



***WORK RELATED ACCIDENTS IN
CONSTRUCTION SITES INVOLVING
MIGRANT POPULATION***

ROMANIAN PERSPECTIVE

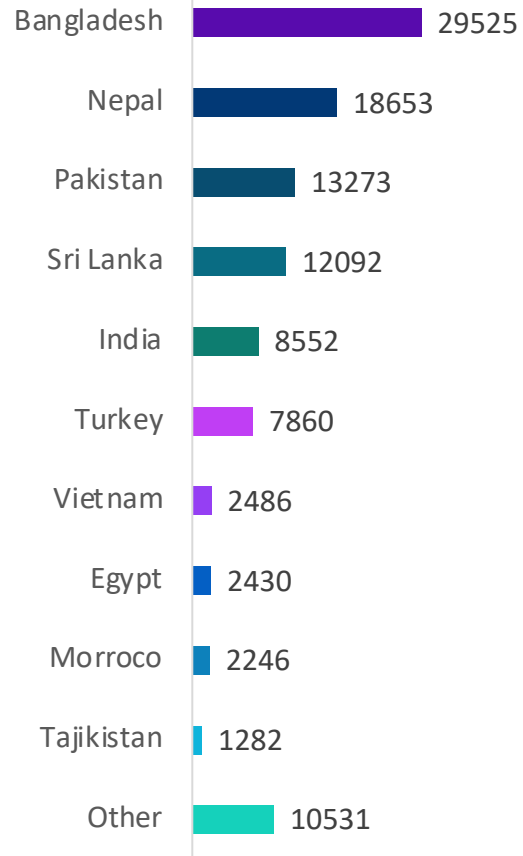


Loredana Alina Dumbravă
Senior Associate

CONTEXT

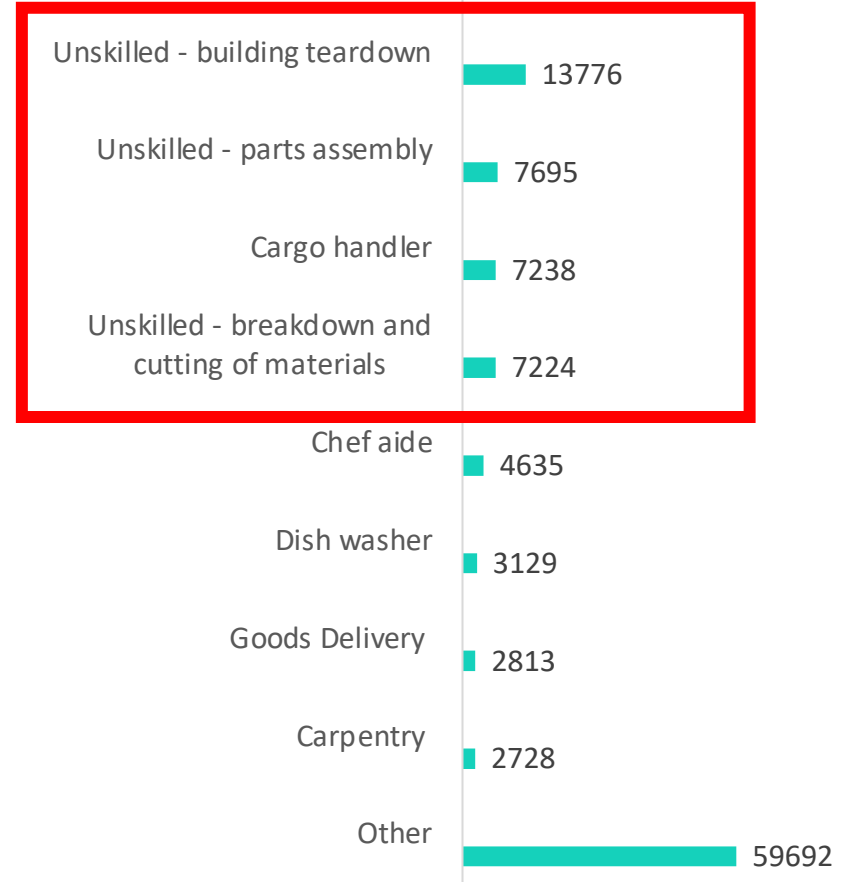
Non EU Workers

- by country -



Non EU Workers

- by job -



2022'S OFFICIAL STATISTICS

Work related accidents

4513

Fatal accidents

99

Construction injury

5,7% (257)

Construction deaths

17,2% (17)

ROMANIA'S LEGAL FRAMEWORK

- Law 319/2006 : Health and safety work
- Art. 36-42 of Regulation no. 883/2004 and Art. 33-42 of Regulation no. 987/2009: The legal framework in the field of coordination of social security systems of migrant workers in case of work accident or occupational disease

WHAT MAKES AN ACCIDENT BEING A WORK ACCIDENT

- Definition according to 319/2006:
“violent injury to the human body, as well as acute professional intoxication, which occur during the work process or in the performance of work duties, regardless of the legal nature of the employment relationship based on which the activity is carried out, and which causes temporary incapacity for work for at least 3 days, disability or death”
- *Classification of work accidents*



