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Short Analysis of the Essential Elements of the Typical Employment Contract and of its Importance in Maintaining it within the Current Social and Economic Context

Carmen Constantina Nenu¹

Abstract: Nowadays, the typical individual employment contract is the main source of individual legal labor relations, but is important to find the road of this instrument in the future. It is a result of the fact that labor market dynamics should be reflected in the new meanings of rights and obligations of the parties, which cannot be covered by legal acts, with their general and impersonal character. The purpose of the legal work relationship is a special one, connected to the personality of human beings, and, as people are different, we need individual legal acts which materialize working conditions in which each of the employees provides work. Given the ongoing flexibilization of labor relations and the emergence of new types of contracts, an essential question arises. The question is whether the classic employment contract will maintain its importance in the future, whether it will be a response to the interests of employers and employees in a world characterized by economic instability, on the one hand, and by lack of skilled labor force on the other hand. Therefore, this study aims to identify the characteristics of the typical employment contract, as they were highlighted at international and national levels and the extent to which they will be maintained in the future.

Keywords: classic work; characteristics; security; labor market; instability

1. Introduction

Both at European and national level there are significant concerns for finding new forms of regulating individual labor relations, forms that should answer the current needs of the labor market. In this social economic context, the typical employment contract, being signed for an indefinite term, with full-time work, the employee's work being carried in a location belonging to the employer, does not benefit from the attention that it has been paid for decades.

Therefore, it is important to highlight that the characteristics of the individual employment contract are specific primarily to the typical employment contract, because it responds and combines the best interests of the employer and the employee, despite the emergence of new types of contracts, which give a certain precariousness of labor relations.

The analysis of the current standard employment contract and of its destiny in the near future is absolutely necessary to identify the extent to which protection of employee rights in the work relationship suffers by adopting atypical labor contracts.

¹ Senior Lecturer, PhD, Faculty of Law and Administrative Sciences, University of Pitesti, Romania, Address: Târgul din Vale Str., Pitesti 110040, Romania, Tel.: +4 0348 453 100, Corresponding author: carmennenu2006@yahoo.com.

2. Characteristics of the Individual Employment Contract f International Regulations

Internationally, the International Labor Organisation has given priority to the individual employment contract concluded for an indefinite period and full-time, as the legal instrument that responds best to the principle of protecting the employee in the relationship of subordination created in the contract. The ILO vision on the duration of the work is found for the first time in the Recommendation 166/1982, Member States being invited to establish adequate safeguards against the use of fixed-term employment contracts. Given this recommendation, but also the fact that the overwhelming majority of ILO member States circumscribe their legislation to this principle, the rule on employment contracts is employment contracts of indefinite duration. In the context of globalization and pressure of unprecedented economic development, materialized in increased competition between operators, flexible labor relations through the use of fixed-term employment contracts, part-time temporary employment agency or labor at home, appears to be a necessity. Although aware of all these transformations, the ILO continued to address in its work, mostly, the issue of individual employment contract of indefinite duration. (Popescu, 2006, pp. 227-234)

At the ILO Conference in 1998 it was tried for the first time to regulate the employment relationship of those who perform an activity or provide a service under a civil or commercial contract, but what was only obtained was keeping this problem in the attention of the organization. Thus, in 2003, the ILO Conference recommended Member States to adopt policies that prohibit the practice of concealing the employment relationship, practices that have as effect the absence or reduction of social protection for workers, which is only provided by employment law.

Within the ILO Conference in 2006 Recommendation 198 was adopted, regarding work relationships, which requires Member States to formulate and implement, after consultation with social partners, national policies that would allow the determination of the specific employment relationship, would formulate criteria to distinguish between employees and self-employed workers, namely to establish measures to combat disguised employment relationships and to adopt rules applicable to all forms of contractual arrangements. (Popescu, 2006, pp. 231-232)

Starting from the consideration that, in some cases, difficulties in establishing an employment relationship occur, either because rights and obligations of the parties are not clearly defined, because there are attempts to disguise the employment relationship, or because the law, its interpretation or application is insufficient or limited, all these making workers vulnerable, the Recommendation states that it is necessary to adopt a national policy to protect workers within employment relationships. In the second part, the Recommendation 198/2006 of ILO states the determination of the existence of an employment relationship by conditions and by specific indicators. (Popescu, 2006, p. 233)

This is the first time an international document officially defines the characteristics of the individual legal work contract and the legal relationship arising under the individual employment contract, and this paper aims to explore these very traits. In this introduction we only indicate what the ILO recommends to Member States concerning the characterization of the employment relationship.

