



ON THE SANCTIONS PROVISIONS IN THE LABOR CODE

ABSTRACT

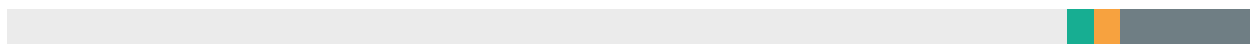
The Investment Council has discussed issues raised by the businesses in regard to the level of fines provided in the Labor Code for labor legislation violations and on how to apply these fines into daily practice.

Investment Council Secretariat

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I. INTRODUCTION

In the Investment Council (IC) meetings [click here](#), among others, have been subject of discussion issues raised by IC members related to labor legislation in the Republic of Albania. These issues relates to the following:

1. The level of fines provided in the Labor Code (*Law No. 7961, dated July 12, 1995*), claiming to be too high comparing with other countries in the region;
2. The wide range (min.-max.) of the fines provided in the Labor Code *up to 50 times of the minimum salary*. Fines in the absence of a clear definition of a minimum, leave broad decision-making discretion available to labor inspectors for their deployment and create opportunities for arbitrariness.

The Secretariat, on the basis of the above issues and tasks assigned by the IC for analyzing them, considered from a comparative point of view:

- legislation and practices applicable in some of the countries in the region, EU and beyond;
- the tendencies of these countries when applying sanctions (*fines, penal sanctions and their combinations*);
- Measures taken by these countries to address the need to *limit the discretion of labor inspectors to arbitrarily deploy the sanctions provided for in labor legislation*.

On the above basis, the Secretariat has carried out the following actions:

- a) Analyzed the recommendations/studies of the International Labor Organization (ILO);
- b) Analyzed the legal provisions of the labor legislation of some EU and Balkan countries;
- c) Analyzes the Labor Code - Law no. 7961 dated 12.07.1995 (as amended), Law no. 9634 "On Labor Inspection in Albania" (as amended) and Law no. 10433 dated 16.06.2011 "On Inspection in Albania".
- d) Consultations and meetings during period April-May 2017 with inspectors, Labor Inspectorate, Ministry of Youth and Social Welfare and businesses.

This briefing represents only a synthetic summary of the issues outlined above and does not undertake to exhaust all the other elements that may be related to them.

II. INTERNATIONAL PRACTICE¹

1. In the European Union, Member States typically use a combination of criminal and administrative sanctions. Administrative sanctions are the predominant method in Austria, Denmark, Germany, Italy, Lithuania, Netherlands, Portugal, Slovakia and Spain.

¹ *Labor Inspection Sanctions: Law and Practice of National Labor Inspection Systems*- International Labor Organization 2013.

2. The imposition of administrative sanctions (fines) remains largely the function of bodies of an executive nature such as labor inspectorates (Denmark, Netherlands, etc.). For imposing them, no prior court decision is required, except the case when the fine is imposed as a criminal sanction for serious violations of labor legislation (i.e: accidents at work as a result of violation of the technical security rules).
3. In Italy, most labour sanctions are of administrative nature. The criminal law still plays a role in the prosecution of serious violations of OSH (Occupational Safety & Health) standards. Civil penalties are used chiefly for unpaid social & security contributions. France's system of labour law enforcement is based primarily on a criminal sanctions regime, although a number of administrative sanctions are provided for under the authority of the labour minister and that of regional labour administration bodies.
4. In the region's countries (i.e: Montenegro, Macedonia, Albania) labor sanctions are mainly fines, while for several violations classified as criminal offenses by specific laws (i.e Criminal Code) is provided imprisonment.

The structure of the sanctions related to the labour legislation in EU countries is a combination between administrative and criminal sanctions which according to their severity can be listed as following:

- a. Criminal Penalties
- b. Civil Penalties
- c. Closure of Operations

- d. Revocation of Licenses
- e. Suspension of Operations
- f. Monetary of Fines

III. TREND OF SANCTIONS

Many countries have amended their laws by increasing the level of fines in proportion with economic reality and aiming to prevent the breach of labour provisions.

1. Countries like Austria, Greece, or Italy, have revised their legislation to include not only significant increases in penalties, but also the introduction of criminal responsibility for certain violations.
2. From 2006, France has undertaken comprehensive reforms of its labour inspection system, including the strengthening of legal sanctions (primarily through the criminal law). In both Germany and France the penalties for using undeclared labour are a fine or up to 3 (three) years in prison.
3. In Norway, employers caught using undeclared workers can be imprisoned for up to six months.
4. In Albania, under the Albanian Criminal Code, Article 170/the maximum charge for illegal employment is up to 2 years.

IV. THE BASIS OF IMPOSING FINES

Below are some of the basic principles on which sanctions in the form of fines are applied:

1. Fines are one of the basic means available to many labour inspectors to compel compliance with labour legislation or to sanction violators. Issuing fines is a common practice in most inspectorates, although the procedures involved in imposing and enforcing them varies from one legal and administrative system to another.
2. The law specifies the range of fines or a maximum fine for each violation, whether based on a multiple of the applicable minimum wage, the repetition, number or type of the breach, number of employees in the workplace or the severity of the violation. In principle fines must not be so low that an employer finds it easier to pay the fine than to bring workplace practices in compliance with the law.
3. Fines should also be flexible enough to adapt to the circumstances of an infraction as per the above characteristics.
4. Treating different violations with an identical fine fails to differentiate between less and more reprehensible infractions, and ignores the punitive function that fines can serve in cases of grave violations.

V. FINES IN COMPARATIVE VIEW-ALBANIA vs REGION

Below it is provided briefly a comparative overview of fines foreseen for violations in the field of work by relevant legislation (labor codes and special laws) of some countries.