Temporary incapacity
> 3 days



Medium or long-term
Disability



≥ 3 workers

PROCEDURE OF CLAIM – CRIMINAL CODE

- **Art. 349 and Art. 350 – Ex-officio:**

“Non-compliance by whomever to adhere to the obligations and measures established, regarding health and safety at work, if this creates an imminent danger of an occupational accident or occupational disease, is punishable by imprisonment from 6 months to 3 years or with a fine”

- **Art. 196 – Prior complaint by the aggrieved party**

“Injury due to fault which an infirmity or traumatic injuries or health impairment of an individual the healing of which required more than 90 medical care days or a serious and permanent aesthetic injury or abortion or endangering of an individual’s life, shall be punishable by no less than 2 and no more than 7 years of imprisonment”

- **Art. 192 – Ex-officio:**

“Manslaughter as a result of failure to observe the legal provisions or precautionary measures established for the practice of a profession or of a craft or for the performance of a specific activity shall be punishable by no less than 2 and no more than 7 years of imprisonment.”

PROCEDURE OF CLAIM – LABOUR LAW

- After every work-related accident, the Territorial Labour Inspectorate will determine the causes of the accident and apply administrative sanctions against the employer or the employee
- The victim of a work-related accident can address a complaint to the Labour court to obtain compensation – art. 253 Labour Code just in case of injury, not in case of death

PROCEDURE OF CLAIM – CIVIL LAW

- In case of death, even if the accident is a work related accident, the victim's relatives need to address to the civil court for compensation and not the labour court
- **Art. 1349:**
“Each person has the obligation to comply with those rules of conduct imposed by law or by customs and to restrain from causing harm to the rights and the legitimate interests of others by means of actions or omissions. Those who are not incapacitated and infringe this obligation are held liable for all the damage that has been caused, and are obliged to repair all the damage”
- **Art. 1373** - the employer's liability for the employee's deed
- **Art. 1391** - ascendants, descendants, brothers and sisters as well as any other close person can obtain compensation

EXAMPLE
THE CASE OF MR. DEMETRIOS

THE CASE OF MR. DEMETRIOS

- Mr. Demetrios was employed by an outsourcing company (X Ltd) which leases personnel as an electrician
- On 18th of January 2017 he was working at one of the Bucharest's metro stations on behalf of UG Inc as an electrician
- During that day he received an assignment to replace, helped by a colleague, some cables which were posed at an elevation of 8 meters
- In order to accomplish the assignment the two erected a scaffold which was put at their disposal by UG Inc.

THE CASE OF MR. DEMETRIOS

- Due to the height of the scaffold, which was only 6m, they were unable to replace the cables
- As they were pressured to do the job, otherwise they would of been fired, the two took a wooden ladder and posed it on top of the scaffold
- After Mr. Demetrios climbed on the ladder, the scaffold collapsed and they fell on the ground.

MR. D'S INJURIES

- Due to the fall he was diagnosed with spastic paraplegia and spastic neurogenic bladder, which implies that he will have a catheter and an urine bag with him for the rest of his life
- As his problems affect to a great extent his ability to work he was retired due to ill health

WHAT WENT WRONG

- Mr. Demetrios is a qualified electrician and not a scaffolding trained technician
- They did not receive the safety equipment (the personal fall arrest system)
- They were not supervised while working (mandatory for working at heights)

THE CRIMINAL CASE OF MR. DEMETRIOS

- Mr. Demetrios filed a criminal complaint against X Ltd and UG Inc but the case was dismissed as the prosecutor found Mr. D to be at fault
- An appeal on the decision of the prosecutor was admitted in 2022 but due to the statute of limitations the case was dropped.

THE LABOUR CASE OF MR. DEMETRIOS

- In 2019 Mr. D filed a complaint in labour court in order to obtain non-pecuniary damages, loss of earnings and legal interest from the date of the accident until payment
- After all the proceedings and study of the case, the court found him at guilt with a percentage of 50% **while UG Inc was found at guilt for the rest of 50%, X Ltd was found not at guilt for the accident**
- The court ruled that Mr. D must receive 50000€ in non-pecuniary damages, 12000€ loss of earnings and legal interest

THE APPEAL ON THE CASE OF MR. DEMETRIOS

- Mr. D and UG Inc appealed the decision, with Mr. D demanding a decrease from 50% to 10% in guilt, while UG demanded that Mr. D should be found exclusively at guilt.

THE RULING OF THE COURT OF APPEAL

- On 9th of June 2023 the Bucharest's Court of Appeal ruled partially in favour of Mr. D, decreasing his guilt from 50% to 30%.
- In addition, UG was obligated to pay 70000€ in non-pecuniary damage, 15500€ in loss of revenue and the legal interest from the date of the accident (~30000€)

KEY POINTS

- The Law does not discriminate between immigrants and nationals
- If the consequence of the accident is death of the worker, Civil Law applies
- Prosecuting the criminal charge takes a very long time, which might lead to dropping the case
- There isn't a guidance to establish the non-pecuniary damage
- Regardless of the employment legal relations, a company can be found guilty for an accident
- In Romania a work accident insurance is not mandatory



***Thank you for your
patience***

WORK RELATED ACCIDENTS IN CONSTRUCTION SITES INVOLVING MIGRANT POPULATION

ROMANIAN PERSPECTIVE