Articles

Judicial Labor Relations in the European Union

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Abstract: The European social law represents the branch of the international labor law consisting of the regulations in this matter adopted by the Council of Europe, respectively the European Union. If the instruments elaborated within the Council of Europe are, in virtue of its objectives, limited as number, the law elaborated within the European Union, known as „community social law" knew full expansion in the latest years. In the current language, we are witnessing a confusion of terms, the collocation „European social law" being attributed either to the law created through the conventions and agreements of the Council of Europe, as „European" in title, or the law consisting of the regulations and directives of the European Union. In reality, in our opinion, both sets of regional norms, together, represent a new branch of international law, maybe insufficient grounded theoretically, the social European law. The work relations related to the European social law are not established only in the sector of production of material goods, but also in the section of nonproductive activities such as those units (economic agents, private and judicial entities, state or private, institutions, administrative authorities etc.) which hire personnel for management or execution positions, in productive or nonproductive sectors (hold and exert administrative, sanitary etc. positions). The social work relations stemming from the individual labor contract have a leading position from the other typical or atypical forms, judicial work relations in the European social law and the law of the EU member states.

Keywords: social work relations; European social law; judicial work relations

1. Introduction

The treaties, conventions, regulations, recommendations, protocols, directives, etc. elaborated in the sector of work relations by the ILO, EC, EU forms what is called the European social law[3] and cannot be regarded as „global law" consisting of rules universally valid in any state and in any geographic area. The judicial norms

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[3] See "Fundamental principles of the social European law", reviewed European Social Charter, ratified by Romania through Law t4/ 3 rna. 1999 and published in the Official Monitor of Romania, part I, no. 193 on May 4, 1995 (CSER), the European Code of Social Security (ESSC) on 16 IV, 1964, The judicial statute of the migrant worker, Strasbourg, 24 XM977.

referring to the individual and collective judicial work relations do not have effects by themselves, but only following their ratification by the member states and their transposition in practice by the internal legislation.

The establishment of the object of the social European law is related to the social individual relations, relations formed in the work process between private or judicial entities out of which one has the quality of worker (employee) and the other one (private person most of the times or legal entity) has the quality of unity (company or institution) for the provisions of a certain paid work.[1]

This category of social relations which is formed between a private person on one hand and a unity on the other hand in the EU states, following the provision of work by the first entity to the benefit of the second, in exchange of a salary, comes from the individual work contract or work relations. We can say that a first category of individual social relations refer to those relations based on the individual labor contract. The social relations deriving from the individual labor contract have a leading position than the other forms, typical or atypical, of the judicial labor relations in the European social law and in the law of the EU member states.[2]

Any private entity has the right to earn their existence through free chosen work, performed in one of the EU member states. The person who graduated a form of professional training or who did not graduate the latter and choses a nonqualified activity can dedicate to any profession, labor or activity by offering his services to the benefit of a national or international employer. No person, irrespective of his professional training, can be bound, by a contract or work convention, to work for his entire life and no person can be bound not to exert a certain profession or activity, irrespective of the type on activity.

The labor freedom is guaranteed by the EU regulations and the constitutions of the member states and the private entity can chose the working place or profession without being prevented or constrained by the employer or any other entity.

The employer (unit)- economic agent, company, institution or any other private or legal entity- cannot make decisions especially to what concerns the hiring, labor

[1] The reviewed Social European Charter, ratified by Romania through Law no. 143 in 1999 and published in the Official Monitor of Romania, part I, no. 193 on May 4 1995, (CSER); the European Code of Social Security (ECSS) in 16V, 1964, Judicial statute of the migrant worker, Strasbourg, 24.X.1977.

[2] *Ibidem*.

distribution, training, promotion, salary, recognition of social rights or internship contract based on criteria such as: sex, age, nationality, race, religion, political options, social background, handicap, association or non-association with a union and union activity of employees.

The employer has the obligation, according to Directive 91/533/14.X.1991 of the EEC that prior to the hiring, to inform the persons that request the position, at least the following elements: headquarter of the company, type of property, social conditions that can be provided (accommodation, transportation, nursery etc.), work contract (position, number of vacancies), employment conditions (noise, toxin, physical labor, neuro-physical conditions, underground work etc.) requirements to occupy the position (studies/ qualifications), attributions of the position, effective duration of work (in hours/ day and days/ week), duration of vacation and conditions for granting, trial period (if necessary), conditions for notice granted by the contracting parties and its duration, indication of the collective labor contract governing the labor conditions of the employee.

