

ANALYSIS ON THE NUMBER OF WORK ACCIDENTS INVOLVING DEATHS THAT RESULTED IN CRIMINAL PROCEEDINGS IN THE MUNICIPALITY OF GOIÂNIA IN THE YEAR 2016

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Abstract: There are several legal consequences of a death resulting from an accident at work. Among the main ones are social security, labor and criminal. At least in theory, they must all have repercussions in some way after the fateful event. The present work aims to evaluate the number of accidents at work involving deaths that resulted in criminal proceedings in the municipality of Goiânia, in the period covered by the year 2016, presenting the number of occurrences involving deaths at work, and that had criminal consequences, or that is, those responsible were prosecuted and tried criminally. For this, a search was carried out in the database at the Instituto de Medicina Legal Aristoclides Ferreira (IML), where the number of necropsies related to the event under study was determined, in this case fifty-seven. Each name found was entered into the PROJUDI system - the Goiás Court of Justice database. Then, the number of cases in which there was criminal liability of the agents that caused the work accident was obtained. The result obtained was zero, that is, the criminal repercussion did not occur, unlike the social security or labor repercussions. Thus, despite the legal provision for the criminal conviction of those responsible for accidents at work that produce deaths, the criminal responsibility of the perpetrators rarely occurs, so that it becomes important to define which factors corroborate for such a low number of convictions.

Keywords: Responsibility, perpetrators, convictions.

INTRODUCTION

When an accident at work occurs in which the employee loses his life, there are social security, civil and criminal consequences for those responsible for the fact. As it is a violent death, the Judiciary Police (Civil

is called and, consequently, the Technical-Scientific Police who, through official expertise, will examine the location of the fact and determine the circumstances and agents that caused the accident. After the entire investigation process, the indictment of those responsible may or may not occur, depending on the contribution of each one to the occurrence of the accident (BRASIL, 1941).

What is known is that much is said about administrative and civil repercussions, through sanctions, fines, indemnities, among others, but not the criminal one, which raises questions such as: has anyone been arrested or tried? It is important to know whether there were criminal implications for those who caused or contributed to this type of event, either through actions or omissions. This relationship found could be used, for example, to determine at what point the investigation system fails to reach a greater number of processes in the judicial sphere.

But does every occurrence involving accidents at work with deaths produce criminal consequences for those responsible? If not, is it possible to determine with which portion this occurs, that is, what is the relationship between the number of occurrences of accidents at work with fatal victims and the respective number of criminal proceedings arising from these occurrences?

In order to obtain an estimate regarding the question presented, it is important to find out, in a given region and over a period of time, the number of occurrences of occupational accidents with death.

Therefore, this study aims to evaluate the number of accidents at work involving deaths that resulted in criminal proceedings in the municipality of Goiânia, in the period covered by the year 2016, accounted for by the number of necropsies resulting from accidents at work by the Instituto Médico

Legal. As a specific objective, we have: consult the database of the Court of Justice of Goiás, aiming to verify, among the recorded cases, those that entered the criminal judicial process phase, which will allow the presentation of the relationship between the number of occurrences that produced criminal consequences with the total number of accidents at work with death.

THEORETICAL FRAMEWORK

LEGAL RESPONSIBILITY

The accountability of a fact, in the legal aspect, means the legal obligation to respond, to someone, for the acts or obligations of others, by virtue of legal determination. According to Silva (1999), this accountability takes place under four aspects: civil, labor, social security and criminal.

The first type, “in a maximum and didactic synthesis, refers to the legal remedy of damage caused or suffered (without disregarding its preventive efforts)” (BOLESINA, 2019, p. 23). That is, it is related to the pecuniary compensation for the damage caused.

In the second type, according to Silva (1999), there is provisional stability, according to which the employee, after the accident at work, has his stability guaranteed for a period of twelve months, at least, after the cessation of sick pay and the termination indirect, in which the employee can terminate the employment contract unilaterally if the employer fails to comply with rules protecting the safety and health of the worker.

The third type is related to the regressive action against those responsible, according to the following discipline:

Art. 120. Social Security will file a regressive action against those responsible in cases of: I - negligence regarding the standard norms of safety and hygiene at work indicated for individual and collective protection (BRASIL, 1991).

The fourth type is related to the compatibility of conduct in relation to the criminal types described in the Brazilian Penal Code, Decree-Law Number 2848, of December 7, 1940 (BRASIL, 1940).

As for criminal liability, it can be due to commissive or omissive behavior. The former concerns doing, such as driving a vehicle, opening a door, signing a document. These behaviors can be harmful. The omissive act, on the other hand, is a non-doing or even failing to do so, such as, for example, failing to turn off a machine at the end of the working day, as one had an obligation to do so (MENDES, 2018, p. 46).

