

JURIDICAL TREATMENT AND ACCOUNTING REGARDING THE DAMAGES CAUSED BY AN EMPLOYEE TO HIS EMPLOYER

Crumpănă Elena-Diana

Universitatea Spiru Haret, Facultatea de Drept și Administrație publică, Rm. Vâlcea, str. G-ral Praporgescu, nr. 22., Email :diana_crumpana@yahoo.fr, Tel. 0722341027,

Șuiu Ion

Universitatea Spiru Haret, Facultatea de Contabilitate și Finanțe, Rm. Vâlcea, str. G-ral Praporgescu, nr. 22., Email :nelusuiu@yahoo.com, Tel. 0721926984/0745780074

Resume: The new Labor Code adopted in 2003 in order to adjust the legislation to the European regulations brought significant changes in what regards the employment contract that also affected the accountancy related to it.

At a glance, one could say that accountancy of the damages caused by the employee to his employer couldn't arise any real difficulties. Nevertheless, the new labor Code completely removed the old form of the civil responsibility of the parties of the employment contract, meaning the material responsibility, which generated in our opinion significant changes in what regards the accountancy of the damages caused by the employees to

Their employer. In this paper, by an interdisciplinary approach, we are going to present certain difficulties that could be found in practice with a view to the registration of such debts in the accountancy of the commercial societies (firms) submitted to the provisions of the Law 82/1991 – the accountancy law.

Key words: Civil responsibility, Damages, Employment contract, Accountancy, Debtor, Debt recovery, Guarantee, Deduction

Since 1 March 2003 Romania has a new Labour Code³¹⁹, adopted as an absolute necessity to adapt the Romanian legislation to the *aquis communautaire*, to the socio-economical realities of the market economy and the transition period that characterizes our country.

From all the juridical institutions regulated by the Labour legislation, the most radical changes of all have been observed to the regard of the reparatory responsibility of the parties of the employment contract. If in the past there existed the material responsibility of the employees as a specific responsibility form that characterised Labour law, on the basis of which the recovery of the damages was accomplished by the issue of the imputation decision by the employer or through a payment statement signed by the employee, both of them being executory titles³²⁰, nowadays the recovery of the damages caused by the employees to their employers can only be accomplished by an amiable agreement or a trial in court.³²¹

Thus, according art. 270, first paragraph of the Labour Code, the employees bear the patrimonial responsibility, on the basis of the norms and principles of the civil contractual responsibility, for the damages they cause to their employer as a result of their guilt of in connection with their work.

In the same time, the employee who cashed from the employer a sum that he wasn't entitled to is mandated to pay it back. If the employee received goods of services that he wasn't entitled to he is obliged to bear their cost.

Taking in consideration that according to art. 164 of the Labour Code damages that the employee caused to the employer cannot be deducted from the salary by the employer unless they are settled by a final and irrevocable judgement, the doctrine³²² showed that, under the rule of the actual provisions, the only legal ways for the employer to recover the damage caused by an employee are for the last one to assume a

³¹⁹ Law 53/2003, published in the Official Romanian Journal, part I, no. 72 of 5 February 2003

³²⁰ Art. 102 - 110 of the old Labour Code – Law 10/1972 regarding the Labour Code, published in the Official Romanian Bulletin, no. 140 of 1 December 1972

³²¹ Art. 270 – 275 of the new Labour Code

³²² **E. Lipcanu**, *Considerații critice în legătură cu o opinie aberantă referitoare la recuperarea de către angajator a prejudiciului pe care salariatul i l-a cauzat (Considerations about an aberrant opinion with a view to the recovering of the damages caused by an employee to his employer)*, in „Law Journal”, no. 4/2004, pp. 78-80

written payment statement or for the employer to obtain a final and irrevocable judgment that orders the employee to pay the damage.

In the same time, nothing stops the parties of the employment contract to convene by mutual agreement on the extent of the compensation and the recovering procedure, according to the norms of the usual civil law, completed by the special labour law regulations.³²³

At a glance, one could say that accountancy of the damages caused by the employee to his employer couldn't arise any real difficulties. Nevertheless, the new regulations of the Labour Code regarding the patrimonial responsibility of the employees had an important impact over the accountancy of this kind of debts.

As in most of the cases the heads of the accounting departments are the ones that deal with the damages caused by the employees to their employer there have been many times that problems appeared in the practice, related to a very knowledge of the labour law legislation in this field, we consider that the present subject has a high importance both theoretical and practical.

In this paper we are going to present certain actual difficulties that could be found in the registration of such debts in the accountancy of the commercial societies (firms) submitted to the provisions of the Law 82/1991 – accountancy law.³²⁴ Thus, we would also refer only to the damages caused by the employees hired by an employment contract on the basis of the Labour Code, by the companies mentioned above.