According to article 1 of directive 91/533, these elements of information established by the EEC Council are presented to "*every employee with a work contract or a work relation governed by the law in force in a member state or subordinated to a law in force*[1] *in one of the member states*".

The private entity with family wanting to occupy a position has the right to do so, without being discriminated and, as much as possible, without conflicts between his professional responsibilities and the family ones.

The employer can offer the occupation of the position or unit skill (for example: IT worker, electrician etc.) or multiple identical positions, of the same nature or different ones (for example: accountants, mechanical engineers, economists etc.). The identical positions or positions of the same nature offered to the applicants have to enclose the work attributions of equal nature. The positions of equal value entail a series of professional knowledge, proved by a title, diploma or professional practice and capacities that derive from the experience acquired and which involve physical effort, nervous tension and the same responsibility.

[1] "*In general, many provisions within the legislation of the Union indicate that the functioning of the treaties is made with the strict compliance with the principles applicable in the member states*". See, (Goga, 2012, p. 67).

According to Directive 91/533 the member states can chose not to apply the provisions on informing the worker in the following situation:

- when the duration of the work contract changes from a month or weekly work duration does not exceed 8 hours and
- when the contract or work relation has an occasional or particular character on the condition that objective grounds justify the lack of application of the directive. For example, when a work contract is concluded for an agricultural season, touristic season or provision of household works.

In our opinion the information given to the employees should contain all the details of the relation for which the employer is hiring personnel, respectively also those limited to a month as well as the seasonal or touristic ones, household etc.

The general rules that have to be imposed in the EU are those that for all the periods worked, the employer should be obliged to offer all the information mentioned in article 2, paragraph 2 of directive 91/533 and pay the insurance taxes. In such manner, the phenomenon of ‚black labor market' would be diminished and work conflicts would be avoided. In practice there were encountered cases and misunderstandings that have been generated by the lack of information regarding the work to be provided during the touristic season, agricultural season or household activities regarding the salary, work conditions etc.

Article 3, paragraph 1 of the directive 91/533 provisions ways to accomplish the obligation regarding the information of the workers. According to this text, within two months from the beginning of the activity, the employer is obliged to:

- conclude in writing, an individual work contract;
- send the worker a letter of hiring;
- to send one or more written documents with references to:
- identity of the parties;
- fixed work place or the main location or the locations in which the employee will perform his activity;
- title, quality or category of working place the employee will occupy or the description of the position;
- beginning date for the execution of the contract or work relation;
- level of the starting salary, other representative elements of the latter as well as the payment schedule the employee is entitled to;
- daily working hours or normal week schedule of work.

2. Conclusion of the Individual Labor Contract

The private entities, foreigners or stateless entities can be employed by any employer in the EU based on a labor contract concluded for an undetermined periods, determined period or temporary activities. Given the development of the market economy and the norms of international labor law, adopted by the **International labor organization** and the **EU,** the states recognize the effective exert of principles and rights referring in general to the social labor relations and implicitly to social security/ protection[1]. In order to perform an activity useful for a party by the people employed in the EU, the norms of internal and international labor law have to be respected during the conclusion, execution and modification of the individual labor contract; in cases of suspension of the labor contract, all the other effects of the contract will be terminated and the employee ceases to perform the activity and also to receive payment.

For the conclusion of a valid individual labor contract the conditions common to all conventions and in different types of law have to be fulfilled, as well as the specific conditions applicable to the social European law. A valid labor contract can be concluded only if the following conditions are fulfilled.

3. General Conditions Mandatory to Concluding an Individual Labor Contract in the Community Area

3.1. Juridical Status of the Contracting Parties. The Juridical Status of the Person to be Employed

According to the provisions of paragraph 20 in the Community Charter of social fundamental rights of the workers, adopted on 9.XII.1989, the minimum age for „a labor relation if 15 years" and paragraph 22 of the same normative act limits the duration of work for 18 years old young people.