ALBANIA	SERBIA	ROMANIA	GREECE	M.NEGRO	KOSOVO
Group 1- up to 20 x (min. salary 22,000)= 440,000 ALL - ~3,260 Eur)	Group 1- 400 Euro/800 Euro	Fines from 67 Euro up to 22,300 Euro	Fines from 500 Euro up to 50,000 Euro.	Group 1- nga 30 Euro deri në 2,000 Euro	Group 1- from 100 Euro up to 10,000 Euro
Group 2- up to 30 x 22,000= 660,000 ALL- ~4,900 Eur)	Group 2- from 3,230 Euro up to 8,075 Euro	<i>Note: (narrow range of penalties for violations in many other highly detailed sub-groups)</i>		Group 2- from 150 Euro up to 6,000 Euro	Group 2- up to 20,000 Euro (i.e: the injured under 18 years).
Group 3- up to 50 x 22,000=1,100,000 ALL - ~8,150 Eur) For repeated violations the amount of fines up to 5,500,000 ALL)	Group 3- from 4,846 Euro up to 12,112 Euro			Group 3- from 500 Euro up to 20,000 Euro	Group 3- fines up to 30,000 Euro (i.e: discrimination)
	Group 4- from 6,460 Euro up to 16,200 Euro.				

Note: As of 3rd May 2017, the minimum salary in Albania is 24,000 ALL, however, the referral was made with a salary of 22,000 ALL in force at the time of the discussion of the issues in IC. Classification of fines into groups is done by taking into consideration the categories of the Albania Labour Code and the similarities of the violations foreseen for each category. The structure of fines in different legislation is different. The table contains the main fines which are of orientation purposes. For final information please refer to the legislation of the respective countries.

The amount of fines in all countries depends on some elements such as: repeat offense, duration, extent of damage/consequences, number of employees affected by the violation. It is noteworthy that the Albanian Labor Code maintains the same system of sanctions foreseen since 1996² divided into three main groups: a) fines up to 20 times of the minimum monthly salary; b) fines up to 30 times of the minimum monthly salary; c) fines up to 50 times of the minimum monthly salary.

VI. IMPOSING OF FINES IN ALBANIA

Below are some of the elements on the basis of which the fines for violations in the field of labor are imposed in Albania:

1. Labor inspectors impose fines/sanctions based on Law No. 9634 dated 30.10.2006 "On Labor Inspection" (amended) and Law no. 10433 dated 16.06.2011 "On Inspection in the Republic of Albania".
2. There is a lack of a concrete methodology for imposing administrative measures (fines), while the Labor Code for most of the violations does not clearly specify a minimum level of fines applicable.

² Law No. 8085 dated 13.03.1996 "On some amendments to Law no. 7961 dated 12.07.1995"

3. For 2016, 117 fines were imposed. The amount of fines imposed varies from 22,000 ALL to 880,000 ALL. The maximum fine of 5,500,000 ALL was imposed only once in 2014.
4. In practice, fines should be determined by inspectors in proportion to the violations in the field of labor. Elements that are taken into account by inspectors in imposing fines are: a) repetition or non-repetition; b) duration of the violation; c) the extent of the damage and its consequences; d) number of employees affected by the violation.
5. Currently, the Central Inspectorate and Labor Inspectorate are working on the preparation of a Methodology *"On the Manner of Imposing Administrative Measures/ Penalties"* which is still DRAFT. This methodology will limit the discretion of labor inspectors or the possibility of imposing fines abusively. This is seen as a measure within the framework of the e-inspections project (online inspection).
6. Also, Law no. 9634, dated 30.10.2006 "On Labor Inspection" was last amended by Law no. 57/2017 dated 20.04.2017, which entered into force in May 2017.

With this law, the level of penalties regarding the minimum limit applied by the inspectors has been clarified by specifying: *"the labor inspector imposes a fine from 10 times to 50 times of the minimum salary, according to the principle of proportionality, in accordance with the law on inspection"*. Also with this Law were made a number of other clarifications of the Law in relation to the Labor Code.

7. One of the comments from the International Labor Office (ILO) experts made in 2012 regarding the Albania Labor Code was related precisely to the need to set minimum levels of fines. This would serve the effectiveness of sanctions and increase the security of legal practice leaving less room for authorities' discretion. While employer organizations have in principle agreed with other changes to the Labor Code that were approved in 2015 and result that they have been consulted.

VII. CONCLUSIONS

- The Albania Labor Code has not the toughest applicable penalties comparing to several other countries in the region. While comparing to EU countries, the maximum level of fines foreseen at the comparative level is even lower. The tendency is to increase administrative sanctions (fine) and strengthen sanctions in some countries.
- Most countris legislation, including Albania, foresee fines in a wide range between the minimum and the maximum for breach of labor legislation. The prediction of fixed fines for violations of labor legislation does not help differentiating violations, damages occurred and does not seem to be a viable option to be implemented. The wide range of fines should be properly interpreted to enable adequate punishment of violations proportionally to their importance and nature and not as an arbitrary

tool for inspectors. For this purpose, continuous training of labor inspectors remains a necessity.

- Labor legislations provide the basic principles upon which the amount of the exact applicable fine is determined. The limitation of the discretion of the inspectors is done with the Methodology and Explanatory Handbook for inspectors which define the objective criteria for determining the amounts of fines applicable and with their continuous qualification.

The Secretariat considers that the need to limit the discretion of labor inspectors in their decision-making on imposing finer fines is addressed through:

- a) The latest legal amendment to Law no. 57/2017 that changed the law "On Labor Inspection", which sets minimum limits.
- b) Approval of the Methodology for the establishment of administrative / penal measures in cooperation with the Central Inspectorate.
- c) On-line inspection procedures combined with training and qualifications of labor inspectors will serve the purpose of limiting the arbitrary possibility of inspectors in imposing fines.