THE ROLE OF LABOUR LAW IN THE PROCESS OF HAVING AN EFFICIENT MANAGEMENT

Camelia OLTEANU[1]
Ana MUNTEANU[2]

Abstract: *The rights and obligations of the parties under an individual employment contract, regardless of its type or duration, must be known and respected in good faith. We believe that any employer who is concerned with the proper functioning of the organization and the efficiency of the whole process of management should know the labour laws and keep up with the new legislation.*

The paper underlines the fact that the employer's obligation to provide information is one of the most important elements underlying the conclusion of a valid employment contract. We also looked at the new concepts brought by the new Romanian Labour Code because we think that they should make way to a better management. The legislative solution in terms of individual performance objectives, though, can sometimes be discriminatory or unfair given the fact that, according to the current provisions, it is a unilateral act of the employer.

***Keywords*:** constitution, contract law, human resources, labour law, labour standards, labour management
JEL Classification: K10, K12,D86, J80,M54

1. Introduction

An efficient management should provide employers with real time and comprehensive information about the current state of their business. It should also facilitate the decision-making process and increase the overall efficiency of the business. Can the knowledge and understanding of labour law help management be competent, adept and effective? We

[1] 'Spiru Haret' University, Faculty of Legal and Administrative Sciences, Brasov, e-mail: olteanucami@yahoo.com.
[2] 'Spiru Haret' University, Faculty of Legal and Administrative Sciences, Brasov.

believe that a good, solid grasp of labour law, contract law and fundamental human rights leads to increased quality of the work processes, transparent business processes, and coordinated and streamlined work processes.

The accession of Romania to the European Union generated, as it was natural, a series of changes not only in the economic, administrative, and fiscal fields, but also at the legislative level. Aligning the Romanian legislation to the European community standards has been and remains a current concern in all areas, especially in terms of human rights taking into consideration both people's relations with public authorities and the employment relationship.

2. Labour standards in the basic areas of law

In terms of legal employment relationships and the correlative rights and obligations of the parties arising as a result of the contract of employment – regardless of its type and duration – the labour law and the relationships governed by it should be of first priority in any organization. In other words, a manager aware of the current legal norms brings efficiency and sustainability to any managerial process. Because both the human factor and the socialization of the labour process, as appreciated in the Russian literature, have a decisive role in the production process (Petrescu, 2012, p. 22), human capital is perceived nowadays as one of the most important investments, an important strategic resource. Hence, the preoccupations towards the recognition and guarantee of the fundamental human rights of the human capital in the rules of international labour law, in the conventions and recommendations of the International Labour Organisation, in the European Union norms and in the Romanian Constitution and Labour Code. And the results are called 'Labour and social protection of labour', 'Right to strike' or 'Economic freedom', to give just a few examples.

The legislation developed in the field of legal employment relationships, and in labour law respectively, has its genesis in the fundamental legal document of our country, document which is the primary legislative source of any branch of law. Thus, the Romanian Constitution governs the fundamental principles of this field, such as Article 41, paragraph 1 that states, 'The right to work shall not be restricted. Everyone has a free choice of his/her profession, trade or occupation, as well as work place.' Paragraph 2 of the same article says, 'All employees have the right to measures of social protection. These concern employees' safety and

health, working conditions for women and young people, the setting up of a minimum gross salary per economy, weekends, paid rest leave, work performed under difficult and special conditions, as well as other specific conditions, as stipulated by the law' (*Constitution of Romania*). All these fundamental stipulations help both employers and employees have a good legal relationship and managers have an efficient workforce.

On the other hand, in the field of legal employment relationships, the employees' freedom to choose a profession, trade or occupation and a work place corresponds to the employers' freedom to choose their collaborators, excluding any administrative constraints for the employment of employees (Ştefănescu, 2002, p. 40).

Article 42, paragraph 1 of the Romanian fundamental law provides the prohibition of forced labour and then paragraph 2 states the situations not covered by the previous regulation, namely 'the activities of doing the military service, as well as activities performed in lieu thereof, according to the law, due to religious or conscience-related reasons; the work of a sentenced person, carried out under normal conditions, during detention or conditional release; any services required to deal with a calamity or any other danger, as well as those which are part of normal civil obligations as established by law'. (*Constitution of Romania*).

The socio-economic rights fall under the same coordinates: the right to strike and the right of association in trade unions, employers' associations (Article 43, paragraph 1 and Article 40 paragraph 1), as well as the equality before the law and public authorities, without any privilege or discrimination (Article 16, paragraph 1) because nobody is above the law (Article 16, paragraph 2).