In the social European law norms children and adolescents are specific groups of risk that require special measures of security for the protection of health and ensuring minimum periods of rest. These norms apply to any person age below 18 with a labor contract or a work relation defined by the norms of law in force in a member state and which is governed by these regulations.

[1] See "Judicial norms of European social law".

A private entity can conclude an individual labor contract in a unit within the EU only in the conditions of usage capacity as well as judicial work capacity, its dissociation in use capacity and exertion capacity not being a point of interest.

The full capacity to conclude a labor contract is acquired by the private entity in the social European law at the age of 18, assuming that starting from that age, the person has the physical and mental skills to perform a job or exert a profession. At the age of 18, the person can conclude a labor contract without the permission of the legal tutors, assessing that the person has the necessary judgment to assume the obligations and exert the rights deriving from this contract.

Article 4, paragraph 1 of the Directive 94/33/22.VI.1994 of the EC on the protection of youth on the labor market provisions the prohibition of children work (people that have not yet 15 years or still have education obligations imposed by the national legislation).

No interdictions are applied in hiring children for cultural activities or similar activities. Children of 14 years can be employed if they are part of a training system or internship program. Also, easy labor can be performed by children of at least 14 years, other than the ones belonging to cultural or similar customs.

According to the same regulation, article 4, paragraph 1 of Directive 94/33 children age 13 can perform easy labor (cultural, artistic, sport or publicity activities) for a limited number of hours per week and for categories of works established by the national legislation.

Although the European Social Charter, adopted on 18.X.1961 and reviewed on May 3, 1996, the right to labor was granted to everyone in the sector of the community states[1] there are certain limitations or restraints of the capacity of use, regulated by law, to the purpose of protecting the person or defending general interests, called incompatibilities. Among the incompatibilities that have the purpose to protect the women and young people we list: use of pregnant women and nursing women to works and in damaging conditions, without medical permission, as well as forcing them to work over time; performance of night work, starting with the 6th month of pregnancy; performing night work during nursery; work in damaging and extremely damaging conditions or dangerous and very dangerous conditions of young under 18, use of young under 28 to work during the night.

[1] See "Judicial norms of European social law".

Certain positions cannot be given to people with a certain moral conduct, who are not an example of correctness and probity (for example, people that have been criminal convicted or do not have a clean reputation cannot be employed as teachers). For the didactic positions, other incompatibilities are stipulated such as: commerce with obscene or pornographic material, written, audio or video; practice of lubricous activities in public or any other activities involving obscene exhibition of the body.

Another incompatibility refers to the employment of foreign people for certain positions. Foreigners are not allowed to be employed on positions involving the exertion of state authority (legislative, judicial, executive).

Judicial status of the employer

Judicial persons in the EU can employee coming from the following categories: commercial companies, enterprises, associations and foundations established according to the law etc. as well as private entities. The EU regulations include all the categories of units that have the capacity to employee people. Considering the legal norms in force regarding the conclusion of work contracts, we conclude indicating that the employers (respectively the owners or units) can be divided in state units, private and mix share companies, other entities, private or legal, with the capacity to be subjects of law in a judicial labor relation.

The judicial capacity of the employers consists in the capacity they have to conclude labor contracts with private entities to which they ensure labor conditions and pay a salary. The judicial capacity to employee of the associations or foundations is conditioned by their organization statute or other normative acts based on which they function.

The employers conclude labor contracts and exert their rights and obligations through executive organs, respectively private persons exerting the leadership of the unit.

The labor contracts or work relations concluded by the executive organs of the legal entities, limited by the powers that have been granted to them, are the acts of the employers. The legal capacity to sign the individual labor contracts is held by the director, manager or leader of the unit, or the leader of the titular organs or the private entities using paid labor.

According to article 11 of the **Rome Convention** concluded on 19.VI.1980 in a labor contract (work relation) concluded between persons in the same country, a

private person, who would be capable, according to the law of this country, cannot invoke her incapacity that would result from another law at the moment of the conclusion of the contract, the co-contractor known this implication or knowingly has ignored it. The determination of the competent organ to employ is made by applying the normative act on the organization and functioning of the respective unit. Article 10 in the Rome Convention contains the **"Domain of the law of the contract"** referring actually at the fact that the applicable law of the contract governs especially:

a. its interpretation;
b. the execution of the obligations deriving from the contract;
c. the consequences of the total or partial lack of execution of these obligations including the evaluation of the prejudice, within the limitations of the competence attributed by the procedural law, including the evaluation of the prejudice, to the extent in which it is regulated by specific norms;
d. different measures to terminate the obligations such as prescriptions and terminations, grounded of the expiration of a term;
e. consequences of the invalidity of the contract.

