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Criminal liability for accidents on construction sites

Reports published by the Main Statistics Office and the State Labour Inspectorate show that construction sites are one of the most dangerous workplaces. Failure to observe occupational health and safety (OHS) rules, whether by employers or employees, has led to hundred of accidents on construction sites every year and several fatalities.

The main issue when examining construction site accidents is to establish whether the cause of the incident was failure to observe OHS regulations. If so, then criminal liability will be borne by the person responsible for OHS compliance. However, if a fatal accident occurs on a construction site, liability for manslaughter will also arise.

This article discusses the issue of employers' criminal liability for accidents occurring on a construction site due to failure to observe OHS rules and circumstances when liability can be excluded.

OHS obligations are set out in the Labour Code and special/implementing acts. Construction work carried on in compliance with OHS rules and regulations is not only important in reducing the risk of accidents – the obligation to ensure that employees have suitable work conditions is laid down in the Criminal Code.

Important!
The obligation to ensure that employees have suitable work conditions is laid down in the Criminal Code.

According to article 220 of the Criminal Code, anyone who, while being responsible for OHS, fails to meet the resulting obligations, thereby exposing employees to the risk of serious injury or loss of life, is subject to imprisonment for up to 3 years. Unintentionally committing this offence is also punishable. In this case, the perpetrator is subject to a fine, deprivation of liberty or imprisonment for up to a year. In addition to these penalties, a court can also impose criminal sanctions in the form of a prohibition on carrying on economic activity, fulfilling a specified function involving managing employees or holding specified positions for up to 15 years.¹

¹ Only persons having an employment relationship being covered by criminal protection measures does not mean that exposure to the risk of serious injury or loss of life of other persons in gainful employment is not penalised. In these cases, the penalty is imprisonment for up to 3 years for anyone who exposes a person to the risk of serious injury or loss of life.

The perpetrator of a crime under article 220 of the Criminal Code can only be the person responsible for OHS. This person must therefore have the power to structure OHS conditions for employees and to take steps in this respect. Control powers given to entities functioning in the workplace and supervision powers exercised by persons outside the workplace are insufficient for these persons to bear criminal liability.

The entity responsible for OHS of employees is primarily the employer, i.e. an organisational unit, even if it does not have legal personality, and also individuals if they have employees.

On behalf of an employer that is an organisational unit, labour law issues are handled by the person or body managing the unit, or another person appointed to do so, i.e. a management board member, liquidator, receiver or conservator of a legal entity. If the employer is a collegiate body, criminal liability can be borne by all the members of the managing body or only by selected persons, depending on whether there is a division of duties enabling the entity responsible for OHS to be distinguished. In the first case, liability under article 220 of the Criminal Code is borne only by the person representing the entity in this respect, while in the second, by all those on the collegiate body.

The group of entities that can bear criminal liability for failing to comply with OHS regulations is wide. The perpetrator can be the employer or anyone else whose duties include OHS matters. Criminal liability can therefore also be borne by the direct superiors of the injured person.

Important!
Criminal liability will not be borne by persons who are merely OHS advisers.

These persons include:

- construction site manager
- OHS coordinator
- persons in management positions
- persons in autonomous positions structuring OHS conditions (i.e. head mechanic, head power worker)

Criminal liability will not be borne by persons who are merely OHS advisers. Outsourcing these tasks to specialists does not free the employer from criminal liability under article 220 of the Criminal Code. This is because both OHS personnel and external specialists only have an advisory and control capacity and therefore do not bear criminal liability under article 220 of the Criminal Code. In this respect, the employer will bear criminal liability.

The legal situation will be similar where the employer signs an agreement with a professional external entity under which this entity performs the employer's OHS duties. Liability for OHS being extended to other persons does not, however, release the employer from liability in this respect, as each responsible person is accountable for his own conduct, regardless of the liability of others.

A factor leading to liability of a given person for observing OHS norms is his right to directly structure OHS conditions in the workplace and his obligation to take steps in this respect in the event of irregularities. Liability can also arise under a specific provision of law, scope of activity, instruction or regulation. Entities responsible for OHS in the above meaning also covers persons who have assumed OHS duties under a civil contract.

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