Thus, under section 12 Member States are advised to consider clarifying the conditions that determine the existence of an employment relationship, for example, subordination or dependence. By the provisions of sections 13, Member States are recommended to consider the possibility of defining in their laws, or by other means, specific indicators of the existence of an employment relationship, indicators that could include: (Popescu, 2006, pp. 232-233)

2.1. The Fact that the Work

- is done according to the instructions and under the control of another person;
- involves the integration of worker in organizing the enterprise;
- is done only or primarily for the benefit of another person;
- must be provided personally by the worker;
- is carried out according to a schedule determined or at the specified workplace or work accepted by the applicant;
- has a specified duration and a certain continuity;
- involves the provision of tools, materials or machinery by the employer.

2.2. Other Features of the Employment Relationship

- the worker's regular pay; remuneration is the only or main source of income;
- payment in kind is made in the form of food, housing, transport etc.;
- recognition of certain labor rights as weekly rest and annual leave;
- financing professional employee travel by the person requesting the provision of work;
- no financial risks for the worker.

As noted, the 198/2006 ILO Recommendation on the employment relationship, highlights the characteristics of the individual employment contract, updating them and focusing on current legal and economic subordination of the employee, as a distinguishing feature that customizes it to other civil or commercial contracts with a similar object. Obviously, all these guidelines are not legally binding, but they have their own power, stemming from the international character of the organization, for guiding the ILO Member States labor laws and not only. Undoubtedly, these guidelines concern and enactment of legal work in Romania. In this respect, the following principles contained in the ILO Recommendation (Ștefănescu, 2008, p. 76; Popescu, 2006, p. 234) have a special importance:

1. member states should, within their national policies, consider the possibility of establishing a legal presumption of existence of an employment relationship if one or more relevant indicators exist;
2. protection of employees must not conflict with civil or commercial real relations, thus ensuring that people engaged in a true working relationship benefit from the protection to which they are legally entitled.

Regarding the legal framework of the European Union, there is so far no Community act to crystallize, as does the ILO Recommendation 198/2006, the characteristics of individual employment relationship. However, such features are to be found, scattered in a number of EU regulations and directives. Moreover, the European Commission frequently called on Member States to take account of Recommendation 198/2006 of the ILO on the employment relationship. In its Communication the Commission has made to the Council, the European Parliament, the Economic and Social Committee and the Regions Committee, Communication entitled “The result of public consultation on the Commission Green Paper” - Modernizing Labor Law to meet the challenges of the 21st century” (Commission document COM (1007) 627, final) “emphasizes the following“ The European Parliament called for an initiative to the convergence of national definitions of the status of workers in order to ensure more consistent implementation and effective application of the *acquis communautaire*. He urged Member States to promote implementation of the 2006 ILO Recommendation concerning the employment relationship. Some Member States have also suggested that the recommendation should serve as a basis for discussions between Member States and social

partners on how to best approach at European level the phenomenon of disguised employment relationships.”

In conclusion, the ILO recommendation opened a perspective for a new vision of labor relations, while maintaining the foundation on which the employment contract (Popescu, 2006, p 234) is based, by highlighting characteristic features of this type of legal relationship.

3. The Elements of Typical Employment Contract

Characteristics of the individual employment contract are those features that define and customize it in relation to other civil or commercial contracts also involving the provision of work. The identification of these features was mainly a result of doctrine, but also of specific legal practice. Although not specifically outlined by the legislature, these characteristics have been the basis for legal regulation of individual employment contract. The national doctrine (Ștefănescu, 2007; Popescu, 2006; Volonciu, 2007) has characterized the individual employment contract mainly by the subordination relationship, mostly legal, but also with an economic component, that arises between the employee and the employer during the course of employment, highlighting other distinguishing features as follows: it is a legal document that is bilateral, commutative, for consideration, concluded *intuitu personae*, involving the main obligation of the parties to conclude a contract unaffected by its ways, on a continuing basis, whose content has a legal and a conventional part. Also, the employment contract is characterized by the fact that it is governed by the employee protective legislation, designed to alleviate the unequal strength relationship of its parts.

