# Study on the Interference Area Between the Criminal Law and the Labour Law

**Senior Lecturer Radu Răzvan POPESCU, PhD**
***National School of Political Studies and Public Administration***
***radupopescu77@yahoo.com***

**Abstract:** The evolution which took place in this area of the Romanian legislation, an interference zone between the penal law and labour law, can be explained not only starting from the internal reality characteristic to the labour relations but also from guidelines offered by compared law. Notwithstanding, labour criminal law cannot be consider merely as an accessory part of the corporate criminal law, but having an essential part, such as an exhibit test, in order to determine new legal mechanisms, like the ones regarding criminal liability of the legal persons.

**Keywords*:*** penal labour law, branch, infractions, contraventions, legislation, interference

## 1. The place of the penal labour law in the juridical system

**1.1.** The law does not exist only as an accidental apposition of a number, greater or lesser, of juridical norms. A structural analysis of the law leads to the conclusion that its structure involves a *network of relationships* and their organization and hierarchy make up, finally, a system. Thus, the system of law proves to be an organized and logical whole, an ensemble with related parts and being structured by *branches*, *sub-branches and juridical institutions* (N. Popa, 2002, p.7)

Characteristic to this system is the mandatory existence of a *common structure*, which incorporates the related elements within a complex and relatively stable body which acts as a *whole*, with its own properties and functions which are distinct and qualitatively different from those of the elements that formed it.

The basic element of the system of law is the juridical norm.

Organization of the law as a system entails the grouping of the juridical norms by branches, sub-branches and juridical institutions. The largest grouping of juridical norms is the *law branch*. The law branch is the collection of juridical norms regulating the social relationships in a particular sphere of social life, on the basis of specific regulation methods and common principles. The criteria which underlie the structuring of the branches of this system are:

- *the object of the juridic regulation*, which represent the social relationships under the incidence of juridical norms, considered as being the prevalent premise;
- *the common principles of the corresponding law branch*;
- *the regulation method*, as a way to establish the type of social conduct, by preponderantly using the norms, either imperative or having a character of disposition.

**1.2.** Not all social relationships have a corresponding law branch. A law branch is constituted on the basis of the qualitative specificity of a group of social relationships which require a system of norms with *congruous characters* but each having *characteristic elements*.

Within the law branches, the identification of the characteristic elements of a group of social relationships leads to outlining the *law sub-branches*[1]. The law sub-branch is made up by a system of juridic institutions, which by their structure belong to the same law branch and have in common a number of specific characteristics giving them a certain autonomy.

*The juridic institution* is a group of juridical norms with a lesser extent than the law sub-branch. The juridical institution is defined as the body of juridical norms that are systematically interrelated and belong to the same law branch. These norms regulate connected social relationships using the regulation method specific to the respective branch.

Thus we theoretically find *a juridic triptych*: law branch, law sub-branch and juridic institution.

The existence of the law branch, law sub-branch and juridic institutions is governed by the complexity of the social relationships that are juridically regulated. The social relationships exist in close correlation and this imposes certain mandatory links between the law branches as well as some juridic institutions (as, for instance, the institution of property) that belong to several law branches (mainly to the civil law but also to the commercial law, administrative law a.s.o.).

In these conditions, there is also another consequence: between the law branches result *interference zones* that generate some difficulties in reckoning which sub-branch a juridic institution belongs to or which law branch a sub-branch belongs to.

The theory of law does not make a clear-cut clarification if one can accept, in the present stage in Romania, the existence of some sub-branches of law that, at least formally, as denomination, are similar to the law branches (e.g. transportation law, intellectual property law, companies law). Also, there is no firm opinion on some disciplines which represent a juxtaposition of some concepts belonging to several law branches as, for instance, the penal law of business (O. Predescu, 2000, p.112).

[1] The sum of these distinct parts constitute the law branch as a whole.