Still with regard to criminal liability, it may result from culpable or willful action. The first occurs when the agent’s conduct has one of the following elements: negligence, malpractice or imprudence. The first is defined as “carelessness, inattention. Anyone who goes on a trip with “bald” tires or brakes in poor condition is being negligent” (FIUZA, 2008, p. 253).

About the characterization of the second element that makes up guilt, we can say:

The person who does not observe technical rules that he must know acts with ineptitude. Thus, we see that only the expert can act with malpractice, that is, the person who must know the technical standards related to the act he is practicing. In perfectly normal conditions, if a driver is unable to make a turn, we will call him a *hard wheel, barber, razor*. In fact, he will be acting with ineptitude, as he did not manage to make a curve that he must know how to make (FIUZA, 2008, pg. 253).

The third element of guilt is recklessness, which can be defined as:

Commissive conduct (action) that portrays an external manifestation of the subjective posture of incontinence in the face of the objective duties of care. In other words, it means the audacity, the precipitation of the individual that leads him to produce the harmful result. See the examples of advancing a light signal, undue overtaking or speeding when driving a motor vehicle (GALVÃO, 2007, pg. 183).

The intentional action comes from an intentional act of the causative agent. For example, when the driver of a vehicle deliberately runs over a person.

CRIMINAL LIABILITY FOR WORK ACCIDENTS

In a fact considered as an accident at work, several conducts can corroborate for its occurrence. This fact, according to Brasil (1991, p.13) “is what happens due to the exercise of work at the service of the company or the exercise of the work of the insured, causing bodily injury or functional disturbance that causes death or loss or reduction, permanent or temporary, of the ability to work”. Thus, in addition to the victim/worker, other agents can intentionally or culpably contribute to its development and occurrence.

When an accident at work results in injuries or even death of the worker, this liability will be attributed according to the contribution of the person who acted or must have acted to prevent the accident.

Among the conducts described in the Penal Code, we mention:

Article 121, paragraph 4, which deals with manslaughter resulting from non-compliance with technical rules of profession, art or trade, or even, failure to help the victim (BRASIL, 1940, p. 22).

Article 129, which deals with bodily injury and its degrees of intensity (BRASIL, 1940, p. 25).

Article 132, which deals with exposing the life of others to direct and imminent danger (BRASIL, 1940, p. 27).

In addition, Law Number 8213, of July 24, 1991, which provides for Social Security Benefit Plans and other measures, in its second paragraph classifies as a criminal misdemeanor, the company's non-compliance with safety standards and occupational hygiene (BRASIL, 1991).

INVESTIGATION AND DETERMINATION OF THE CAUSES OF AN WORK ACCIDENT

The beginning of the process of determining the causes of an accident at work, the result of which is bodily injury or death, begins with the communication (*notitia criminis*) of the infraction to the Civil Police, more precisely to the police authority (police delegate) who, in accordance with Decree-Law Number 3689 of October 3, 1941, Article 158, provides for the isolation of the scene of the fact and the activation of the Technical-Scientific Police, responsible for the material evidence and which will act through the examinations carried out by experts criminal authorities, which will investigate the circumstances in which it occurred, including the removal of the corpse for the necropsy examination at the premises of the Instituto Médico Legal - IML (BRASIL, 1941).

After the end of the investigations, in the inquisition phase, there will be the indictment or not of individuals, who corroborated for the infraction to occur. Then, the records will be sent to the courts, which will depend on the public prosecutor to file the complaint and, thus, prosecute the referred individuals (LOPES, 2013, p. 95).

This process develops independently of other actions that, perhaps, the referred individuals may respond, namely, civil, social

security and labor, according to the following provision:

Art. 63. Once the condemnatory sentence becomes final, the victim, his legal representative or his heirs may promote its execution, in the civil court, for the purpose of repairing the damage.

Single paragraph. Once the condemnatory sentence becomes final, the execution may be carried out for the amount established in the terms of item iv of the caput of art. 387 of this Code without prejudice to the assessment of the damage actually suffered. (BRASIL, 1941).

Within the scope of criminal justice, there may or may not be the conviction or not of those initially appointed as responsible for the circumstances that gave rise to the accident at work.

According to Silva (1999), 98% of accidents at work are to blame. Moreover, states the author, the number of convictions in the criminal sphere is low, questioning what reasons make criminal conviction a rarity in Brazilian justice. The author also points out that one of the causes would be the formation of the position of Chief of Police, who is responsible for initiating investigations and coordinating the collection of evidence in the inquisitorial phase. However, it does not show the exact number of occurrences involving accidents at work that resulted in injuries or deaths of the victims, which were investigated by the Civil Police and Technical-Scientific Police and which subsequently resulted in convictions.