3.2. Consent- Manifestation of the Decision to Conclude a Labor Contract

The consent, manifestation of the will of a private and/or legal person in order to conclude or perform a judicial work act, has effects if it is freely expressed and does not involve errors or violence.

Vices of Consent

The vices of consent (will) provisioned for contracts in the international legislation are applied accordingly to the individual work contract. These circumstances affect the liberty to express the judicial will or consciousness to the conclusion of a judicial act and give the right to the person involved to require its annulment.

The errors, false representation of the reality by a person, on the conclusion of an act, labor contract or work relation, regards objective cases and circumstances (when faced to a fact) or the existence, inexistence or meaning of a judicial norm (when faced an error).

Only the errors of facts are of interest for the conclusion of an individual labor contract, judicial acts in general and judicial liability because the error does not influence the existence and the validity of the judicial act or liability.

We can witness errors at the conclusion of the individual labor contract when the employee has such a wrong representation of the essential clauses of the contract (type of work, payment conditions) that if he had known the meaning of the clauses, he would have not concluded the contract.

The vice of consent, consisting in using vicious means to determine a person to conclude a judicial act to which the person in cause would have not consented in different conditions – represents a cause for invalidity. Indirect vice does not lead to the annulment of the act but justifies only the introduction of a request for claims. We need to mention that in both cases, direct and indirect vice, the act is not void but makes room for an annulment action.

The labor contract is concluded following the vice when the employee presents false documents- indicating and maintaining the state of error towards the unit regarding the qualification or education.

Violence- vice of consent, consisting in the threat that a considerable and imminent harm or in inspiring fear meant to force the person to conclude the labor contract is rarely found within the European social relations.

In order for the decision of the contracting parties to conclude an individual labor contract to have judicial effects, it has to be declared, to express the complete liberty to contract, to be serious and not affected by vices. In practice, the people in the EU countries performing a certain activity for which they have been employed without a labor contract (dancer, house keeper, social worker etc.) can be constraint by the employer to fulfill other activities as well (prostitute etc.) for which they were not employed but during the performing of the contract and not at the conclusion.

The consent of the employee at the conclusion of the contract is expressed in person and has to be free of vice, constraint or violence. The consent of the unity (private or judicial person) to conclude a labor contract is accomplished by the private person assigned by the management organ competent of the employer.

The labor contract derives from the consent of both parties and has a consensual character and is considered to be concluded „solo consensu" for its validity it does not have to have a certain form; the labor contract (work relation) can be proven

with any evidence. The EU regulations are for the written form of the individual labor contract. The circumstances that affect the liberty of the judicial will (vice of consent) have as effect the annulment of the labor contract.

3.3. Object and Illicit Cause of the Labor Contract[1]

At the conclusion of the work contract the type of work is determined, able to be performed and legal. The employee is obliged to perform only the work he is obliged to by contract, both as quantity as well as quality. The employer is obliged to repay the work performed by the employee according to the understanding and the respect of the limitations imposed by law. When employed, the parties agree that the object of the labor contract to be performed in a certain time, being a contract with successive execution, the order of those two performances couldn't be reversed: first the employer performed the work and then the employer pays (retribution) the work performed with a salary.

The employer (unit) brings to the knowledge of the employee at employment, the attributions of the position and elements comprised in the basic salary as well as its components.

3.4. Duration of the Labor Contract and Effective Duration of the Work

According to Directive 97/81/15.XII.1997 of the EC Council which enforced this frame concluded on June 6 1997, Directive 1999/70/28.VI.1999 which enforced the frame agreement concluded March 18 1999 by the UNICEF, CEEP and CES[2], of the Recommendation of the CE Commission on May 27 1998[3] on the ratification of Convention no. 177 of the ILO on 20.VI.1996 and the Convention of Rome no. 80/934/19.VI.1980 of the CEE[4], the individual labor contracts can be concluded for a reduced period of time (partial), on determined, undetermined and home work.