Due to the fact that the term 'human capital' encompasses not only men, but women also we should look at the legislation regulating the relationships between mangers, employers and male and female employees. Thus, we found a series of European directives regarding the issue of the equality of sexes in this field: the 'old' Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women – Article 1 of this directive provides that the principle of 'principle of equal pay' in Article 119 of the EC Treaty means 'for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration'. It

requires member states to ensure that the national legislation give effect to this principle and provide a mechanism for redress where the principle has been violated (Articles 2 and 3); the Council Directive of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (76/207/EEC). N. Voiculescu (2005, p. 113) had underline the fact that this Directive includes a derogation at Article 2, paragraph 2: 'This Directive shall be without prejudice to the right of Member States to exclude from its field of application those occupational activities and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor'.

Law no. 40/2011 amending and supplementing Law 53/2003 – the current Labour Code – prohibits forced labour and defines it, according to Article 4, as 'any work or service imposed on a person under threat or for which he/she did not freely express his/her consent', listing the circumstances which are the exception to the rule. The legislator has provided the sanction of absolute nullity of an employment contract if illicit work or immoral activities are carried out.

3. The obligation to provide information

Strategy, planning and results are the prior elements of any organization, but a good manager does not only have special technical knowledge or communication skills, but also legal knowledge of the rights and obligations that arise as a result of concluding a work contract. And the best manager knows both their parts of the contract and the employees' ones, because the violation of any may lead to the nullity of the contract, or to disciplinary, administrative or criminal sanctions.

Let us analyze the legal provisions related to the employers' obligations both before signing the individual employment contract and as long as it lasts.

Personnel's recruitment and selection represent two particularly important stages in the process of management, the human resources strategy being, after all, a condition of the quality and performance of an organization. The obligation to provide information, as stipulated by the Romanian Labour Code, Article 17, is the responsibility of the employer and according to the legal provisions the employer shall inform the person

selected for employment on the essential clauses to be introduced in the contract and on other relevant elements:

a) the identity of the parties;
b) the workplace or, in the absence of a permanent workplace, the possibility of working in several places;
c) the headquarters or, as appropriate, the domicile of the employer;
d) the position/occupation according to the Romanian Classification of Occupations or other regulatory documents and the job description;
e) the employee's professional activity evaluation criteria used by the employer;
f) the job-specific risks;
g) the date when the contract takes effect;
h) in the case of an employment contract of limited duration or of a temporary employment contract, its respective length;
i) the length of the leave the employee is entitled to;
j) the conditions under which the contracting parties may give notice and its length;
k) the basic pay, other components of earned income, and the payment frequency for the wage the employee is entitled to;
l) the normal length of work, expressed in hours per day and hours per week;
m) the reference to the collective labour agreement governing the working conditions of the employee;
n) the length of the probationary period.

If the person selected for employment should perform their activity abroad, the employer shall communicate them in good time, before the departure, all the above information and information on the following, according to Article 18 of the Labour Code: the main labour law regulations in that country, the currency of wage payment, and the payment methods, the climatic conditions, and the local customs whose breach would endanger their life, freedom or personal safety.

According to Article 16 paragraph (1) of the amended Labour Code, the individual employment contract has become an *ad validitatem* written contract under the civil or criminal sanction applicable to the employers. The mandatory written form of an individual employment contract is applicable to all types of contracts (an employment contract of limited or

unlimited duration, of a temporary employment contract, part-time work, work at home, and apprenticeship at the working place).

Special clauses specific to each activity that can be inserted in the individual employment contract are expressly provided in Article 20 of the Labour Code: the non-compete clause, the mobility clause, the clause on vocational training and the confidentiality clause (the enumeration is not meant to be limitative).

The non-compete clause can occur both when concluding the individual employment contract or during its performance, producing its effects when the activities prohibited to the employee upon the cessation of the contract, the amount of the monthly non-compete benefit, the time limits of the non-compete clause, the third parties for whom it is prohibited to perform activities, and the geographical area where the employee may reasonably compete with the employer, have been specifically provided for in the individual employment contract. Thus, according to the legal provisions, the monthly non-compete benefit owed to the employee may not be a wage-like benefit, shall be negotiated and shall amount to at least 50% of the average gross wage income of the employee during the previous six months before the cessation of the employment contract or, if the duration of the individual employment contract was less than six months, of the average gross wage income owed to them during the contract.

