case of accidents, as well as the organizing and endowment

of the savior teams, for the situations imposed by the activity specific (Țiclea, 2011).

According to art. 6 para. 2 of Law no. 108/1999, corroborated with art. 4 of the Regulation, Labour inspection, by means of its own personnel, may provide, upon the request of the interested parties, against a cost, the following services:

- specialty assistance and consultancy;
- training and improvement in the field of the work records of the personnel performing an activity within the companies that have as object of activity work recording, accredited according to the law;
- technical assistance in the elaboration of the professional risk prevention programs;
- expertise of the natural and legal persons in view of issuing the functioning authorization from the viewpoint of providing labour security and health, of reviewing the authorization upon the changing of the initial conditions;
- expertise and analysis in view of issuing the authorization for the production, holding, transport, trading and use of the toxic and explosive substances;
- consultancy for the managerial methods and means of applying the legislative provisions for the purpose of normalizing the labour conditions;
- organizing of courses, consultancy and specialty assistance for the training and improvement of the personnel with activity in the field of labour security and health;
- consultancy and specialty assistance in evaluating the risk level, in view of establishing the programs for the prevention of the labour accidents and of professional illnesses;
- consultancy in the elaboration of the labour security and health instructions;
- analysis, expertise and technical assistance regarding the activities specific to the mining sector;
- issuance of certificates on the basis of the documents existing in the archives of the territorial labour inspectorates, upon the request of the natural, legal persons, or of any entities that have a legal right to request and obtain this information;
- issuance of certificates with information taken from the database organized at the level of the Labour inspection with the general registers for the records of employees, submitted by employers;

- supply of the data of the general registers for the records of employees, in order to rebuild its contents with the employer, by taking information from the database organized at the level of the Labour inspection.

3. Applicable Sanction Regime

The labour inspectors can establish and apply the contravention sanctions regulated by Law no. 108/1999 and, as the case may be, those regulated through other normative acts regarding the labour relations or the social field. Also, the labour inspectors are those able to establish and sanction all deeds that, according to the law, are contraventions and for which it is indicated that the establishing agent is part of the staff of the Ministry of Labour, Family and Social Protection, of the labour and social protection directions and of the territorial labour inspectorates (art. 23 of Law no. 108/1999).

In addition, in case of a repeated offence, by the employers, of serious deviations from the provisions of the labour legislation or from the labour security and health regulations, the inspectors may request the erasing of the legal person from the trade register (art. 24).

Law no. 108/1999 regulates the following contraventions: the prevention, in any way, by the employer, natural or legal person, of the labour inspectors to exercise control within the legal limits, is sanctioned with contraventional fine (art. 20); the refusal of an employer, natural or legal person, to fulfill the obligatory measures ordered by the labour inspector, on the deadline set by him/her, within the limits and with the observance of the legal regulations, is sanctioned with contraventional fine (art. 21).

4. Litigations. Procedure

Considering the fact that Labour inspection is an organ of public administration, it is derived that the measures taken within it by the labour inspectors constitute *administrative acts* of a public authority. Thus, the possibility to be contested in court is materialized through the actions in administrative contentious.

The action in case will be grounded on art. 1 para. 1 of Law no. 554/2004 regarding the administrative contentious. Prior to introducing the action for the

annulment of the administrative act, the employer must formulate an administrative complaint with the body that issued the act, within 30 days since the communication of the act, in which to request its total or partial revocation; naturally, it can also formulate a second complaint, also administrative, before the hierarchically superior body.

At the same time, in the shortest possible time (if not simultaneously, during the same calendar days) after introducing the annulment petition grounded on art. 1 of Law no. 554/2004, the plaintiff (employer) should request the administrative contentious court the *suspension of the execution of the administrative act*, namely of the measure ordered by the labour inspector, “for the prevention of an imminent damage” (art. 14 para. 1 of Law no. 554/2004). The petition in question can be admitted by the court or not, without it having an *ope legis* execution suspension effect (Țop, 2008).

On the contrary, in case the employer wishes to contest a contraventional fine received from the Labour inspection, it can do so only by introducing a complaint with the court, within 15 days since the date of communication of the contravention minute (according to art. 31 of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, with its subsequent modifications and completions). In the situation in which on trial there are, concomitantly, both the administrative contentious action against the measures ordered by the labour inspector, and the complaint against the contravention minute, become applicable the dispositions of art. 244 point 1 of the Civil procedure Code, regarding the possibility to suspend the complaint trial, until the irrevocable settling of the administrative contentious action.

5. Conclusions

Apparently, given the subordination relation between the two institutions, Labour Inspection has, mainly, the role of coordination and control over the Territorial Labour Inspectorates, and the latter have the execution role, that of actually controlling the modality of applying the legislation in the field of work relations and labour security and health. Being two public institutions, with their own legal personality, it is presupposed that their duties are also distinct; however, as derived from the normative acts regulating their activity, in many cases we meet a superimposition of competences. The holding of certain competences in common may not be the most appropriate regulation, because, apart from confusing the

citizens and making more difficult the activity of recording and control, this situation also leads to a delay in solving contestations as a consequence of the possibility to de-notify the hierarchically superior body and to the increase of the functioning costs of the two institutions, both having to have specialized staff for fulfilling the same duties.

Moreover, by means of attributing competences of direct control of the application of the law only to the Territorial Labour Inspectorate, a legality control can also be achieved, of all acts drafted in exercising the competences, by the hierarchically superior institution, Labour Inspection. At present, the fulfillment of the function of control of the application of the law directly by the Labour Inspection does not give the possibility of exercising the hierarchical control, except through the presentation of certain reports to the Minister of labour, family and social protection, who, however, cannot make a decision on the legality of the acts issued. In what concerns the acts issued by the Labour Inspection by the units under its subordination, given its duties, we qualify them as public power acts, being the result of the full manifestation of the state power. Therefore, they are administrative acts, subjected to a specific legal regime.

In the analysis of these acts, we shall have to distinguish between them, with respect to the competences of the Labour Inspection that generated them, since, as indicated, this institution does not only have the role of controlling the application of the regulations, but also of taking active measures in view of removing the irregularities and of sanctioning the breach of the legal dispositions, fulfilling inclusively functions of notification, authorization and certification. Following the exercise of the competence of the Labour Inspection to control and to apply sanctions, mainly derive contravention establishment minutes which, although are also administrative acts, follow a legal regime different from the others, being applied the dispositions of Government Ordinance no. 2/2001 regarding the legal regime of contraventions.

However, for any other acts of the Labour Inspection, the contestation procedure will be the one established by the dispositions of art. 7 of Law no. 108/1999 for the establishment and organization of the Labour Inspection, which refers to the dispositions of Law no. 554/2004 regarding the administrative contentious, as completed and modified, implying inclusively the formulation of the prior complaint (Popescu, 2011).

At the same time, any contestation, from the employers or employees, of the acts to which are applied the dispositions regulating the activity of Labour Inspection, must take into account inclusively the issuing body, a possible complaint going to be made either against Labour Inspection, or against the Territorial Labour Inspectorate, with respect to the institution that issued the contested act, given the double competence they have in different matters. However, we must not forget the possibility to exercise the administrative recourse against the acts of the Territorial Labour Inspectorates, considering the fact that there is the possibility of a hierarchical control performed by the Labour Inspection, since they derive from the control and coordination duties existing in the administrative hierarchy, even if Law no. 108/1999 for the establishment and organization of Labour Inspection and the Regulations for organization and functioning do not regulate in detail the manner of exercising this control.

6. References

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