

## GENERAL CONSIDERATIONS ON LABOUR INSPECTION

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### **Abstract:**

*In the context of current workplace safety, strengthening the administration and labour inspection is a fundamental objective in promoting effective social policies at both international and national levels.*

*In accordance with the provisions of Conventions No. 81 and 129 of the International Labour Organization and on the basis of Law no. 108/1999, the Labour Inspection was established and organized in Romania. The functioning of this institution is governed by the Regulation for the organization and functioning of the Labour Inspection, approved by the Order of the Minister of Labour and Social Justice no. 1095 / 22.02.2018.*

*The Labour Inspection is aimed at monitoring employers' fulfilment of the legal provisions in the field of work relations, safety and health at work.*

*The purpose of this article is to highlight some aspects of the organization, functioning and attributions of the Labour Inspection.*

*The Labour Inspection subordinates the territorial labour inspectorates, organized in each county, in which labour inspectors work, activity which consists in exercising control over the unitary application of the legal provisions in the field of competence.*

*A priority for fulfilling the mission of the Labour Inspection is the assurance of the quality of the control act and the way of fulfilling the attributions of the staff of the institution and of the territorial labour inspectorates. In this respect, the Inspection Quality Control Body, which operates within the Labour Inspection, was established.*

**Key words:** Labour Inspection, Labour Inspectors, Health and Safety at Work, Labour Relations

**JEL classification:** J28, J41, J81

## **INTRODUCTION**

Current challenges, such as non-legal employment, require the adoption and implementation of responsible and effective measures that can be put into practice through well-coordinated labour inspection mechanisms.

In this respect, at international level, there is a body that plays a very important role in ensuring the observance and enforcement of labour law, namely the International Labour Organization (ILO). There is no doubt that the development of labour inspection has been strongly influenced by international legal instruments, which are contained in ILO conventions and recommendations. These effective international labour standards have put in place effective systems for labour inspection and management.

Labour inspection was the subject of two conventions that remain even today in full actuality, the Convention no. 81 / 1947 on labour inspection in industry and commerce and Convention no. 129 / 1969 on labour inspection in agriculture, both as a common object to ensure through regular inspections the application of labour law provisions at the workplace (Popescu A., 2008, p. 253).

Considering the quality of member state of the International Labour Organization, Romania has ratified the two conventions (Convention no. 81 through the Decree no. 284/1973, and Convention no. 129 through the Decree no. 83/1975). According to the article 1 of the Convention no. 81 / 1947, each Member State must have a labour inspection system, so they adopted the Law no. 108 / 1999, law establishing the Labour Inspection. This law was amended and supplemented with the following normative acts: Law no. 51 / 2012, Government Decisions no. 1377 / 2009 and 488/2017.

## ORGANIZATION OF LABOUR INSPECTION

The Labour Inspection is a public institution, a specialized body of the central public administration with legal personality, subordinated to the Ministry of Labour and Social Justice (Regulation according to G.D. 488/2017).

This body exercises tasks in the field of labour relations, security and health at work and controls the application of labour law. It has as main purpose the pursuit of the legal obligations of the employer in the field of labour relations as well as those related to the protection of life, corporal integrity and health of employees and other participants in the work process (Ticlea A., 2012, p. 227).

The Labour Inspection's control activity covers the legal provisions on health and safety at work, the protection of employees working in special conditions, social security, employment, and social security. In other news, this inspection promotes the improvement of working conditions and raising the level of protection of health and safety at work.

Labour Inspection is, in a broad sense, the control over the application of special and general regulations in the field of labour relations, safety and health at work, by the bodies that have such competencies according to the law, as well as the organization of such control. The Labour Inspection designates, in a narrow sense, the specialized body of the central public administration, which has the attributions to carry out this control (Vieriu D., 2012).

Besides the function of state authority, this institution also performs other general functions, such as: the *communication function*, which ensures the exchange of information with the local and central public administration authorities as well as with the natural and legal persons; the *cooperative function*, which ensures that joint actions are carried out internally and internationally; the *representation function*, which ensures the representation of the Romanian state externally and internally in its fields of competence (Activity Report of the Labour Inspection 2016).

Regarding the activity of the Inspectorate of Labour at external level, we can emphasize that it cooperates with labour inspectorates in other states and participates in events organized both at European and international level. Being a member of the Senior Labour Inspector's Committee (SLIC) working within the European Commission, the Labour Inspection is required to attend SLIC meetings. In 2016, the General State Inspector attended the SLIC meetings in Amsterdam, where the *European Platform tackling undeclared work* was presented.

