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Investigation of accidents at work through judicial expertise in the Republic of Moldova

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This article focuses on the subject of judicial expertise of occupational safety techniques in the Republic of Moldova. The research starts from the analysis of the legal regulations in the field of occupational safety with the elucidation of the notion of work accident, continuing with the identification of its main characteristics that defines it as a work accident. At the same time, are investigated and explained, the legal procedural conditions for the appointment of a judicial occupational safety expert and some basic peculiarities of its performance.

Keywords: occupational safety and health, work accident, special knowledge, judicial expertise, normative acts.

**Розслідування нещасних випадків на виробництві за допомогою судової експертизи
в Республіці Молдова**
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Розглянуто проблеми судової експертизи технологій безпеки праці в Республіці Молдова. Дослідження розпочинається з аналізу правових норм у сфері охорони праці із визначенням поняття нещасного випадку на виробництві та його основних характеристик, які обумовлюють його як нещасний випадок на виробництві. В той же час досліджено та розкрито процесуально-правові умови призначення судової експертизи з охорони праці та деякі основні особливості їх проведення.

Ключові слова: охорона праці; нещасний випадок на виробництві; спеціальні знання; судова експертиза; нормативні акти.

Occupational safety and health in the Republic of Moldova is a complementary compartment/area of the legal employment relationship, through which the employee is ensured the right of labor protection, provided by art. 43 para. (2) of the Constitution of the Republic of Moldova [1]. Thus, in order to guarantee this right, an organic law on health and safety at work No 186 of 10 July 2008 was adopted, which regulates the legal relations relating to the introduction of measures to ensure the health and safety of workers at work. At the same time, taking into account the complex and wide-ranging nature of the field concerned, several Government Decisions were adopted for the implementation of the Law on Safety and Health at Work, among which the most relevant are: GD no. 95 - on the implementation of Law no. 186/2008; GD no. 353/2010 - on the approval of the minimum requirements for safety and health at work; GD no. 1361/2005 - for the approval of the Regulation on how to investigate accidents at work;

In the Republic of Moldova, an accident at work [2] means an event that caused violent injury to the employee's body (injury, psychological stress, electrocution, burns, frostbite, asphyxiation, acute poisoning, bodily injuries caused by insects and animals, natural disasters, etc.)., as a result of the action of a risk factor (condition, state, process, phenomenon, behavior) specific to an element of the work system (worker, work tasks, means of production, working environment) and which led to the temporary or permanent loss of working capacity or death of the employee:

- a) in the course of performing their work or duties;
- b) before the start or after the end of work, when the employee moves from the entrance to the premises of the enterprise, institution, organization (hereinafter — establishment) to the place of work and vice versa, changes personal clothing, personal protective and work equipment and vice versa, takes over or hands over the place of work and means of production;

- c) during established breaks, when the employee is on the territory of the establishment or at his place of work, as well as during the attendance of sanitary or auxiliary rooms;
- d) when travelling from home to work and vice versa on transport provided by the establishment in the prescribed manner and when embarking or disembarking from such transport;
- e) during journeys from the establishment in which the employee is employed to his place of work outside the territory of the establishment or to another establishment, and vice versa, in order to carry out a work assignment or work duties, at the time required for that purpose and along the route laid down for the journey, irrespective of the mode of travel or the means of transport used;
- f) when participating in cultural, sporting or other activities organized by the unit on the basis of an order or provision issued by the employer;
- g) when acting on his own initiative to prevent or remove danger or to save another employee from danger in the circumstances specified in points (a), (b), (c), (d) and (f) of this paragraph;
- h) during production training or professional practice under contract between the employer and the educational institution, between the employer and the pupils and students.

At the same time, accidents at work are divided into three types:

- accident causing temporary incapacity for work — event that caused partial or total loss of the employee's ability to work for a period of at least one day, reversible after completion of medical treatment, confirmed by the medical institution in the established manner;
- serious accident — an event causing serious injury to the employee's body, confirmed by the medical institution in the prescribed manner;
- fatal accident — an event which caused the death of the employee immediately or after

a certain period of time, confirmed by the forensic medical institution in the prescribed manner.

The purpose of this article is to elucidate the investigative path of occupational accidents in the Republic of Moldova, through the prism of carrying out methodical research with the application of special knowledge, resulting in a judicial expert report.

The research methodology comprises a set of theories and concepts specific to different areas of law, materialized as finality in the content of this article by means of analysis methods:

- logical (deductive, inductive, specification, etc.), consisting of the use of laws, categories and logical reasoning with reference to the analysis of doctrinal opinions held by various authors and the synthesis of regulations concerning the investigation of accidents at work;
- systemic, involving research into national legal rules, competent institutions, material and procedural rules;
- synthetic, consisting of a generalized expression of the specific features of accidents at work.

