LEGAL LABOUR RELATIONS – EMPLOYERS AND EMPLOYEES – GUARANTEES OF THE EFFICIENCY AND EFFECTIVENESS OF THE MANAGERIAL PROCESS

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Abstract: *Whatever type of relations are established within an organization, the labour relations, namely, the legal labour relations that arise following the signing, modification, suspension of the labour contract, are particularly important because not only the regulation is a priority, but also their acknowledgement by the actors involved in any type of organization. Regardless of the structural changes that occur in the life of an organization, regardless of its statutory obligations, the existing hierarchy, the introduction of the new measures regarding the management of the human resources should take into account primarily of their legality, because any illegal activity both at the management level of the organization and at the employees' level results in liability according to law.*

Moreover, the development of the labour relations, given the dynamics of the society, is evident and the notion of teleworking became a reality and also a response to globalization, to the international business world, but unfortunately it is uncertain in Romania.

The paper presents a brief overview of the rights and obligations of both parties at the moment of signing the labour contract, taking into account the specificity and particularities of this type of contract, as well as some legal and managerial aspects regarding teleworking.

Keywords*: rights, obligations, labour contract, labour relation, management relationship*

JEL Classification: *K31,D86,J80,M54*

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1. Introduction

The Romanian Dictionary of Management (Nicolescu, 2011: 522) defines the labour relations as the relations arising between the employers and the employees within an organization, relations that may be formal (labour contracts, procedural agreement) or informal (as the psychological contract, expressing certain assumptions and expectations about what the managers and the employer have to offer and what they are obliged to give effectively. The concept of labour relations is important for the human resources specialists as it governs an important area the organization should know and take into account when developing or implementing its human resources policies and procedures.

In the specialized legal literature, the concept of labour relations defines *all the social relations between individuals at work*, based on direct application of labour on the means of production. Therefore, the labour relations within any organization are particularly important because the efficiency and effectiveness of the managerial process depends of how these relations are governed and determined later. The relations of authority, the relations of subordination, and the relations of management or organization – all these kinds of relationships are based on the principle of legality which requires the compliance with the basic law and with the other subsequent acts. The adaptability of the legal norm in the labour field is determined by the constant development of the social partners and the economic and social reality of the society at every stage of its development. "Amending the law must take into account the essential purpose of the concepts of adaptability and perfectibility, respectively the economic and social development of the country, the civility of the working environment, and the consolidation of the social partnership". (Athanasiu, 2011: 8)

In conclusion, the Romanian legislation on labour law has gone through and still goes through substantial changes, amendments imposed by the European legislation and by the diversity of the social labour relations arising as soon as the labour contract is signed.

2. The legal framework governing labour

The headquarters of any primary legislation of any branch of law is the Fundamental Law, which under the name Common provisions laid down a series of core and defining principles of the institution of human rights, considered indispensable for understanding all the issues in the field. Among these provisions stated by the Romanian Constitution, there are: the *universality* of the rights and freedoms (Article 15 par.1), the principle of non-retroactivity

of laws (Article 15 par.1), the equality of citizens before the law and public authorities (Article 16). Regarding the latter principle, since 1970 at the European Community level there have been adopted a total of 13 laws that were subsequently completed, covering a variety of areas. As these laws cover a range of areas, it is normal to find included the equal treatment when applying for a job, equal treatment at work, protection of pregnant workers and breastfeeding mothers, and the rights to maternity leave and parental leave as the European Commission informs us in a short policy coverage called *Tackling discrimination at work*. Non-discrimination at work was subsequently completed, prohibiting discrimination of a person based on: racial and ethnic origin, religion and belief, disability, sexual orientation and age. The refusal of a physical or juridical person to hire a person or conditioning a job or a competition launched by an employer by belonging to a certain race, nationality, religion, or a disadvantaged category or by their beliefs, sex or sexual orientation, with the exception of the positive measures aimed at protecting disadvantaged groups, is prohibited. (Voiculescu, 2003: 24)

As legislation is vital in the fight for equality, the European Commission says that the European Union is supporting a range of "measures to combat discrimination, from funding projects, to carrying out research to supporting awareness-raising and information campaigns". According to Article 20 paragraph 1 of the Romanian Constitution, as O. Predescu and I. Necsulescu have already noticed, "the constitutional provisions on citizens' rights and freedoms shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party". (Predescu, Necsulescu, 2012: 113)

Regarding the economic and social rights, the Romanian Constitution regulates the following: (Duculescu, Călinoiu, 2010: 58) the right to work and social protection (art. 41), the right to strike (art. 43). Conceived as a right with complex content (Pavel, 2010: 381-383), the right to work includes: freedom to choose profession, trade or occupation, freedom of choice of employment, social protection of labour, remuneration of the work, the right to collective bargaining.