METHODOLOGY

The present work was carried out through field research, of the descriptive and applied type. For analysis of the results obtained, a quantitative method was used.

STUDY AREA

The territorial limit for data collection was the municipality of Goiânia. It is a city where the seat of government of Goiás is located, a state in the center-west region of the country, located close to the parallel 16°40'43" south and the meridian 49°15'14" west. (CIDADE-BRASIL, 2020).

Founded on October 24, 1933, it currently has 1,516,113 inhabitants. It has an area of 728.841 km², with a population density of 1776.74 inhabitants/km² (GOIÂNIA, 2020).

According to (IBGE, 2020):

The average monthly wage was 3.2 minimum wages. The proportion of employed persons in relation to the total population was 46.1%. In comparison with other municipalities in the state, it occupied positions 9 out of 246 and 4 out of 246, respectively.

The neighboring cities are Nerópolis and Goianópolis to the north; Aparecida de Goiânia to the south; Senador Canedo and Bela Vista de Goiás to the east; and Goianira and Trindade to the west (IPEA, 2015).

DATA COLLECTION

To carry out the research, initially a survey was carried out of the number of occurrences related to accidents at work with deaths, attended by Forensic Experts assigned to the Technical-Scientific Police of Goiás, in the year 2016, in the municipality of Goiânia-GO, since, according to Brasil (1941), these are civil servants responsible for examinations at the crime scene.

The year 2016 was adopted as the period of study so that there was enough time between the occurrence of the accident at work, its communication, investigation and referral of the process to justice, actions that may take a few years.

Considering that the present work was prepared in mid-2020, it was believed that 2016 was an adequate period to search for initial data on occurrences. In order to obtain these numbers, systematic observation was carried out, in which records of attendance of this nature were verified in the Technical-Scientific Police database.

During this period, the records occurred in two systems:

- a) Occurrences attended to in loco were registered in the SAPLIC system (Service, Protocol and Report Control System);
- b) Cadaveric examinations were registered in the SCL (Forensic Medical Institute Report Control System). Consultation was used with the report system of the Instituto Médico Legal Aristoclides Teixeira, the body responsible, among several exams, for necropsies of deaths resulting from violent death.

Thus, to obtain the number of incidents of work accidents attended, the SCL system was consulted. This system is not publicly accessible, and its use is exclusive to servers of the Secretariat of Public Security of Goiás.

In possession of the data of the occurrences, especially the name of the victim, the PROJUDI system (Judicial Process) - website <https://projudi.tjgo.jus.br> - of the Judiciary Power of Goiás, whose consultation is open to the public, were consulted, which cases are already at the procedural stage. After this consultation, he was faced with two situations in relation to the occurrences examined:

- a) Those that are in the procedural phase;
- b) Those who are still in the inquisitorial phase.

DATA ANALYSIS

After data collection, using Microsoft Excel software, a spreadsheet containing the data obtained from occurrences in the SAPLIC and SCL systems, in addition to those present in the PROJUDI system, was prepared, identifying the stage in which each case is found.

Monthly spreadsheets were produced, referring to each month of the year 2016, containing data from the exams performed by the IML. Then, in each worksheet, filters were used, which allowed reaching the results obtained, namely: deaths resulting from accidents at work. To represent the relationship between occurrences that are in the procedural phase and the total number of occurrences handled, a vertical bar graph was used.

Another way to obtain the number of occurrences involving accidents at work with death, assisted in 2016, in the municipality of Goiânia-GO, was through the interview of each criminal expert who was assigned to the violent death group of the Technical-Scientific Police and that, eventually, they may have carried out a service of this nature.