When the violation of labor protection rules has led to the occurrence of a serious or fatal accident, the event falls under Article 183 of the Criminal Code of the Republic of Moldova, which states [3]:

(1) Violation by a person in a responsible position or by a person managing a commercial, public or other non-state organization of safety technique, industrial hygiene or other rules of labor protection, if this violation has caused accidents to persons or other serious consequences, shall be punishable by a fine of between 550 and 850 conventional units or by unpaid community service of between 100 and 200 hours, or by imprisonment for up to 2 years.

(2) The same action which has caused the death of a person by negligence shall be punishable by imprisonment for a term of 2 to 6 years with deprivation of the right to hold certain positions or to engage in certain activities for a term of up to 3 years.

In view of the vast and complex nature of an accident at work, the prosecution authorities often call on specialized knowledge [4] in the field of occupational safety and health to clarify and assess the circumstances which may be of evidential importance to the case, which is then reflected in a judicial expert report. In this regard, the Code of Criminal Procedure defines forensic expertise [5] as a scientific-practical research activity carried out within the framework of criminal proceedings, with the aim of finding out the truth by carrying out methodical investigations,

applying special knowledge and technical-scientific procedures to formulate reasoned conclusions about certain facts, circumstances, material objects, phenomena and processes, the human body and psyche, which may serve as evidence in a judicial process.

In accordance with the Nomenclature of Judicial Expertise, approved by Government Decision No. 195 of 24.03.2017 [6], directly under point 21.01: Examination of the circumstances of the accident at work, the documentation reflecting the organization and performance of work, the purpose and resolved issues of the forensic expertise of occupational safety and health technique were established, namely:

PURPOSE: Determination of the mechanism of the occurrence of the work accident and the circumstances, which caused the occurrence of the work accident.

RESOLVED ISSUES:

- determination of the mechanism of the occurrence of the accident at work;
- determination of the phases of the dynamics of the accident at work;
- determining the main causes of the accident at work;
- determination of the obligations and responsibilities of the manager of the workplace where the accident occurred in terms of the implementation of occupational protection measures;
- determining whether the actions/actions of the workers, persons in positions of responsibility in concrete conditions, which are related to the causes of the accident at work, comply with the requirements of the regulations in force;
- determining whether the actions/actions of the employee directly or indirectly related to the accident at work meet the requirements of the regulations in force;
- determination of the suitability of the location and use of mechanisms, machinery, tools, work process and means of protection for the requirements of the prevention of risk factors specific to the working environment;
- checking whether the work safety training of the workers is carried out in accordance with the measures required to prevent the risk factors specific to the work task;
- other similar.

Taking into account the fact that the judicial expertise report [7] inherently has to be carried out/drafted by approved methods and procedures, the National Centre of Judicial Expertise has developed

and approved the Standard Method [8] for carrying out the judicial expertise of the occupational safety technique, code MT - 21.01, edition 1 of 12.12. 2018, as well as the Inspection Procedure [9]: "Examination of the circumstances of the accident at work, documentation reflecting the organization and performance of work", code PI-MT-21.01, edition 1 of 05.09.2019, which has complex criteria and techniques of knowledge and verification of the truth, in the framework of expert examinations in the field concerned. At the same time, the methodology represents a system of prescriptions, inherent to the investigation of an accident at work, which are materialized by acts/documents, which need to be examined, among which the most relevant are: the act of ordering the judicial expertise; the reports of the on-site investigation; the licenses and/or fields of activity of the legal entities where the accident took place; the employment contracts of the persons with specific responsibilities in the field of occupational safety and health; the occupational risk assessment sheets; the protection and prevention plan; the occupational safety and health training sheets; the occupational safety and health instructions; the documentation of the equipment; the records of the provision of personal protective equipment; and others. All the mentioned documents are regulated by the legislation of the Republic of Moldova, and, are mandatory to in the activity of a legal entity [10]. Moreover, for example, in the case of an accident at work in the construction sector, acts/documents from several normative acts are examined during the investigation of an accident at work, namely from: the Labor Code of the Republic of Moldova no. 154 of 28.03.2003, the Law of the Republic of Moldova no. 186 of 10.07. 2008, on safety and health at work, Government Decision No. 95 of 05.02.2009, on the implementation of Law No. 186/2008, GD No. 1361 of 22.12.2005, on the investigation of accidents at work, Government Decision No. 80 of 09.02.2012 on minimum requirements at temporary and mobile construction sites, Technical Standard in Construction (NCM A.08 .02-2014), Rules No. 54 of 08.11.2001, on the preparation of occupational safety and health instructions.

The investigation of accidents at work through the prism of judicial expertise is a legal instrument which provides the authorizing officer reasoned, objective and full conclusions on the circumstances which favored the occurrence of an accident at work, as well as the compliance of the contents of the acts/

documents in the field of occupational safety, drawn up and approved at the entities where the accident occurred. The causal link between the actions and in-actions of persons with specific occupational safety and health duties and/or involved in the accident is established. The legal instrument takes the form of a judicial expert's report, drawn up in accordance with methodical research, with the application of special knowledge at the end, and reasoned conclusions are written regarding the circumstances of the accident at work.

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