Art. 42 of the Romanian Constitution is about the prohibition of forced labour and the limiting situations not covered by the previous regulations, namely, "activities of doing the military service, as well as activities performed in lieu therefore, 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".

The *Labour Code* is the main source of the provisions governing the social relations of work. Chapter II (Article 3 – Article 9) of the Romanian *Labour Code* lists the fundamental principles governing labour relations as follows: "Any person is free to choose the job, profession, trade or activity to perform and no one may be forced to work or not to work at a specific workplace or in a specific a profession, whichever they may be". The legislator has provided automatic nullity of the employment contract for failure to comply with these provisions. Article 8 paragraph 1 states, "the employment relationships shall be based on the principle of consent and good faith".

The *European labour law* was the standard to be achieved by the national legislation, the alignment with the European standards representing a legislative breakthrough. The labour law aimed at the improvement of the working conditions and a high social protection level for workers, covering two areas: working conditions and information and consultation of citizens in the event of collective redundancies.

3. The individual labour contract

The Romanian *Labour Code* (Article 10) defines the individual labour contract as follows: "An individual employment contract is an agreement under which a natural person, called employee, undertakes to perform the work for and under the authority of an employer, natural or legal person, against a remuneration called wage". As everyone can notice, the legal definition alleges the relations to be established between the employer and the employee: the subordination relationship and the economic relationship following the payment of the value of work performed. "This atypical subordination is born after the time the contract was signed when the employee starts to perform the work that was required. For the employers, their superior position is expressed by the powers at its disposal, powers that materialized in the right to direct and organize work, the right to issue rules and disciplinary norms" (Cazan, 201: 13-14). "In other words, both the employer and the employee are at the same time creditor and debtor in the individual employment contract". (Vieriu, 2016: 18) Work is not a commodity and labour pay is not just a pecuniary exchange for the work performed; "work is an embodiment of the dignity of each one of us". (Athanasiu, 2011: 9)

The unlimited duration of the labour contract is usually the norm of this type of contract, the individual employment contract concluded for a limited period of time representing the exception, Article 83 under Title II of the Romanian *Labour Code* listing the limiting situations:

a. replacement of an employee when his/her work contract has been suspended, unless that employee participates to a strike;
b. temporary increase or/and modification of the employer's activity;
c. performance of a seasonal activity;
d. when it has been concluded under legal provisions issued in order to temporarily benefit certain categories of unemployed people;
e. employment of a person who, within 5 years from the date of employment, fulfils the old age retirement conditions;
f. filling in an elective position within trade unions, employers' organizations or non-governmental organizations, during the mandate;
g. employment of retired people who, under the terms of the law, may cumulate the retirement benefit with the wage;
h. in other cases expressly provided for in special laws or for the achievement of works, projects, programs, under the terms established in the collective work agreement concluded at national level and/or at branch level.

Referring to the common legal status of the individual employment contract of unlimited duration, Article 87 paragraph 1 states, "As regards the employment and working conditions, the employees with an individual employment contract of limited duration shall not be treated less favourably than the similar permanent employees, just based on the duration of the individual employment contract, except for the cases where the differentiated treatment is justified on objective reasons".

Since adapting the Directive no. 2008/104/EC of the European Parliament, which established a non-discrimination framework between workers as well the diversity of the relations on the labour market, the status of each worker, the working conditions and, hence, the employment contract which s/he concludes, the Romanian *Labour Code* regulates a new institution – work through temporary employment. Art. 87 – 100 from the Romanian *Labour Code* stipulates that work through a temporary employment agency is the work performed by a temporary employee who concluded a temporary employment contract with a temporary employment agency, made available to

the user to work temporarily under the supervision and management of the latter.

Directive 97/81/EC of 15 December 1997, aimed at eliminating discrimination of part-time workers, improving the working conditions and addressing the need for labour flexibility, namely the labour market flexicurity. In this respect, the Romanian *Labour Code* provided the *individual part-time work employment contract*, whose features distinguish it in relation to other contracts typology. An example: a ban on overtime, except in cases of force majeure or for other urgent works to prevent accidents or to eliminate their consequences.

