TECHNICAL RESEARCH ON LEGAL APPROACH OF COLLECTIVE WORK ACCIDENTS IN JIU VALLEY MINING EXPLOITATIONS

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THEORETICAL BASIS ON WORK ACCIDENTS

The concept of work accident, work accident elements, their effects on victims

In accordance with the Law of safety and health at work no 319/2006 (updated), accident at work means “violent injury to body and professional acute poisoning that occurs during work process or work duties, regardless of the legal nature of the contract under which the activity is taking place and causing temporary incapacity to work for at least three days, disability or death.”

The accident, in order to be classified as a work accident, should occur at a time and a place where the person employed to work is within the relations that are established in the powers envisaged in the employment contract.

It is essential that the person we speak about must perform a work task. This may consist in fulfilling the main obligation arising from the employment contract or some secondary work (preparation of work tools, cleaning the workplace, etc).

Also, in accordance with the law, it is considered an accident at work:

a) Accident occurred to persons visiting the enterprise and/or establishment, with the employer’s permission;

b) Accident occurred to the people who perform duties of state or public interest, including in the framework of cultural activities, sports, in the country or abroad, during and because of these tasks;

c) The accident occurred during organized cultural-sports activities, during and because of carrying out these activities;

d) Accident suffered by any person as a result of action taken on their own initiative to save lives;

e) Accident suffered by any person as a result of action taken on its own initiative for the prevention or removal of a danger to public and private property;

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f) Accident caused by activities not related to work process, if it occurs at the headquarters of the legal entity or to the individual, as an employer or in another job held by them, during working hours, and not due to exclusive fault of the injured;

g) Route accident, if the move was made on the normal route and in normal time, from the residence of the worker to the workplace organized by the employer and vice versa;

h) Accident suffered while traveling from the headquarters of the legal person or natural person to the workplace or from one job to another, in order to fulfill a work task;

i) Accident suffered while traveling from the headquarters of the legal person or from the natural person’s address where the victim is assigned or from any other workplace held by them, to another legal or natural person, for work tasks, during normal travel time;

j) Accident suffered before or after cessation of work, if the victim was taking or giving the work tools, workplace, equipment or materials, if changing personal clothes, personal protective equipment or any other equipment provided by the employer, if they are in the bathroom or washer, or if they were moving from the workplace to the exit of the establishment or unit and vice versa;

k) Accident suffered during regular breaks if it occurred in places organized by the employer, as well as during and on normal route to and from these places;

l) Accidents occurred to workers of Romanian employers or Romanian natural persons, delegates for service duties abroad, during and on the route specified in the travel document;

m) Accident suffered by the Romanian staff who works and provides services in other countries, under contracts, agreements or other conditions, under the law, concluded by Romanian legal persons with foreign partners, during and due to performing their duties;

n) Accident occurred to those who attend the training, retraining or professional training course, during and because of performing internship related activities;

o) Accident determined by natural disasters or phenomena such as storm, blizzard, earthquake, flooding, landslides, lightning (shock), if the victim was during employment (work) or performing service duties;

p) The disappearance of a person in an accident at work and in circumstances which justify the assumption of the persons death;

q) Accident suffered by a person while fulfilling their work duties, as a result of an assault;

The elements of a work accident

By definition of law, for an accident to be classified as a work accident, several conditions must be fulfilled and relate to:

- violent injury to the body;
- time and place of the accident;
- the quality of the injured.
Body injury involves a violation of anatomical integrity, leading to cancellation or reduction of one or more physiological functions. It is noted that in the form that is legislated in, the notion of violent injury is considered an accident only in case of damaging the biological component, without taking into account the mental side of the human personality. In the European Union countries, the notion of accident at work also extends to some cases of damage to the mental component.

In case of work accident, damaging of the body must have an outside cause, must be violent and involuntary. Violence requires rapid and sudden action of the external factor on the body. The event occurs unexpectedly, surprising the victim, who can’t take avoiding measures due to the short time that happens.

Depending on the nature of the factors that causes them, body damages can be: Mechanical (bruises, cuts, crushes, fractures), thermal (burns), electric (electric shock, burns), chemical (acute poisoning), radiation (body exposure to radiation), combined.

The time to produce the work accident is the second characteristic element. An accident is classified as a work accident, when the injury occurs:
- during working process;
- while performing their duties (including outside normal schedule), including state or public duties;
- before the start or after stopping work;
- during breaks occurring in the working process;
- while traveling home from work and vice versa;
- during the official working hours, for activities not related to work process, if the event occurred at a workplace;
- during the performance of professional practice for students, pupils and apprentices, or didactic visits.

The place where it occurs is the third determinant of the work accident. For an accident to be accident at work, it must occur at the workplace.

From a legal point of view, by workplace it is understood:
- any place (area, room, vehicle, etc) where operate one or more workers and where the authority is exercised by the leader, legal person or natural person;
- any organized place, including dispersed workstations, where the legal person or natural person is carrying on a permanent or temporary activity.