According to the legal provisions in force (Regulation no. 1095 / 2018), the organizational structure of the Labour Inspection is approved by Order of the Minister of Labour and Social Justice and includes:

The State General Inspector has under its subordination:

- I. Deputy General Inspector who coordinates the activity in the field of labour relations;
- II. The Deputy State General Inspector coordinating work in the field of occupational safety and health and market surveillance;
- III. Specialty compartments

Among these compartments we can mention a few, namely: the Division of Undeclared Labour Control, Collective Labour Contracts and Labour Relations Monitoring; the Control Body Division of Inspection Quality; the Service of Communications, Public Relations and Emergency Calls.

Within the Labour Inspection, the Labour Inspection College functions as an advisory body, consisting of civil servants, appointed by the decision of the General Inspector of State. This College meets periodically to establish strategies and discuss issues they have come to know about their activities.

Also, within this body, there is also the Tripartite Consultative Council, composed of representatives of departments with powers of control and representatives of trade unions and trade union confederations, having a social dialogue role.

Among the attributions of this Council we can enumerate:

- Analyses the problems of common interest identified in applying the provisions of the legislation in the field and makes proposals for its improvement;
- Identifies the areas of activity where employers use undeclared work and formulates proposals to diminish this phenomenon;
- Analyses aspects concerning the violation of labour legislation by both employers and employees and makes proposals on the legal measures for their resolution (Regulation no. 1095 / 2018).

The management of this institution is ensured by a state general inspector, which has two deputy state general inspectors, all of whom are appointed by order of the Minister of Labour and Social Justice. The powers of the state general inspector are stipulated in art. 14 paragraph 1 of the Government Decision no. 488 / 2017, but these are complemented by other attributions of art. 5 of the Regulation of organization and functioning of the Labour Inspectorate itself. The situation is the same with the Deputy State General Inspectors.

## **TASKS OF THE LABOUR INSPECTION**

The main objectives of the Labour Inspection are set out in G.D. no. 488 / 2017 and in the Regulation of organization and functioning, among which we mention:

### **1. General tasks:**

- Controls the correct and uniform application of the legal provisions regulating the working, safety and health relations at work;
- Coordinates and controls the activity of the territorial labour inspectorates and the subordinated institutions;
- Represents the Ministry of Labour and Social Justice in the international cooperation relations in the field of competence;
- Solves petitions addressed by individuals or legal persons;
- Ensures the exchange of information with other central or local public administration bodies as well as with individuals or legal persons;
- Initiates proposals for improvement of the legislative framework in the fields of activity, which it submits to the Ministry of Labour and Social Justice (G.D. no. 488 / 2017).

### **2. Tasks in the field of employment relations:**

- Controls the observance of the legal provisions regarding the posting of employees in the framework of the provision of transnational services, as stipulated by the Law no. 16/2017;
  - Controls, coordinates and guides methodologically the application of the legal provisions regarding the labour relations, arising from the national and European legislation and from the conventions of the International Labour Organization;
  - Controls employers' use of labour for the purpose of identifying undeclared work. For the purpose of combating undeclared work, control is carried out at the workplace where the work is done;
  - It is established that the activity performed under a contract, other than the work, is carried out under a contract of employment;
  - Ascertains the completion of individual labour contracts and their transmission in the employees' records for the persons identified as performing the work without an individual labour contract;
  - Controls the employment of foreign citizens in Romania;
  - Controls the implementation of gender mainstreaming measures;
  - Organizes the registration and records of the collective labour agreements concluded at the unit level;
  - Reconciling work conflicts triggered at unit level (G.D. no. 488 / 2017).
- ### **3. Specific tasks in the field of health and safety at work and market surveillance:**
- Controls the organization and functioning of the occupational safety and health committees;

- Controls the employer's observance of the legal provisions regarding the medical examination on hiring as well as the regular medical check-up;
- Investigating events and taking samples, commissioning measurements, expertise, and making statements to workers, employers as well as other people who can provide information about the event being investigated;
- Notify the criminal investigating authorities when there are indications of a crime;
- Controls the compliance by employers with legal provisions in the field of occupational safety and health;
- Analyses and solves the appeals, notifications and complaints regarding the performed controls (G.D. no. 488 / 2017).

According to the legal provisions in force, it can be noticed that the territorial labour inspectorates are public institutions with legal personality, which also operate under the subordination of the Labour Inspection. These public institutions are organized in each county, being headed by a chief inspector who is directly subordinated to two Deputy Chief Surveillance Officers, which empowers state authority in the field of labour relations.