## 2. The scope of the penal labour law

**2.1.** The scope of the penal labour law, a sub-branch or the penal law, there are several options:

a) The penal labour law would be represented by the entirety of penal acts specified in the Labour Code and in the other special regulations in the field of labour relations, hence in labour legislation, excluding those in the Penal Code. In such a case it is clear that, once the new Penal Code is in force, the infractions concerning the labour safety and those concerning the obstruction of labour unions rights would not be a part of discipline.

b) The penal labour law would be constituted by, on one hand, the regulations pertaining to the infractions to the labour legislation and, on the other, by the regulations in the Penal Code and other special laws which are related to infractions entailing, *sine qua non*, the attribute of employee.

c) The penal labour law would be constituted by the regulations concerning the violations to the labour legislation and the violations to the Penal Code, respectively the violations related to obstructions in exercising labour union rights, those concerning labour safety (entailing *in the first place* the attribute of *employee*) and, exceptionally, by assimilation – the sexual harassment offence (which presupposes an action taking place at the *work place*).

Although the first option for defining the scope of the penal labour law could constitute, from some viewpoints, **the optimal choice**, however this cannot be maintained in the present Romanian juridical context because, in our opinion, it would unjustly introduce a delimitation between the infractions regulated by the labour legislation and those specified in the Civil Code and categorically entailing the attribute of employee: the violations concerning labour safety, obstruction to exercising labour union rights and sexual harassment. It is necessary that these infractions constitute an inherent part of the penal labour law in that it is not acceptable to leave aside those penal acts which are violations to the norms aimed at protecting essential institutions of the labour law i.e.: labour safety, labour unions and dignity at work.

The second solution cannot certainly be maintained because it **presupposes a „fracture" (fragmenting) in the penal law** which is not accepted by the legislator or by the doctrine. It would limit the impact of some penal acts specified in the Penal Code (e.g.: bribery, abuse at work) only to the existence of the labour contract and with recourse to the labour law[1].

Consequently, in the actual juridic, economic and social context, we opt for the third solution as being the **optimal solution**. Hence:

[1] It should not be omitted the fact that the penal law has a public character while the labor law has mainly a private character and only subsidiary public.

- **at present, the penal labour law** is constituted by the entirety of regulations concerning the violations specified in the labour legislation (including violations to the labour safety and those concerning unions) to which should be added the sexual harassment as specified in the Penal Code;
- **in the future**, once the new Penal Code comes to force, **the penal labour law** will pertain to the same infractions as those penalized by the labour legislation with the addition of infractions to the labour safety, obstruction of exercising the labour union rights and sexual harassment which, although they are specified in the Penal Code, hurt some fundamental and specific institutions of the labour law (health and safety at work, unions, non-discrimination at work).

The fact that a violation is regulated by the Penal Code does not make it incompatible with the scope of the penal labour law[1].

One can consider as questionable the inclusion of the infraction of sexual harassment in the penal labour law. We deem that including it in this law sub-branch results from the following considerations:

- all attributes mentioned above as being characteristic to the violations pertaining to the penal labour law are also characteristic to the sexual harassment while, in the case of some other violations, mentioned in the Penal Code and involving also the attribute of employee, do not cumulatively reunite these characteristics and this accounts for their non-inclusion in the penal labour law[2];
- the infraction of sexual harassment can be carried out, according to article 223 of the future Penal Code, by a person „who abuses his/her capacity or influence resulting from the position at the workplace" while other infractions, also entailing the attribute of employee, can be carried out separately from the workplace or distinct from the work relations.

## 3. "The need" of a penal labour law in the Romanian juridical system

**3.1.** As in other states, in the context of the transition to the market economy, the previously known penalizing means used in labour law became inadequate. Consequently, the legislator operated changes in the following fields:

- *the material answerability of the employees* (a limited form of compensatory answerability, which usually held responsible the employee only for the effective damage, not for lost profit) *has been replaced with a variety of the*

[1] In Italy, most of the infractions belonging to the labor penal law (9 of them) can be found in the Penal Code and in France there are 4 infractions in the Penal Code which belong to the penal labor law. Hence one cannot speak about an incompatibility.

[2] For instance, the intellectual false and disclosure of the economic secret do not presuppose a subordination relation.

*civil contractual answerability, with some characteristics resulting from the specificity of labour relations, where the employee is totally answerable*;

- *the number of contraventions in the matter of labour relations has been substantially increased;* in effect, as compared with 1990, their number practically increased threefold;
- *acts that previously were contraventions have been ruled as infractions*[1].

For the first time in Romania, referred to the four Labor Codes[2] (I.T.Ştefănescu, 2007, p.15), has been ruled in a Code, in Chapter V of the XI$^{th}$ Title, *the penal answerability*.

