

**CRIMINALITY AND THE WORKPLACE. LINKS BETWEEN THE
OCCUPATIONAL STATUS AND VARIOUS OFFENCES IN THE
ROMANIAN PENAL LEGISLATION**

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Abstract. Aim. The aim of this paper is to analyze what types of crimes can occur in workplaces, according to the Romanian criminal legislation, in order to raise the awareness regarding the possibility that workers may be victims or perpetrators (or both) for certain offences. **Method.** The study offers an overall perspective on the possible crimes in connection either with the workplace or with certain professions. It also evaluates the efficiency of the legislation in what concerns the prevention of the crimes described, in order to identify ways for improving the occupational-related criminal system. **Results.** There is a need for increased awareness-raising towards the danger of crimes committed in the workplace, as many people would tend not to report abusive behaviours (to which they are victims or witnesses) in order not to threaten their employment status. **Conclusions.** The recommendations for improving the implementation of the legislation in the field include the provision of basic legal education for workers, in order to make them able to recognize a crime and support and aid for people reporting a crime committed in the workplace.

Key words: workplace, crime, perpetrator, illegal causing of abortion, negligence, aggravating factor

Rezumat. Scop. Scopul acestui studiu a fost de a analiza tipurile de infracțiuni care pot să apară la locul de muncă, potrivit codului penal din România, în vederea creșterii conștientizării faptului că salariații pot fi atât victime cât și făptașii acestor infracțiuni. **Metoda.** Studiul oferă o perspectivă generală asupra infracțiunilor posibile în legătură cu locul de muncă sau cu anumite profesii. De asemenea este evaluată eficiența legislației în ceea ce privește prevenția infracțiunilor menționate, în vederea identificării metodelor de îmbunătățire a sistemului de infracțiuni legate de locul de muncă. **Rezultate.** Este necesară creșterea nivelului de conștientă privind pericolul de infracțiuni săvârșite la locul de muncă, cu atât mai mult cu cât salariații tind să nu raporteze comportamentele abuzive (la care aceștia sunt victime) pentru a nu-și periclita situația la locul de muncă. **Concluzii.** Recomandările pentru îmbunătățirea implementării legislației în domeniu include furnizarea unei educații legislative de bază a salariaților, pentru ca aceștia să fie capabili să recunoască o infracțiune, dar și pentru a-i ajuta să raporteze orice infracțiune de la locul de muncă.

Cuvinte cheie: loc de muncă, infracțiune, făptaș, provocare ilegală de avort, neglijență, circumstanță agravantă

INTRODUCTION

The aim of this paper is to analyze what types of crimes can occur in workplaces, according to the Romanian criminal legislation, in order to raise the

awareness regarding the possibility that certain workers may be victims or perpetrators (or both) for certain types of crimes.

A job is the most secure manner to avoid the tendency to crime and delinquency, by assuring people a chance to honestly earn their living. But what happens when the workplace becomes the scene of the violent act, representing an inner condition and a key factor in the process of crime committing? The Romanian Criminal Code describes several crimes which have as a prerequisite the fact that they are committed whether in criminal's or in victim's workplace.

WORKERS AS PERPETRATORS

There are several groups of crimes associated with professionals: crimes regarding the military profession (military airfare, marine, war-related crimes), regarding the railway safety, regarding specific economic activities (e.g. counterfeiting the object of an invention, unlawful competition, disclosure of economic secrecy, etc.). Public officials or employees can perpetrate the following crimes in connection with the workplace: malfeasance and nonfeasance against persons' interests, malfeasance and nonfeasance by limitation of certain rights, malfeasance and nonfeasance against general interest, negligence at service, abusive conduct, negligence in the keeping of state secret information, conflict of interest, bribe-taking, receipt of undue advantage and influence peddling (1). The aim of incriminating these offences is the need to ensure the correctness of public servants in accomplishing their work and preventing third persons to intervene herein.

Public employees in the judicial field are a special category of workers, whose crimes committed in connection with their job affect the course of justice, besides menacing other social values protected by the penal legislation. The crimes which are likely to be perpetrated by these persons are: unjust repression (the act of initiating the criminal procedures, ordering the arrest, or sending to justice a person while aware that he/she is not guilty), unlawful arrest and abusive investigation, subjection to ill-treatment, torture and facilitating escape (2, 3, 4, 5, 6). Among the crimes against property, defalcation and fraudulent management are strictly connected, to the perpetrator's job with regard to the crime's material object. Therefore, defalcation consists in the appropriation, use or traffic, by an employee, in his own or in another's interest, of money, values or other goods that he administrates (7).

Fraudulent management is the act of causing damage to a person, in ill faith, on occasion of administering or preserving his/her assets, committed by the person charged with the administration or preservation of those assets (8).

A person's freedom is another important social value which can be affected by the crime of disclosing of the professional secret (9). This offence can be committed by professionals such as physicians, psychiatrists, lawyers, or even clerics.

Illegal causing of abortion is an offence which had undergone important changes in what concerns its incrimination in the

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Romanian legislation, throughout the last century (10). Nowadays, it consists in:

1) The act of interrupting the course of pregnancy, by any means, committed in one of the following circumstances:

a) outside medical institutions or medical offices authorized for this purpose;

b) by a person who is not a specialized physician;

c) if the age of the embryo has exceeded fourteen weeks;

or: 2) Interruption in the course of pregnancy, committed in any conditions, without the pregnant woman's consent.

During the communist times, the act of interrupting the course of pregnancy was a crime regardless of the embryo's age. In 1989 it has been eliminated from the Criminal Code, being re-incriminated afterwards, with the rationale that it is socially dangerous if certain conditions are not met, in order to secure the woman's life and the success of the intervention.