### **STATUS AND ATTRIBUTIONS OF LABOUR INSPECTORS**

Labour inspectors are civil servants with special status who carry out both unannounced control activities and control activities under the Labour Inspection Framework Action Program and the Territorial Labour Inspectorate respectively. Also, the work inspector benefits from stability in the face of any governmental change. Currently, the Government has adopted a draft law on the status of the labour inspector regarding the rights, specific obligations and incompatibilities of this function.

Rights and obligations of labour inspectors (Law no. 108 / 1999):

#### **✓ Rights:**

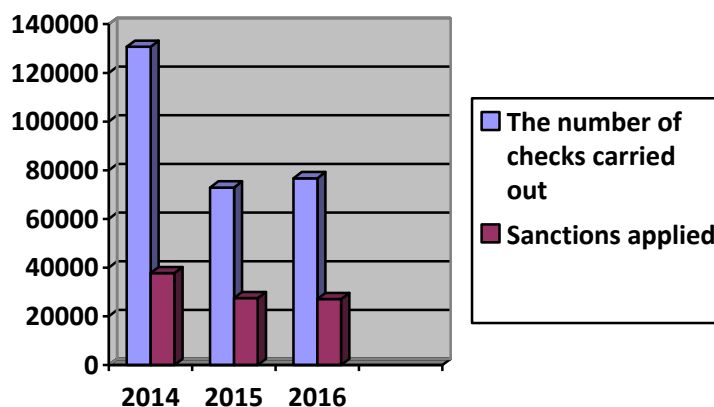
- Have free and unannounced access to the premises of any employer and any other place of work organized by individuals or legal persons;
- Require the employer or his / her legal representative as well as employees, alone or in the presence of witnesses, the documents and information necessary to carry out the control or to conduct the investigation of the events;
- To make written statements, alone or in the presence of witnesses, employees, employers or their legal representatives, as well as other persons who can give information about the subject of the inspection or the event under investigation;
- Order the cessation of work or the decommissioning of work equipment if it finds a state of danger.

#### **✓ Obligations:**

- Have no direct or indirect interest of any kind in the entities under their control;
- Not to disclose the manufacturing secrets and, in general, the operating procedures to which they may have knowledge in the performance of their duties, both for the duration of the service relationship and for two years after the date of their termination;
- To keep confidential the identity of the person who signals the non-observance of the legal provisions in the field regulated by the present law and not to disclose to the employer, to his / her offenders or to other persons the fact that he / she carries out the control following a notification.

On the occasion of remedying the nonconformities noted during the inspection, labour inspectors can resort to the following legal means:

- ✓ Applying the measures;
- ✓ Applying contravention sanctions;
- ✓ Notification to the criminal prosecution bodies;
- ✓ The request for the deletion of the legal entity from the Trade Registry.

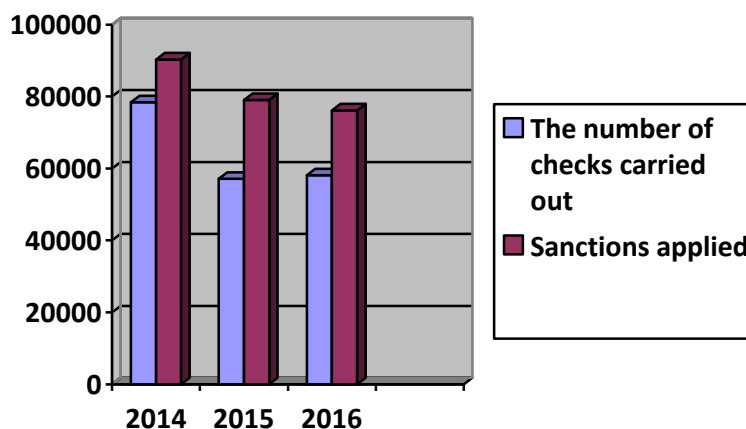


**Figure no.1. Number of controls and sanctions during the period 2014-2016 in the field of labour relations**

Source: Activity Report of the Labour Inspectorate – 2014, 2015, 2016

The figure above shows the number of checks carried out and the sanctions applied in the field of labour relations, where the actions of the labour inspectors can be observed. It is worth noting that there is a large difference between the number of controls performed and the sanctions applied, for example in 2014, 130,720 controls were carried out resulting in only 37,721 sanctions, and in 2015 there were 72,882 controls with a result 27,487 sanctions. Moreover, we can say that there is a very large difference between the number of checks carried out, with 57,838 more in 2014 than 2015, and the difference between sanctions is 10,234.

As far as safety and health at work are concerned, we will show below the activity of labour inspectors from 2014-2016.



**Figure no. 2. Number of controls and sanctions registered in 2014-2016 in the field of health and safety at work**

Source: Activity Report of the Labour Inspectorate – 2014, 2015, 2016

Compared to the field of labour relations, it can be noticed that the number of controls is lower in the field of occupational safety and health, but what is important to note is that the number of sanctions is much higher in the field of health and safety at work. An example of this is the number of controls carried out in 2015, 57,121 of which were applied 79,017 sanctions.