Article 6 of the Convention from Rome provisions the rule according to which the individual labor agreement is subordinated:

[1] See ."Object and cause of the social European law".
[2] The frame agreement is annex to Directive 1999/28.VI. 1999, published in JOCE no .L.216/20.08.1994.
[3] Directive 1999/70/28.VI.1999 published in JOCE no. L.175/10.VIM999.
[4] Article 6 in the Rome Convention in 1980.

a. the law of the country where the employer, in performing the contract, fulfills hoes work as usual even if he is delegated temporary in another country or
b. if the employer does not fulfill his work as usual only in one country, the laws of the country where the employer unit resides, even if the circumstance do not indicate that the labor contract presents stronger ties with another country, case in which the laws of the latter is applicable.

Employment for a reduced period of time (partial), regulated by Directive 97/81/15.XII.1997 of the EC takes place to all the levels of the company, including the positions that demand a qualified work as well as the leading positions and, in the cases where this is possible, the conclusion of labor contracts during the period the professional training takes place. The partial employment can be made in case of activities not longer than 1 month or the duration of the week work does not exceed 8 hours.

According to clause no. 3 in the frame- agreement concluded on March 18 1999 by UNICE,CEEP and CES reduced time worker (del Sol, 2001, p. 792) represents the employee hose normal working period, calculated on weekly basis or in average on a period of work up to one year is inferior to the duration of work of a full time worker. According to the same frame agreement, the full time worker represents the worker with a normal period of work in a company, with the same type of contract or work relation and who performs an identical work or similar one, taking into consideration also other circumstance such as duration and qualification.

According to the dispositions of the frame agreement on June 6, 1997, for many reasons, the EU member states can exclude totally or partially the workers employed for a reduced period of time who perform occasional works.

The work for a determined period of time is regulated by Directive 1997/70/28 June 1999 of the EC Council, that enforced the frame agreement concluded on March 18 1999 by UNICE, CEEP and CES. The dispositions of the frame agreement focus on the following objectives: the improvement of the work conditions of determined duration, ensuring the respect of the principles of nondiscrimination and establishing a preventive frame against abuse resulting from the use of contracts, collective conventions or practices in force of each member state.

According to clause 3 of the agreement concluded on March 18, 1999, the employee on determined duration is the person that has a contract or work relation

on determined duration concluded directly between the employer and employee, according to which the termination on the contract or work relation is determined by collective conditions.

According to clause 4 of the frame agreement, between the workers that perform work based on a contract for a determined period of time and between those that concluded a work contract on undetermined period of time, there are no discriminations regarding:

- the work conditions, the workers employed for a determined period of time being treated like the workers employer for an undetermined period of time;
- the salary, the worker with determined contract receiving the retribution of the worker with undetermined contract;
- determination of the periods of experience in the work field is being made based on the same criteria for both types of workers;
- the legislation applicable; both workers with determined contracts as well as those with undetermined contracts are applied the sale regulations enforced by the national practices.

Clause 5 in the frame agreement signed in March 18, 1999 provisions the measures to prevent the abusive use of successive work contracts for a determined period of time:

- the contracts or work relations for a determined period of time can be renewed for objective reasons that justify this measure;
- the employers will establish, after consulting the social partners, a maximum duration of the contracts or successive relations for a determined period of time that cannot exceed the community regulations.
- the number of possible determined contracts or work relations established by norms of community law.

The employers are obliged to facilitate the access of the workers with determined contracts to corresponding training opportunities, with the purpose of improving the professional competence of the workers, development of their career and professional mobility.

The workers with determined contracts are taken into account to reach the necessary limits provisioned in the national legislations when establishing the representative organs for the employees on a unit.

The effective duration of work (respectively the daily working time, maximum duration of the work week, including the additional hours, night work) is regulated by TEC and especially by Directive 93/104/23.X.1993 of the EC Council regarding the organization of the work time, modified by Directive 2000/34/22.06.2000 of the EC Council and Parliament.

Article 2 in Directive 93/104 defined the work time: „period in which the worker is at work, at the disposition of the employer and in exertion of his activity or functions, according to the legislation and national practices" and article 6 provisions that the maximum duration of the work week has to be established by the member states to 48 hours, including the overtime hours.