According to Article 22, paragraph 1, the non-compete clause may take effect for a period of maximum 2 years from the cessation of the individual employment contract and cannot have the effect of preventing the employees from working according to their profession or specialization. The immediate measure that could be taken by the employees is to address to the Territorial Labour Inspectorate, which may undermine the non-compete clause.

The clause on vocational training includes the practical way of holding it: the rights and obligations of the parties, the period and frequency of the training, the contractual obligations of the employee with respect to the employer's expenses incurred for such participation.

Article 25 of the Labour Code regulates the possibility of introducing a mobility clause in the individual employment contract. Under the mobility clause, the parties shall provide that, taking into account the specificity of the work, the employee would not perform the job in a single workplace. In such case, the law stipulates that the employee shall enjoy supplementary benefits, in money or in kind, the sum being stipulated.

Under the confidentiality clause, regulated by the same document, Article 26, the parties shall agree, for the entire length of the individual employment contract and after its cessation, to refrain from disclosing data or information they took knowledge of during the performance of the contract, under conditions laid down in rules of procedure, collective labour agreements or individual employment contracts. It is important to know that breach of this clause by any of the parties shall incur the obligation of the liable party to pay damages.

4. The new Romanian Labour Code has new concepts which should lead to a better management

The new Labour Code has brought substantial changes with important implications for improving the management activity within any organization. Thus, new concepts were introduced, concepts which were not included in the previously law, namely: the employees' professional activity evaluation criteria used by the employer (Article 17, paragraph 3, letter e), the employees' individual performance objectives (Article 40, paragraph 1, letter f), as well as the procedures for the employees' professional assessment criteria (Article 242 letter i), the latter being part of the internal rules of each and every entity.

According to the existing legal framework, the employer is obliged to introduce evaluation criteria for their employees and has the right to establish performance criteria. Thus, the performance objectives or targets aim at achieving measurable or quantifiable results, with a viable character in relation to a predetermined referential or one determined in real time by the entity's management system (*Dicţionar de Management*, 2011). The performance objectives can be changed annually according to the development strategy of the organization and they should be made known to each and every employee.

As we have already seen, the employees' professional evaluation criteria are included in the information on employment contract clauses specified in Article 17, while the individual performance objectives are left to be decided by the employer, who may determine the amount and may decide to inform the employee on these individual performance objectives (Moarcăş Costea, 2011, p. 45)

The legal provisions stipulate that the individual performance objectives are established after the conclusion of the employment contract unilaterally by the employer, although Article 37 of the Labour Code states that, 'the rights and obligations regarding the employment relationships

between the employer and the employee shall be established according to the law, by negotiation, within collective labour agreements and individual employment contracts'.

This legislative solution can create some inaccuracies regarding the correlative rights and obligations of both parties. In this regard we consider appropriate that the individual performance objectives should be included and regulated under Article 17 – the employer's obligation to inform the employees, taking into account the specific tasks for both types of employees: executives and management.

5. Conclusions

We think that both managers and the process of management are positively influenced by having a solid grasp ofthe contract law, the labour law, and the labour standards. It is really important that the rights and obligations of the parties under an individual employment contract, regardless of its type or duration, should be known and respected in good faith.

We believe that any employer and/or manager who is concerned with the proper functioning of the organization and the efficiency of the whole process of management should know the labour laws and keep up with the new legislation and the newest labour law amendments and standards.

References

Moarcăş Costea, C., (2011). *Evaluarea salariaţilor în raport cu criteriile de performanţă şi natura juridică a obligaţiilor specifice contractului individual de muncă*, în *Modificările Codului munci işi ale legii dialogului social*, Bucureşti: Universul Juridic Publishing House.

Petrescu, I., (2012). *Managementul şi managerii în Federaţia rusă*, Bucuresti: Expert Publishing House.

Ştefănescu, I. T., (2002). *Dreptul muncii, Curs universitar*, Bucureşti: Lumina Lex Publishing House.

Voiculescu, N., (2005). *Drept comunitar al muncii*, Bucureşti: Rosetti Publishing House.

*** (2011). *Dicţionar de management*, Bucureşti: Pro Universitaria Publishing House.

Constitution of Romania at http://www.cdep.ro/pls/dic/site.page?id=339&idl=2

Council Directive 75/117/EEC at http://www.secola.org/db/3_10-11/en_75-117-ewg.pdf
Council Directive 76/207/EEC at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.1976.039.01.0040.01.ENG
Romanian Labour Code at http://www.codulmuncii.ro/en