Another type of labour relations is work at home representing that type of contract whose regulatory distinguish it from all the other types of contracts. The development of this type of contract is inextricably linked to the economic and social development, generating a different kind of relationship between the employer and the employee. Its particularity is determined by the place of work, which is not the employer's headquarters, but the employee's residence. According to Article 108 of the Romanian *Labour Code*, "the employees performing, at their domicile, the specific tasks of their position shall be considered home workers". In order to fulfil their respective duties, home workers set their own work schedule.

As Dragomir C. (2016: 13) notices, "The society based on knowledge presupposes the stimulation of continuous learning through the assimilation of knowledge of science and technique and its transformation, by virtue of use, into competitive advantage". The members of the knowledge society, no matter if they are employers or employees, try to keep up with the modern times from many points of view, including the labour relations. Considered an important step in reconsidering the classical labour relations, the individual home working contract represents a breakthrough in the way that the employee by virtue of rights and obligations assumed under the employment contract and using new technologies, fulfil the professional specific tasks undertaken at a place other than the employer's, i.e. the domicile of the employee or any other place of his choice. Home working, also named teleworking, does not have an own internal regulation yet in Romania, but at the European level there is a Framework Agreement on Teleworking concluded between the European cross-industry social partners in 2002. It was signed by the European Trade Union Confederation (ETUC), also representing the EUROCADRES/CEC Liaison Committee, the Confederation of European Business (BUSINESS EUROPE,

then called UNICE), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP), and the European Association of Craft, Small and Medium-sized Enterprises (UEAPME).

As the *Reporton the Implementation of the European Social Partners' Framework Agreement on Telework* underlines, telework is recognised by "both sides of industry as a means of modernising work organisation by introducing flexible work arrangements and greater autonomy and of achieving better reconciliation of work, private and family life".(Commission of the European Communities, 2008) A great advantage of regular telework comes from the fact that it can reduce the carbon emissions from commuting to work. Hence, telework has a positive impact on the environment.

"Achieving the organization's goals in a complex and volatile environment where managers are forced to make faster decisions and to change them as fast" (Negulescu, 2014: 120) may lead to the adoption of teleworking more and more, faster and faster. More and more managers may choose to hire people who want to work from home. However, in the Romanian private sector, teleworking is not yet widespread although in many European countries it knows a variety of stages of institutionalization, planning or research.

In 2008, when the Commission of the European Communities wrote and published the *Report on the Implementation of the European Social Partners' Framework Agreement on Telework*, the Romanian social partners affiliated to the European social partner organisations which joined the European social dialogue at the beginning of 2007 did not yet start implementing the Framework Agreement on Telework. Therefore, "the trade unions, including the National Trade Unions Block (BNS), the National Trade Union Confederation 'Cartel Alfa', the National Confederation of Free Trade Unions of Romania 'Fratia' (CNSLR-Fratia) and the Democratic Trade Union Confederation of Romania (CSDR), and the employer organisations, in particular the Romanian Alliance of Employers' Confederations (ACPR), have nothing to report yet. Nevertheless they have acknowledged the need for telework regulations at national level and are willing to take the Framework Agreement as a guideline". (Commission of the European Communities, 2008) The latest Romanian *Labour Code* contains a chapter (Chapter IX) on home-based work (Articles 108 – 110), according to which home workers enjoy all the rights laid down by law and by collective agreement that are applicable to employees working at employers' premises. General provisions on data

protection and the right of privacy are also applicable. However, the provisions regarding home work do not take account of the work carried out using information technology.

Naturally, not all the specific duties from a job description can be done at home, only in those cases where outsourcing the work is without prejudice to its purpose, involving a degree of autonomy or professional independence (not economic). In this regard, we want to emphasize another type of labour relations, an employer – employee relationship based more and more on cooperation and less on subordination. Maintaining a strong employer – employee relationship can be the key to the ultimate success of an organization. Most employers aren't into equality as they would like to believe they are. In some cases favoritism can be subconscious. However, by embracing equality for all employees creates a fair and equal workplace environment for all. If every employee feels equal and important they are more likely to work harder and be more productive.

4. Conclusions

The modernization of the managerial process through constructive and functional transformations likely to increase the ability to apprehend and consider the changes in the organization's environment (Petrescu, 2012: 95) should take into account primarily the social relations which are regulated by the legal provisions. Knowing the law, regulations and legal provisions by both the organization's management and the employees contributes to also strengthening other types of relationships that arise within any organization; how they are applied and known leads to the efficiency and effectiveness of any managerial process.

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