According to the provisions of art. 1, first paragraph of the Law 82/1991, as amended by the Law 259/2007,³²⁵ the commercial societies, the national societies/companies, the administrations, national institutes of research and development, the cooperatives and other entities are obliged to organise and conduct their own accounting, meaning financial accounting according to the present law and the assets management accounting specific to their activity.

In the same time, according to the provisions of art. 43 of the same normative act, realising inexact accounting registrations with the intent to do so is forbidden.

Even more, according to the provisions of art. 43 of the same normative act, realising inexact accounting registrations or the omission to make the proper accounting registrations with the intent to do so, having the consequence of altering the incomes, expenses, the financial results and the active and passive elements reflected in the balance, constitutes the crime of intellectual forgery and is punished according to the law.

Therefore, the accounting registration of all the damages caused by the employees is mandatory, as they represent accounting operations as intended by the accounting law.

In order to realize the accounting registration, as expected, within the company certain acts are required, by which the employer takes account of the damage and the employee guilty of producing it. According to the provisions of art. 95 of the Collective Labour Agreement Unique at National Level for the years 2007 – 2010, the signing union confederations recognize the right of the employers to establish, under the conditions of the law, the disciplinary or patrimonial responsibility of the employees guilty of breaching the labour discipline norms or that cause damages to the employer. No reference is made regarding the way in which the responsibility of the employee would actually be determined.

Art. 6 of the Law 82/1991 stipulates that any economic-financial operation must be registered in the moment of its performance in a document that will be the basis of the accounting registrations, giving to the document the quality of a justifying act.

³²³ **Țiclea, Alexandru**, *Soluții și propuneri privind interpretarea și aplicarea unor dispoziții ale Codului muncii (Solutions and propositions regarding the interpretation and application of certain provisions of the Labour Code)* in „The Romanian Journal of Labour Law” no. 2/2003, p. 15; **Țiclea, Alexandru**, *Răspunderea patrimonială a salariaților (The patrimonial responsibility of the employees)*, in „Commercial Law Journal” no. 7-8/2003, pp. 65 a.f., **Ștefănescu, Ion Traian**, *Tratat de dreptul muncii (Labour Law Treaty)*, Wolters Kluwer Publishing House, pp. 485 a.f., **Moceanu, M.M.**, *Noul Cod al Muncii. Răspunderea juridică, (The new Labour Code. Juridical responsibility)* in „Labour Relations”, no. 4/2003, p. 40.

³²⁴ Published in the Official Romanian Journal, part I, no. 48 of 14 January 2005, as amended

³²⁵ For the amendment and completion of the Law no. 81/1992 – Accounting law, Published in the Official Romanian Journal, part I, no. 506 of 27 July 2007

According to the provision of the Order of the Ministry of Public Finances no. 1850/2004³²⁶, the justifying acts must have the following principal elements:

- name of the document;
 - name and headquarters of the issuing institution/company;
 - number and date of the act;
 - mentions regarding the parties that participated in the act (when the case);
 - the content of the economic-financial operation and, when needed, the juridical basis of it;
 - quantitative and value data related to the economic-financial operation performed;
 - first and last name, and signatures of the persons in charge to perform the economic-financial operation, of the persons in charge of the preventive financial control, and the persons having the right to approve the respective operations, given the case;
 - other elements destined to ensure the complete registration of the performed operations.
- The documents that serve to the accounting registrations can be given the quality of a justifying act only under the conditions that they provide all the information required by the legal provisions in force.

We consider that art. 95 gives to the employer the possibility to issue all kind of acts, that according to the law can be justifying acts in order to serve as basis for the accounting registrations of the damages caused by the employees to their employer. The provisions of art. 95 of the CAUNL must be interpreted as giving the employer the right to determine by its own ways both the identity of the employee that damaged him and the quantum of the suffered damage without permitting it to proceed to salary deductions and without any obligations in what regards the court's own settlement, unless the employee himself admits the evaluation realized by the employer. This is a preliminary phase in determining the patrimonial responsibility of the employee oriented to the acceptance of the employee of the established damage and to recovering the damage amiably, or, in the contrary, to obtaining a sum of proving elements to be used in court.³²⁷

The character of act usable to make accounting registrations regarding the damages caused by the employee to his employer also depends of the moment in which the registration should take place.