According to article 2 of Directive 89/391/12.06.1989 of the EEC, the dispositions of Directive 93/104 are applied to all the sectors of activity, private or public, except for the maritime transport sector, as well as medicine. According to article 8 of Directive 93/104 the night work cannot exceed in average 8 hours at every 24 hours. Directive 93/104 defines the night work as being the activity that entails specific risks or significant mental and physical tensions and article 2 indicated the night workers:

- workers performing their work during the night for a period of at least 3 hours from the normal working time of a day;
- the workers susceptible or performing work during the night for a period of the annual working time, defined by choice by the state in the national legislation (after the consultation with the national partners) or by collective conventions or agreements between social partners at national level (regional).

The night period, of at least 7 hours, is defined by the national legislation as the interval between 24 and 5 o'clock.

According to the provisions of article 9 of Directive 93/104, the member states have the obligation to medically examine the workers employed for night period and transfer them to day work if they suffer from disease that prevent them from working during the night[1]. The individual labor contract can be concluded for a determined period of time only with the express mention of this duration, that cannot be bigger that 18 months, from the moment of conclusion, with the

[1] Directive 93/104/1993 published in JOCE no. L 307/13.X1U993 and Directive published in JOCE no. L 195/1.08.2003.

possibility for extension up to 24 months. In the following situations the individual labor contract can be concluded for a determined period of time in the European space:

- to replace a worker;
- in case of temporary increase in the activity;
- for seasonal or temporary works;
- in case the contract is concluded based on legal dispositions issued with the purpose to favor temporary certain categories of unemployed people;
- for the employment of the artistic personnel;
- for retired people working in units that can extend their contract after retirement;
- for the people in the military sector, in alternative manner, according to the law;
- in the case of professional social workers;
- workers employed with the staff of the public politicians;
- other cases expressly provisioned by the European law.

The European judicial norms result in the fact that two categories of individual labor agreements can be concluded: for determined and undetermined period of time. Directive 1999/70/28 June 1999 provisions the norms of social law that statute that a labor contract for a determined period of time has to comprise clauses regarding:

- situations in which the contract can be extended;
- duration of the trial period, that cannot be longer than: 5 days for a period of the contract smaller than 3 months; 15 days for a contract between 3 and 6 months; 30 days for a contract bigger than 6 months
- retribution for vacation if necessary.

The norms of European social law regarding the labor contracts concluded for a determined period of time provision:

- interdiction to establish in the working contract, of a specific term to replace the employee whose work contract has been suspended; These employees will conclude working contract with the specification „Contract for a determined period of time which terminates at the end of the cause that determined the replacement of the titular of the position" or „until the completion of the work", if the work is executed before the presentation of the titular of the position.

- interdiction to employee workers with a determined contract for a period of time of minimum 6 months in the case in which the employer fired an employee on economic grounds. By exception- this interdiction is not applied in case of the contracts concluded for a duration of maximum 3 months or in case the conclusion of the contract was determined by exceptional growth in activity, with temporary base, imposing the use of labor force much more superior than the one the unit uses normally.
- interdiction to conclude an individual labor contract for undetermined period for the replacement if an employee whose work contract is suspended following the participation to a riot.

According to the norms of European social law, the employer has the obligation to establish at the beginning of employment and also to include in the individual labor contract the effective duration of the work, in hours/ day and hours/ week. The employee has thus very clear information regarding the working hours per day and per week.

The recommendation of the Commission[1] on May 27 1998 regards the ratification of the Convention no. 177 of the ILO on June 20 1996, regarding the home work. Given article 137 of the ECT and objective of the Convention no. 177/1996, the Commission opted for the home work as a way to combine the exertion of paid work with the family care, especially children care.

The Commission recommended the member states to ratify the Convention no. 177/96 of the ILO regarding the home work and inform regarding the measures that have been taken for the enforcement of this Convention.

[1] Recommendation of the Commission on May 271998 was published in JOCE no. L 165 on June 10 1998 The Recommendation provisioned the fact that according to the findings of the Commission, almost 7 million people in the EU perform work at home, that the nature of the work at home evolves fast with the introduction of the new means of information technology and the vulnerability of the people working at home is significant, protection measures adequate to this category of workers have to be taken.