All these characteristic features, whose list is not exhaustive, results from work-itself, which is not a commodity and must have specific regulations in relation to those applicable to common law contracts. The current legislation maintains, as a rule, concluding full-time individual contracts of indefinite duration, where work is provided in locations belonging to the employer. This regulation aims to legally protect an employee to whom this type of legal work relationship provides stability. The Labor Code in force exhaustively governs the institution of the classic individual employment contract, to which it devotes 100 articles. These articles contain provisions relating to the conclusion, performance, amendment and termination of the individual employment contract. In order to clarify the various legal nuances of the typical employment contract one must consider that its elements should be reviewed, that is, the indefinite duration for which it is concluded, the full time work and the work place.

3.1. Indefinite Duration

The indefinite duration of an individual employment contract does not mean that it is completed by the appearance of old age social risk but that the duration of that contract is not known at the time concluded. As shown in the literature (Cristoforeanu, 1937), by the indefinite duration of the contract it should not be understood that the employee is required to work all his life for that employer or that the employer is required to keep the employee in service to death, but the duration is not known during the time the contract was concluded. Obviously, an individual labor contract concluded for an indefinite period may be terminated at any time whether the limiting conditions specified by the law are met. The indefinite contract may be terminated at any time by the employer or by the employee, provided that the employer is restricted in the ability to fire the employee by the fulfillment of conditions imposed by the legislature.

3.2. Full Time Employment

To qualify as typical employment contracts of indefinite duration a contract must be completed full-time, or for a full time job. The normal working hours for employees with labor contracts, according to art. 112, paragraph 1 of the Labor Code, are, on average, 8 hours per day and 40 hours a week. For young people aged up to 18 years working full time means, according to paragraph 2 of the same article, 6 hours per day and 30 hours a week. Distribution of working hours in a week, according to art. 110, paragraph 1 is usually uniform, 8 hours per day for five days, two days of rest, the parties being able to opt for an unequal distribution in days subject to the limit of 40 hours a week.

3.3. The Work Place

A typical employment contract requires that the place of work belongs to the employer, who is obliged to provide the necessary working conditions for employees, according to his own rules set out in establishing and organizing documents and in internal regulations. Also, with indefinite contracts, employees are defended against possible abuses by employers, the legal rules governing dismissal. Also, the typical individual employment contract is a legal instrument favorable to employers, who need constant work provided by individuals with certain training. Moreover, the employers are directly interested in investing further in training order to obtain benefits. Employees with an employment contract for an indefinite period demonstrate more responsibility, being stimulated, depending on the organizational culture, to contribute directly to the growth and development of the activity for an employer where they intend to work for an indefinite period of time, to be promoted professionally.

4. Conclusions

The number of typical employment contracts concluded for an indefinite period and full-time in our country and also in European labor market is overwhelming. This form of contract still responds best to the state of current social relations of work, being an incentive for employees that, in terms of a certain stability of employment, are interested in professional development and professional fulfillment of duties – a beneficial attitude towards the employer. The specifics of labor relations and of the employee rights protection principle are solid arguments in keeping the role of the typical employment contract within the sources of the legal labor relations, ensuring job security to the desired extent.

5. References

- Popescu, A. (2006). *Dreptul internațional al muncii/International Labor Law*. Bucharest: C.H. Beck.
- Ștefănescu, I.T. (2008). Impactul globalizării asupra legislației muncii și securității sociale – perspectiva europeană/The Impact of globalization on labor law and social security law - a European perspective. *Dreptul/Law*, no. 4.
- Ștefănescu, I.T. (2007). *Tratat de dreptul muncii/Labor Law Treaty*. Bucharest: Wolters Kluwer.
- Cristoforeanu, E (1937). *Teoria generală a contractului individual de muncă/General Theory of the Individual Employment Contract*. Bucharest: Curierul Judiciar.
- Athanasiu, Al.; Volonciu, M.; Dima L. & Cazan, O. (2007) *Codul muncii. Comentariu pe articole. Vol. I/Labor Cod. Commentary. Vol. I*, Bucharest: C.H. Beck.

*** Commission document COM (1007) 627, final.