Taking in consideration the recent orientations in the practice of the courts, that of conditioning the proof of the damages incurred by the accounting registrations (that corresponds completely to the provisions of the Law of accounting, mentioned above), it means beyond any reasonable doubt that at the moment of the claim starting the trial against the employee the accounting registrations should have already been realised. Therefore, the judgement issued on the basis of this claim, and by which the employee is ordered to pay the damages, cannot serve as a justifying act for the first accounting of this damage, as the registering must have already been made before this moment. On the contrary, the acts that served for the accounting of the damages caused by the employee would be used as proofs in the trial against the employee, if the last one doesn't pay by his own the compensation, or the same acts would serve to the drawing up of an expert valuation that could be required by the court during the trial.

The following acts can serve as justifying acts on the basis of the mentioned provisions, the enumerating not being limited:

- Control acts (statements) issued by the financial and fiscal control organs of the state (Financial Administration, Financial Guard, Court of Auditors).
- The acts issued by the judicial organs that contain mentions regarding the damage (the resolution of non-prosecution, the judgement by which the court rejected the claim started by the employer against an employee on the grounds that another employee is guilty of producing the damage, etc.).

³²⁶ Regarding the financial and accounting registers and forms, published in the Romanian Official Monitor, part. I, no. 23 bis of 07/01/2005

³²⁷ **D. Crumpănă**, *Aspecte privind modalitatea de constatare a prejudiciilor cauzate de salariat angajatorului său – Aspects regarding the acknowledgement of the damages caused by the employee to his employer*, in „Romanian Labour Law Journal”, no. 2/2007, pp. 108-109

- Acts issued as a result of the internal audits of the company, by the assigned control organs.
- The act issued by the commission of disciplinary investigation or by the commission assigned according to the provisions of art. 77 of the Collective Labour Agreement, Unique at National Level, for the years 2007 – 2010, in order to evaluate the employee professionally unfitted, if in during the proceedings a damage caused by the employee is also established.
- The decisions issued by the management of the company according to the provisions of the Law 31/1990, to serve the good functioning of the company by which there are acknowledged damages and the employee guilty of producing them. We do not mean by these acts to the imputation decisions issued under the regulations of the old Labour Code, as they can no longer be issued legally, and couldn't serve as basis for salary deductions, as they aren't executory acts anymore.³²⁸
- The act (convention – o.n. - C.D.) containing the agreement between the employee and the employer regarding the damages produced by the employee and the procedure of recovering it.
- The act – statement - by which the employee assumes the damage he produced and its quantum, with the amendment that this act isn't an executory deed and cannot serve as basis for salary deductions.³²⁹

Accounting of the damages produced by the employees and their recovery

The accounting registrations regarding the damages produced by the employees involves going through the following steps:

- establishing the patrimonial elements missing or destroyed and their value.
- Deleting from the registers the destroyed or missing assets.
- Establishing the guilty persons and imputing the damages.

Establishing the patrimonial elements missing or destroyed results from the inventory.

The inventory has the principal purpose of establishing the real situation of all the active and passive elements of every unit and the assets and valued held in any way, belonging to other persons or entities, in order to draw up the yearly financial reports that should offer a correct image of the financial position and performance of the company during the respective financial exercise³³⁰.

Deleting from the registers the assets destroyed or missing is usually registered in the accountancy in the debit of an expenses account and in the credit of the account corresponding to the assets missing or destroyed.

Establishing the guilty persons and imputing the damages

The guilty persons are determined on the basis of an internal investigation within the company that suffered the damage.

The following acts are concluded:

- Explicative notice.
- Decision issued by the manager of the company by which there are determined the facts, the guilty persons, the disciplinary sanctions and measures to be taken in order for the damage to be recovered.

³²⁸ As we affirmed before this kind of decisions are valid as long as they don't breach any imperative provision of the labour law - **D. Crumpănă**, *Aspecte privind modalitatea de stabilire și recuperare a daunei cauzate de salariat angajatorului său (Aspects regarding the establishment and recovering of the damages caused by the employees to their employers)*, in „Romanian Journal of Labour Law”, no. 3/2005, p. 105

³²⁹ For explanations that the new Labour Code doesn't preclude the employee from assuming a written payment statement please refer to **I.T.Ștefănescu, Ș. Beligrădeanu**, *Prezentare de ansamblu și observații critice asupra noului Cod al muncii (General overview and critical observations regarding the new Labour Code)*, in „Law Journal”, no. 4/2003, p. 76

³³⁰ Order of the Public Finances Ministry no. 1753/2004 regarding the approving of the norms referring to the organising and realising the inventory of the active and passive elements.

- The employee's written payment statement, if the case.

In case a judgement is obtained to oblige the employee to pay the damages, salary deductions can be performed to the limit of 1/3 of the salary. If the salary deductions are meant to cover several debts (alimonies, damages to a third person, damages to the employer, financial debts, etc.) altogether they couldn't be larger than 1/2 of the salary.