In such conditions, one can reckon, in our opinion, that ruling of the penal acts in Romanian labour law *is in agreement with the relatively recent regulations existing in democratic countries with market economy*[3].

Within the framework of this evolutional process, in Romania took place also another phenomenon: for the first time, the infractions concerning the labour safety, regulated in the past exclusively by the labour law, have been included in the new Penal Code. Thus, due to the changes in the economic and social conditions and in legislator's choices, a kind of communicating vessels principle operates in the matter of incriminating some acts: the number of infractions regulated by the labour law has been increased and, concomitantly, some infractions related to the labour law have been embodied in the Penal Code. The characteristic of this dialectic process which took place during the last 15 years is the substantial increase, as shown before, of the number of incriminated acts (practically, they doubled).

**3.2.** By analyzing the whole extent of the infractions regulated by the labour law and those regulated by the Penal Code in force and entailing, *sine qua non*, the attribute of employee, we tried to develop an analysis as exhaustive as possible, with a general view as well as on each particular act, and tried to finally extract, on this basis, **a conclusion** on the penal labour law. Should it be an exclusively doctrine concept or a law sub-branch, we deem that in the labour law as well as in the penal law it is necessary to underline the following main ideas:

- the multiplication of penal acts is not an exclusive expression of the legislator but represents an objective tendency in the environment of the market economy (it is characteristic to the vast majority of the states having a market economy); in the whole area of law one can observe a number of

[1] As compared with the 15 infractions regulated till 1990 in Romania, at present there are incriminated in the penal legislation of labor a number of 26 penal acts: 3 in the Labor Code, 22 in other special laws and 1 in the Penal Code. When the new Penal Code will be in force, if no changes will appear, the penal legislation of labor will regulate 22 infractions of which: 3 in the Labor Code, 15 in other special laws and 4 in the Penal Code. We mention there is no decrease (in the sense of des-incrimination) of the number of infractions regulated at present but only a formal change, that is the five infractions specified in the Law no. 319/2006 will be grouped in two articles in the new Penal Code.

[2] We partake the opinion expressed in doctrine according to which the Law from 1929 on labor contracts, by its content can be considered as a veritable Labor Code.

[3] As in France, Italy, Belgium.

mutations which cannot be ignored or limited to the classical criteria used for establishing the law branches;

- in the labour law, it is necessary to analyze all acts that lead to a form of juridical answerability; *in extenso* the disciplinary answerability and ownership answerability (specific to the civil law) and, concisely, the contraventional answerability (specific to the administrative law) and **penal** answerability (specific to the penal law);
- concisely, as a theoretical foundation, it would be useful to mention in the penal law a number of regulations and concepts belonging to the labour law in order to give an exact and comprehensive knowledge of all theoretical and practical aspects connected to applying the regulations pertaining certain penal acts[1].

The study of penal acts regulated by the labour legislation and by those regulated in the Penal Code and having as qualified subject a person who is party to a juridical work relation (clerk and/or public officer) allows to observe the existence of the following three categories of infractions:

a) Infractions regulated by the labour legislation and concerning exclusively the employees but not the public officers (as, for instance, the infractions regulated by articles 277 and 278 of the Labor Code which pertain to non-observance of the court verdicts concerning the payment of the salaries and of the court verdicts on resuming the work relation) .

b) Infractions regulated by the Penal Code and concerning exclusively the public officers, without concerning the employees (for instance, the conflict of interest – art.$253^1$);

c) Infractions regulated by the Penal Code which concern certainly the employees as well as the public officers (crime of bribery – art. 254, sexual harassment – art. $203^1$).

**We deem that the penal labour law, as it is at present, concerns only the work relations of the employees based on the individual labour contract but without including the infractions carried out by the public officers**.

[1] For instance, there is an opinion considering that the sphere of the notion of officer, as specified in art. 147 para 2 of the Penal Code, includes also the persons working on the basis of a civil contract. It has been considered that by using the formula „any employee" – found in art. 147 para 2 of the Penal Code – the attribute of officer can be held not only by the person having an individual labor contract but also by the person working on the basis of a civil contract. See: T. Hâj, Dare de mită. Funcţionar. Alt salariat, în „Dreptul" nr. 12/2002, p. 150-152.
Such an opinion is clearly erroneous because there have been omitted the basic differences between the quality of being an employee (part of the individual labor contract) and that of a service provider (on the basis of a civil contract).

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