3.5. Conditions for Granting Rest Time and Vacations

In order to avoid the misunderstandings, abuse and discrimination during the execution of the labor contracts, European regulations have established rules that impose that when employed, the extension of the working time, rest time and vacation the workers in the EU member states benefit from.

The time for work is the determining element of establishing the rest periods and vacations. According to Directives 93/104 of the EC on November 23 1993 and 89/391 the rest time is the period in which no work is performed and comprises the daily breaks, break periods, weekly break, annual rest vacation[1] .

The daily break has maximum 11 consecutive hours, weekly break a period of at least 24 hours without interruption and annual vacation at least 4 weeks[2], with the specification that the minimum period of vacation can be replaced by financial retribution, in case of termination of the labor contract[3].

Article 5 of the Directive 1 999/63/29.VI.1999 of the EC Council provides that the minimum number of hours of rest cannot be less that 10 at every 4 hours and 77 in a period of 7 days. The same article provisions that the rest hours cannot be divided in more than 2 periods, out of which one can be of at least 6 hours. According to directive 92/85/19.X.1992 the maternity leave has to be of at least 14 consecutive weeks, divided between the period before the birth and after the birth. During the maternity leave, the employee maintains her rights related to the labor contract, including experience.

The salary of the employee is paid continuously but there is the possibility to replace the exertion of the work with one equal to which the employee would have exerted if the interruption of the activity on health grounds. The labor contracts and

[1] Art.3 in Directive 93/104

[2] Art.7 of Directive 93/104, forces the member states to take the necessary measures in order that each employee benefits from 4 weeks.

[3] Art.17 of Directive 93/104 provisions that the following derogations from the dispositions regarding working time and rest time : complying with the general principles of health protection and security of the workers, the member states can derogate from the dispositions of the daily rest, weekly rest, the maximum duration of the weekly work, duration of night work and reference duration when the working duration when the working time due to the specific characteristics of the activity is not predetermined or can be determined by the workers (such is the case of the management positions or other persons who have power of decision, people working in family and religious workers and workers in religious communities); legislative, regulatory and administrative derogation or through collective conventions or agreements concluded between social partners is possible on the condition that equivalent periods of rest are granted to the workers or, in exceptional cases when this is not possible from objective reasons, a corresponding financial retribution is to be given.

collective conventions can include more favorable conditions for the employees in maternity leave. The parental leave was regulated by Directive of EC Council no. 96/34/3.VI.1996 on the frame agreement on the parental leave concluded between UNICE, CEEP and CES.

3.6. Conditions on the Termination of the Individual Labor Agreement

Directive 2001/23/12.03.2001 of the EC[1] contains norms regarding the obligation of the employers to maintain the rights of the workers in case of transfer between companies, establishments or branches. This regulation does not expressly refer to the way of termination of the individual labor contract but to transfer, but in our opinion it is necessary to have a provision in the individual labor contract regarding the condition of the employee in case of transfer to another unit or getting fired from a state that hires workers of another member state of the EU. Directive 98/59/20.VII.1998 of the EC refers to the collective fire and the community units can enclose a clause in the individual labor agreement regarding this measure.

3.7. Conditions for notice from the contracting parties and duration of the notice

At employment, clauses according to which the termination of the undetermined labor contract after the expiration of the notice period have to be provisioned, established depending the reason of the termination (of the contract) and the professional category the employee is part of. The notice period has to be of at least 30 days in case of collective fire and for all the other cases of fire.

3.8. Work Conditions of the Employee, Provisioned in the Collective Contract

When employed, the worker is notified regarding the collective work contract and the conditions of the contract in the state in which the work contract is concluded.

[1] Directive 2001/23/2001 a CE on the similarity of the legislations of the member states on maintaining the rights of the workers in case of transfer of companies, establishments or branches.

4. Special Mandatory Conditions regarding the Conclusion and Validity of the Labor Contract in the EU Member States

a. Conditions for Training and Work Experience

One of the special mandatory conditions for the occupation of certain positions is represented by the professional qualification, education and experience in certain activities. The minimum professional training conditions and experience necessary for the employment if the skilled and unskilled workers in the member states are provisioned in the national regulations of the EU member states and are requested at the conclusion of the individual labor contracts.