However, between 2014 and 2016 there were 12,475 injured persons, out of which 531 fatal injuries. Most accidents at work were recorded in Bucharest, Brasov, Constanta and Arges. The sectors of the economy where most of the fatal accidents have occurred are: construction, forestry,

transport, and agriculture. People aged 40-50 are the ones with the highest weight of injured persons.

Also, in 2015, 3,876 fatal accidents were recorded in the European Union, an increase of 102 deaths over the previous year. Romania ranks first in the European Union with 7.5 fatal accidents per 100,000 inhabitants, and the Netherlands is the last with the lowest rate of 0.8 accidents, followed by Sweden, Germany, and Denmark. (<https://euramis.ro/statistici-ue-privind-accidentele-de-munca/>).

Measures taken by labour inspectors may be challenged under the conditions laid down by law, so the administrative act by which measures were imposed which are binding on employees and / or employers may be challenged under the Administrative Litigation Law.

For example, during 2016, 27,294 records of finding and sanctioning were completed by labour inspectors, out of which 2,874 were appealed to the court for offenders.

As shown above, there is a specialised department that checks the work of labour inspectors, namely the Inspection Quality Control Division. In carrying out the activities, this compartment aims at increasing the quality of the inspection and checking compliance with the procedures and rules of conduct in the performance of the job tasks.

The activity carried out in 2016 by the Inspection Quality Control Division took into account the fulfilment of the obligations of the *Regulation for the organization and functioning of the Labour Inspection*. In this process 16 control actions were carried out, out of which 4 thematic actions and 12 actions for solving some complaints. Among the issues raised in the notifications we can list the following: abusive application of legal provisions in the controls; the non-observance of the legal provisions regarding the drawing up of the control documents and the dissatisfaction of the complainants regarding the way of solving the petitions by the territorial labour inspectorates. As a result of the controls carried out, the following findings were made: the superficiality of the control documents, the high weight of the sanctions with warning (written or verbal).

It is important to note that there are institutions that are not controlled by the Labour Inspectorate regarding the application of health and safety legislation at work, namely the Romanian Intelligence Service, the Ministry of National Defence, the Foreign Intelligence Service, the National Administration of Penitentiaries, The Guard and Protection Service, they organize their work inspections activities through their own specialized services.

## CONCLUSIONS

In achieving our approach, we can appreciate that Labour Inspection enjoys an increased interest in the last years at both national and international level, considered as an important source of information in its fields of competence, being an active intermediary in preventing and resolving litigation the work.

In this context, this institution plays an essential role in improving working conditions, ensuring compliance with labour law, promoting transparency and tripartism, by developing and implementing effective measures.

Improving the quality of public service delivery aims at institutional transparency by creating a climate of trust and mutual respect between citizens and public administration authorities.

As an institution serving the citizen, the Labour Inspection ensures permanent free access to information of public interest through communication and public relations activity.

Knowledge of Labour Inspectorate issues can contribute to national progress through its efforts to prevent accidents at work, use of labour in the informal economy and guarantee a decent working environment, this work being in the interests of both employees and employers.

At European level, preventing accidents at work and improving working conditions is a collective concern, both driven by economic and humanitarian considerations. Creating better quality jobs is one of the main objectives of the EU social policy.

**BIBLIOGRAPHY**

1. Popescu Andrei, *Dreptul internațional și european al muncii*, Editura C.H.Beck, București, 2008;
2. Țiclea Alexandru, *Tratat de dreptul muncii. Legislație. Doctrină. Jurisprudență; Ediția a VI-a, revizuită și adăugită*, Editura Universul Juridic, 2012;
3. Vieriu Dumitru, *General Considerations on Labour Inspection*, Public Administration Review, no. 2/2012, p.52;
4. H.D. nr.488/2017;
5. Law no. 108/1999, updated on October 6, 2016;
6. Law no. 16/2017;
7. ILO Convention no. 81;
8. ILO Convention no.129;
9. Regulation on organization and functioning of the Labour Inspection, approved by the Order of the Minister of Labour and Social Justice no. 1095 / 22.02.2018;
10. Activity Report of the Labour Inspection 2016;
11. [www.inspectiamuncii.ro](http://www.inspectiamuncii.ro) [accessed at 15.03.2018];
12. <http://www.mmuncii.ro/j33/index.php/ro/> [accessed at 19.03.2018];
13. <https://euramis.ro/statistici-ue-privind-accidentele-de-munca/>.