Examples of accounting of the damages:

I. On the basis of the inventory missing staples of 2.000 lei is acknowledged:

1. The missin staples are downloaded from the administration:

601	=	301	2.000
“staples expenses”		“staples”	

2. On the basis of the decision of the manager mentioned above the debt of the administrator is accounted.

4282	=	%	2.380
“Other credits related to personnel”			
		7588	2.000
		“Other activity incomes”	
		4427	380
		“collected VAT”	

3. Cashing the debt on the basis of the receipt or the salary grid – as a result of a judgement:

5311	=	4282	2.380
“Cash register in lei”-cash or		“Other credits related to personnel”	
421			
“Personnel salary owed”-for salary deductions			

If the administrator employed had a guarantee deposit:

Registering the guarantee of 3.000 lei:

4281	=	5311	3.000
“Other debts related to personnel”		“Cash register in lei”	

Deduction as a result of the recovering of the damage:

4281	=	4282	2.380
-------------	---	-------------	--------------

“Other debts related to personnel”

“Other credits related to personnel”

II. Example of accounting of the damages produces to a car property of the firm, resulted from a car accident. The registering value is of 30.000 lei, amortized 40%.

1. Deleting the destroyed asset from the register:

% = 2133 30.000

“Transport means”

2813 12.000

“Amortisement of the transport means”

658 18.000

“Other exploitation expenses”

2. The credit against the administrator is registered on the basis of the decision of the management.

4282 = % 35.700

“Other credits related to personnel”

7588 30.000

“Other incomes from exploitation”

4427 5.700

“collected VAT”

Deduction as a result of the establishing of the damage and guilt, if the employee produces another car evaluated at 40.000 lei:

2133 = 40.000

“Means of transport”

4282 35.700

“Other credits related to personnel”

4281 4.300

“Other debts related to personnel”

The doctrine³³¹ showed that, in what regards the responsibility of the employee towards the employer it is usually inadmissible the granting of moral damages. Certain specific cases are excepted provided that the exception is stipulated by the law, as for example, the cases regulated by the Law no. 11/1991³³² regarding the combating of the unfair competition, in the case of damages resulted from crimes committed by the employees or in the case of the employees guilty of organising an illegal strike.

Nevertheless, we emphasise that such damages shall not be recovered from the employees on the basis of the Labour Code or on the basis of the contractual liability, but according to the norms and principles of torts, meaning on the basis of art. 998 – 999 of the Civil Code and other provision of special laws.

Bibliografie:

1. D. Crumpănă, Aspecte privind modalitatea de stabilire și recuperare a daunei cauzate de salariat angajatorului său, în *Revista Română de Dreptul Muncii*, nr. 3/2005, p. 105
2. D. Crumpănă, Aspecte privind modalitatea de constatare a prejudiciilor cauzate de salariat angajatorului său, în „*Revista Română de Dreptul Muncii*”, nr. 2/2007
3. Diaconu Elena, *Șuiu Ion-Contabilitate baze și proceduri*, Editura Sitech, Craiova, 2007.
4. Diaconu Elena, *Șuiu Ion-Contabilitate și expertiză contabilă*, Editura Universitaria, București, 2006.
5. Ristea Mihai, *Contabilitate financiară*, Editura Universitară, București, 2005.
6. Staicu Constantin-*Contabilitate financiara*, Editura Universitaria, Craiova, 2007.
7. I.T.Ștefănescu, Ș. Beligrădeanu, *Prezentare de ansamblu și observații critice asupra noului Cod al muncii*, în *Dreptul*, nr. 4/2003
8. Ș. Beligrădeanu, *Inadmisibilitatea – de regulă – a acordării daunelor morale în cadrul raportului juridic de muncă reglementat de Codul muncii*, în „*Dreptul*” nr. 2/2006, p. 301-317, preluat cu Adenda de Ș. Beligrădeanu, *Studii de drept român al muncii*, Editura C.H.Beck, București, 2007.

³³¹ Ș. Beligrădeanu, *Inadmisibilitatea – de regulă – a acordării daunelor morale în cadrul raportului juridic de muncă reglementat de Codul muncii* (*The usual inadmissibility of moral compensation within the employment relationship*), in „*Law Journal*” no. 2/2006, pp. 301-317, taken over with adenda by Ș. Beligrădeanu, *Studii de drept român al muncii*(*Romanian Labour Law studies*) C.H.Beck Publishing House, Bucharest, 2007, pp. 302-331

³³² Published in the Official Romanian Journal, part I, no. 24 of 30 January 1991