By extension, the law accepts the accidents at work and the events occurred on the travel route from work to home and vice versa, if they fall within the time considered sufficient for traveling that distance.

The quality of the victim is the fourth characteristic element of the work accident. In principle it is considered a work accident only the case that the victim was injured by participating in the work process.

Legal stipulations in our country say, under this aspect, the following people:
- persons employed under labor contracts or any other form of employment;
- cooperative members;
- pupils, students and apprentices while practicing in production or didactic visits.
Work accident effects on the victim

Work accident can cause temporary disability, disability or death. They can occur immediately after the event or at a certain time.

The element on which the accident is classified as accident with temporary disability or accident with disability is the degree of reversibility of the loss of working capacity.

Temporary inability to work – is the least serious consequence of a work accident and the victim is temporarily unable to function as a result of a disorder of functional states (for at least three days). The inability is reversible, so, with the appropriate treatment, it disappears.

Disability – is the loss of a sense, organ, the termination of its function or a permanent disability, physical or mental, if these led to total or partial loss of working capacity (confirmed by decision of framing temporarily or permanently in a degree of disability issued by medical staff). Note that disability is not an organ loss or termination of its functions if it is affected only by aesthetics, working capacity remaining intact.

Death – is the most serious consequence of a work accident, when not only the integrity of the body and working ability are affected, but life itself. Fatality means the accident causing death immediately or after a certain period of time, if it was confirmed by a medico-legal document, following the accident.

The genesis of work accidents

Regardless of nature, in performing any productive activity, must exist and be in relation, four elements: the performer, work tasks, means of production and work environment.

The performer – is the person directly involved in performing the work task. He/she is the potential victim of any accident or occupational disease, and without his/her presence, no incident or accident is, by law, a work accident.

Work task – are all actions that the performer must carry on through the means of production to achieve the aim of the work system and the conditions imposed by their achievement.

The means of production – represents all the instruments of labor and objects of labor (raw materials) that people use in the production process.

The work environment – represents all the physical, chemical, biological and psychosocial conditions where the performer operates. The work environment is composed of the surrounding physical environment and the social environment (both social and group relations, work motivation).

Working process – defined as a unit of the production process, representing succession in time and space of the performer’s joint activities and means of production in the labor system.
**Labor system** – is defined as a set consisting of one or more performers and means of production, with a common goal to achieve (the work process), interact on an information flow, under certain physical and psycho-social working environment.

Given that the elements involved in carrying out the work process properly operate and interact, they will accomplish the purpose for which the system was created, namely to produce and not to destroy itself. Any deficiency in one or more elements, representing a deviation from the default operation of the systems, leads to increasing entropy, so to the manifestation of its self-destructive tendency, including human injury.

Work accidents and occupational diseases are the results of working system dysfunctions, generated by the disturbances of its constituent elements and/or the relationships between them.

Deviations from optimum operation of the system do not always lead to human body injury. In order to produce such an effect, it is necessary for them to form a causal chain, whose last link is the encounter between the victim and the material agent who injures the person.

In the special literature, the risk factors of accidents and professional diseases of the working system elements, are the factors (characteristics, conditions, processes, phenomena, behaviors) that can cause, under certain conditions, work accidents and occupational diseases.

Therefore, the issue of preventing occupational accidents and diseases is reduced to detection and elimination or annihilation of these risk factors’ action.

It is essential that risk factors can be found in each element of the work system, which determines their classification in:
- a. **performer’s risk factors** that may be reception errors, processing and interpretation of information; decision errors; execution errors; self-adjustment errors. The performer’s error translates into inappropriate behavior in terms of job security, in the form of wrong actions or omissions.
- b. **risk factors of the work task** – with two forms of manifestation:
  - inappropriate content or structure of the workload in relation to the work system goal or with the requirements of risk situations (operations, rules, wrong procedures, absence of operations, poor working methods);
  - sub / oversizing requirements to achieve work tasks that are beyond the performer’s possibilities.
- c. **risk factors of production means** – can be manifested in the following forms:
  - physical risk factors, namely mechanical risk factor, thermal risk factors and electrical risk factors;
  - chemical risk factors;
  - biological risk factors;
  - under/ overstrain of the performer due to conditions to fulfill the workload imposed by the characteristics of the means of production.
d. **risk factors of the working environment** – There are two forms of manifestation of risk factors here.

- ambient physical environment may present risk factors as exceeding the level or functional intensity of specific parameters and appearances of inadequate working conditions. Environmental specific risk factors are chemical risk factors, physical risk factors (mechanical, thermal, electrical), biological risk factors, risk factor regarding under / oversizing psycho- physiological of the performer.

- the social environment (immediate social environment) is characterized by mental risk factors that overuse the performer. Risk factors specific for the social environment are inconsistencies between statuses and roles, skills inadequate for the level of responsibility, inadequate primary relationships, interruptions or wrong relations in the communication structure and inconsistency of informal relations with formal relations.

**BIBLIOGRAPHY**