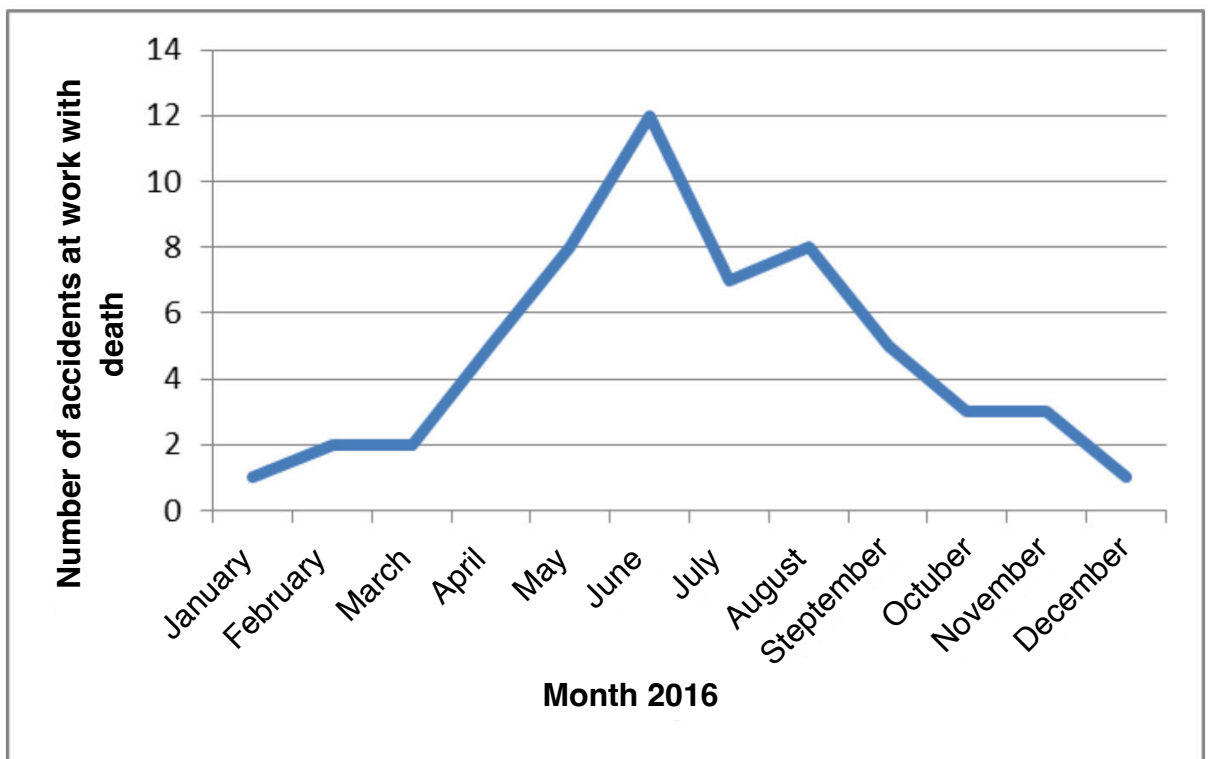
RESULTS AND DISCUSSION

After the methodological procedures described in item 3, which involved, among other steps, consultation with the IML and data tabulation, the number of work accidents with death recorded in 2016 in Goiânia was 57 (fifty-seven), according to Table 1 and Graph 1. It can be seen that the month with the highest number of fatal accidents was June (12), followed by May and August (8).

Month	Number of Accidents
January	1
February	2
March	2
April	5
May	8
June	12
July	7
August	8
September	5
October	3
November	3
December	1
Total	57

Table 1: Number of occupational accidents with death in 2016.

Source: Own authorship (2020).



Graphic 1: Number of occupational accidents with death in 2016.

Source: Own authorship (2020).

The names of the victims of the cases found were entered into the search fields of the PROJUDI system, which is public. It was found that none of them were related to criminal proceedings resulting from the aforementioned work accident. In other words, out of a total of 57 names surveyed, none of them related to criminal proceedings.

Among the causes for the absence of criminal proceedings in the PROJUDI system are the non-initiation of the respective process, mainly due to the difficulty in determining those responsible for the death, in the inquisitorial phase and the time lapse between the date of the fact and the respective initiation of the criminal process. As in the present case, the year 2016 was used, the time span up to the present day is sufficient for the analyzed cases, or part of them, to have evolved to the procedural phase. Thus, it is believed that the police investigation cannot, for various reasons, delimit or even indict those responsible for deaths resulting from accidents at work.

Thus, the data corroborate Silva (1999), who says that criminal conviction is a rarity in the country. Furthermore, the illustrious author points out the lack of intimacy on the part of the Civil Police and state Public Prosecutors with the subject under study, that is, the norms of health and safety at work, as a cause for the derisory number of criminal liability.

According to Melo (2016), there are still few cases in which criminal liability is applied in work accidents, but there is legislation for criminal liability and it must be complied with.

FINAL CONSIDERATIONS

The data presented and analyzed demonstrate the need to improve the investigation of cases involving accidents at work. Silva (1999) points out that 98% of

accidents at work are to blame, however, this number is not supported by reality, as shown by research carried out in the municipality of Goiânia, in 2016.

The need to define which factors influence such an insignificant number of convictions in the criminal sphere and to improve the methods of reaching those responsible who, by action or omission, contribute to the occurrence of work-related accidents with deaths, is obvious. When delimiting them, they need to be analyzed and mitigated so that there is, finally, criminal liability, in order to combat lack of attention to safety and health standards at work.

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