The experience condition is not requested by the employers at the conclusion of the labor contracts except for certain positions, among which we list medical doctor, professor, engineer and economist for certain specializations.

b. Verification of the Skills and Professional Training

The employment cannot be made in the member states of the EU than based on verification of the skills and professional preparation.

The employment is made based on the verification of the skills and professional preparation by practical trials, exam, competition, interview or trial period, under the conditions provisioned by the legislation of the member states of the EU. The trial period of employment can be at most 15 days and for the executive positions, at most 90 days.

The competition or exam consists in a written and oral test or a written and practical test. The candidates that are accepted have to present for the job in a term provisioned when informed on the results. If the term of information is exceeded, it is considered that the employee is no longer interested in the position and the latter is occupied by the candidate with the following result. The employment can also be made by practical test. This test represents the way to verify the capacity of the candidate to perform the work obligations related to the position.

The work contract can be concluded for a determined period of time and establish a term for trial. In this case the contract will comprise the optional clause of the trial period. The two contracting parties stipulate expressly, in writing or verbally, the optional clause of the trial period.

According to the EU regulations, the trial period can be according to the understanding of the parties, from 15 days to 6 months. After the termination of the

trial period, the definitive employment takes place. If the employer asserts that a new trial period is necessary, he can grant it.

Therefore, in the interval of the trial term there is a labor contract concluded under the clause of denunciation, the report being regulated by the European social law, same as the other judicial relations established by a labor contract. The term trial, as well as test, represents a clause of denunciation of the labor contract, in virtue of which the unit that benefits from the clause has the possibility to unilateral terminate the labor contract within this interval. The exception from this rule is represented by the handicapped people that in case of professional non correspondence during the testing period, are transferred to another type of work, without the denunciation of the labor contract.

c. Medical Employment Exam

The persons that will be employed have to have a medical exam in order to establish if the health allows them to fulfill the activity that the employer will execute after the conclusion of the labor contract. The medical exam at employment is imposed either for the protection of the population related to the employer (for example employees working in public alimentation) or the protection of the employee (for example youth and pregnant women) or for the employees with difficult works, dangerous or harming etc.).

The medical exam is mandatory, certain functions or professions or professions cannot be occupied if the employee is not perfectly healthy physically or mentally (for example cannot be hired for a position of guard, the employee with bad eye sight or is not physically capable. A person cannot be hired as medic or professor if they suffer from physical disabilities etc.).

The individual labor contract concluded without the respect of this special condition is void because the medical exam is mandatory for employment in the EU and the noncompliance of this obligation is severely sanctioned.[1]

d. Fulfillment of a Superior Age Limit to the General 16 Years old Limit

Employing young people under 16 years is not allowed for the occupation of positions that have special conditions (for example book keeping cannot be granted to young people below 21 etc.).

[1] See Directive 93/104/23.XM993 a CE and EC Council.

e. Lack of Criminal Record

For certain positions or professions the employee must present the criminal record, without priors. A professor cannot have criminal records and has to have a good reputation. Fulfillment of this special condition for employment in the EU is mandatory because certain positions require a moral conduct and because this conditions represents a safety measure for that person.

f. Agreement (notification) of the Competent Authority in the state that recruits the labor force and the state which concludes the individual labor contract. For the cases expressly provisioned by a normative act, the agreement (notification) of the competent authority is necessary. The agreement, irrespective of the name (approval, notification, recommendation, decision, consultation, opinion etc.) is a specific notification (mandatory) or consultative and is necessary in the case of persons employed according to the European social law.

g. Description of the Professional Activity and the Behavior within the Unit in which he Worked the Previous Time

Carefully, more and more employers in the EU require that the employment interview include the description of the previous activities. This requirement, although not general, is still a special condition that the employers take into account when employing for certain positions or jobs. The employee has to fill in the file with 1, 2 or 3 descriptions (called also recommendations, referrals or assertions) regarding the prior professional activity, given by the forms employees, former leaders or collaborators.

h. Multitude of Positions

According to the regulations of the EU, any person can have multiple positions and has the right to receive the corresponding salary for each of the positions occupied. In order to establish a corresponding working program, the employee has to declare when employed if he or she has any other labor contracts with another unit.

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