However, interruption of the course of the pregnancy by a physician shall not be punished in the following situations:

a) if interruption in the course of pregnancy was necessary in order to save the pregnant woman's life, health or corporal integrity, from serious and imminent danger that could not have been otherwise removed;

b) in the case in paragraph (1) c), when interruption in the course of pregnancy was called for by therapeutic reasons, according to legal provisions;

c) in the case in paragraph (2) when the pregnant woman was unable to express her will, and the interruption was called for by therapeutic reasons, according to legal provisions.

THE CIRCUMSTANCE OF BEING A PROFESSIONAL AS AN AGGRAVATING FACTOR

The workplace as the scene of the crime may also represent an aggravating circumstance. The committing of such felonies is frequently in connection with the disobedience of the work protection regulations.

Among the crimes against a person's life, homicide by negligence is the act of causing a person's death (11):

a) because of failing to observe legal provisions or precaution measures for the exercise of a profession or a trade, or by carrying out a certain activity;

b) committed by a person driving a vehicle with mechanical traction, with a level of alcohol concentration in the blood that exceeded the legal limits or who was inebriated by alcohol or was under the influence of narcotics or other toxic substances; or

c) committed by any other person in the exercise of his/her profession or trade and who is inebriated by alcohol or is under the influence of narcotics or other toxic substances.

Corporal injury by negligence is a crime against a person's physical integrity, which, in connection with an occupational element, affects an extra-social value: the work relations (12). It has as an aggravating factor the circumstance of being the result of non-abidance by legal provisions or precaution measures for the exercise of a profession or trade, or for the accomplishment of a certain activity.

The workplace is very likely to be the scene of a crime in the case of some felonies against the sexual life of the victim (especially in the case of

minors), committed by the personnel charged with the responsibility of surveillance, educating, healing, teaching or looking after the victim.

Thus, an aggravating form of rape takes place when the victim is under the care, protection, education, guard or treatment of the perpetrator (13). The same applies to the crime of sexual intercourse with a minor (14). The more severe form of this offence consists in the sexual intercourse, of any nature, with a person of the opposite sex or of the same sex aged between 15 and 18 years, if the act is committed by the person's tutor or guardian or by his or her supervisor, by the person in charge of his/her care, by the person's physician, teacher, professor or educator, while taking advantage of his/her quality, or if the perpetrator has abused the victim's confidence or his/her own authority or influence over the victim (15).

Sexual perversion falls in the same crime scheme. When it involves a person aged 15 to 18, if the act is committed by the guardian or curator, or by the person charged with his/her supervision or care, by the physician, teacher/professor or educator, using his/her quality, or if the perpetrator abused the victim's confidence or his/her authority or influence over him/her, the crime is more dangerous and therefore more severely punished (16).

WORKERS AS VICTIMS

Workers of all kinds can be victims of subjection to forced or obligatory labour (17). This crime consists in the act of subjecting a person, in other cases than those provided in the law,

to any kind of labour against his/her will or to any kind of obligatory labour.

The fact that some specific categories of workers are victims of certain crimes represents also an aggravating circumstance, if the crime is in connection with the victim's work or is committed while the victim accomplishes his/ her legal duties. This is the case of magistrates, policemen, military personnel or their relatives. Thus, severe homicide takes place when it is related to the victim's accomplishment of work or public duties (18). Most severe homicide can be perpetrated against a magistrate, a policeman, sergeant or soldier, during or related to the accomplishment of their work or public duties (19).

Non-abidance by court decisions is a specific crime against the accomplishment of justice which has as victims a particular type of public employees. It consists in the act of resisting the execution of a court decision, by threat of violence against the body of execution (20).

Outrage, by definition, can only harm certain public servants, directly or indirectly (21). It represents the threat committed directly or by any means of direct communication, as well as hitting or any other acts of violence or corporal injury against a public servant in an office that involves the exercise of State authority, who is in the exercise of office, or acts committed during the exercise of office. The same acts, committed against a magistrate, police officer or gendarme or other member of the military are more severe. The most severe form of outrage consists in threats, hitting or any other acts of

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violence or corporal injury committed against the spouse, children or parents, of persons in above the offences, if committed for purposes of intimidation or revenge for acts performed by the public servant in the exercise of service.

WORKERS AS VICTIMS AND PERPETRATORS

Sexual harassment (22) is the only offence which has as a precondition the fact both the victim and the perpetrator are employees, in a hierarchical relation. This crime, which also infringes the individual's sexual freedom, consists in the act of harassing a person by threat or coercion in order to obtain sexual satisfaction, committed by a person abusing his/her quality or the influence provided by the office held at the workplace. Criminal action is initiated upon prior complaint from the injured person. Reconciliation of parties removes criminal liability. The attempt is also punishable.

CONCLUSIONS

Firstly, there is a need to raise the awareness towards the danger of crimes committed in the workplace. Because in today's society, obtaining and maintaining a job is a difficult task, many people would tend not to report abusive behaviours (to which they are victims or witnesses) in order not to threaten their employment status. The aim of improving people's responsibility towards work-related crimes could be achieved by education in the legal field in order for workers to be able to recognize a crime. Moreover, increased support and aid

should be provided for people reporting a crime committed in the workplace.

Secondly, there should be achieved better implementation of the legislation (by collaboration with the judicial bodies in preventing and effectively prosecuting these crimes), along with supportive state measures dealing with work security

There is also a need for further research, statistical data, monitoring and evaluation of the phenomenon of violence and harassment in workplaces.

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