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CERTAIN REGARDS UPON THE COLLECTIVE BARGAINING OF LABOUR CONDITIONS IN THE ROMANIAN LABOUR LAW

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Abstract

In the market economy, the stabile and social peaceful climate can be assured only through different means of consultation and dialogue between social partners.

Therefore, employers' and employees' interests can be harmonized, starting at the unit level and going up nationally, through various forms of social dialogue.

In this respect, the special literature considered that in present, the Labor Law is primarily a right negotiated with the source of living, dynamic and specific collective agreements.

The collective bargaining contract is compulsory only in establishments that have 21 or more workers employed.

The law provides only an obligation to negotiate and not to conclude the collective agreement. Thus, in literature it was considered that the obligation to negotiate is a duty of care, and its fulfillment must be appreciated in relation with the diligence exercised by the employer in terms of negotiation, and not in concluding the collective labor contract

Keywords:

Labour, Collective bargaining, Social Dialogue, Trade Unions, Employee

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I.Introduction

In a market economy, the climate of stability and social peace can be ensured only by exercising various means of consultation and social dialogue.

In this regard, employers' and employees' interests are harmonized, starting at the unit level and going up nationally, through various forms of social dialogue (Lucian Arnautu, (2010): 159).

Thus, in the literature, the labor law was considered primarily a negotiated right having a conventional, dynamic and specific source, represented by the collective agreements (Stefanescu, (2007), :63).

All employees who work have the right to collective bargaining and, therefore, the rights and obligations of the employment relationship between employer and employee shall be determined by negotiations under collective agreements and individual employment contracts, according to art. 37 and art. 39, par. 1, lett. K) of the Romanian Labor Code.

Basically, the legal status of employees can be developed only through collective bargaining, which extend the legal limits of the rights granted to employees or, as the rightful source of the legal relationship of employment, create new rights in their favor (Boisteanu, Romandas, (2007), :119).

Thus, collective bargaining has a function for adjusting the working relations that trends in the labor market and stages of economic development of society (Ticlea, (2007), :326)

II. Regulations concerning collective bargaining

The Romanian Constitution directs all regulatory labor law by making mandatory general principles, including the right to collective bargaining and working conditions (Article 41), along with other such principles of law, such as: principle of the right to employment and social protection of labor, the right to rest, prohibition of forced labor (Article 42), the right to strike (Article 43), the right to freedom of association (Article 40) etc.

Likewise, among the fundamental conventions of the International Labor Organization, we can mention Convention No. 98 of 1949 on the Right to Associate and Collective Bargaining or Convention no. 154 of 1981 on the promotion of collective bargaining.

ILO Convention no. 154 of 1981 on the promotion of collective bargaining collective provides that the term applies to any negotiations taking place between a person who commits a group of persons who commit or one or more organizations of employers, on the one hand and a more organizations of workers, on the other hand, in order:

a) working conditions and employment setting, and / or

b) regulating relations between those who employ and / or

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c) regulating relations between employers or their organizations and one or more organizations of workers.

III. Practical and theoretical aspects of the negotiation and conclusion of collective agreement

The collective bargaining contract is compulsory in establishments that have 21 or more workers employed.

The law provides only an obligation to negotiate and not to conclude the collective agreement. Thus, literature was considered that the obligation to negotiate is a duty of care, and carry it appreciates the diligence exercised by the employer in terms of negotiation, and not in relation to the collective labor contract (Athanasiu, Dima, (2005), :269).

In these circumstances, under the principle of free will, in units with less than 21 employees, for which the legal obligation to negotiate is provided, the parties may agree not to enter a collective agreement. In this case, the individual employment contract shall be ruled by the collective agreement concluded at a higher level.

The law also disposes an obligation only bargaining unit level. Thus, in order to negotiate collective agreements at branch or national level, it should be expressed the will of the parties to negotiate.

Under these conditions, at branch or national level, parties are free to enter into a collective employment contracts. In negotiating the terms and termination of collective agreements the parties are equal and free.

Under the principle of *pacta sunt servanda*, provided by art. 969 of the Civil Code, collective bargaining agreements, concluded by observing the laws represents the law of parties.

The parties, their representation and the negotiation and conclusion of collective agreements are established according to Law no 130 of 1996 on the collective agreement.

In establishments where collective bargaining is required, it must be held every year, as follows:

- at least 12 months of previous negotiations, unrepentant collective labor contract, or the date of entry into force of the collective work, as appropriate;
- at least 30 days before the expiry of collective agreements concluded for one year.

The duration of collective bargaining can not exceed 60 days. If the parties fail to conclude a collective agreement within this period, they can trigger conflict of interest.

Collective bargaining will cover at least the following issues: the wages, working time, working hours and working conditions

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It is the employer's duty to have initiative to bargain. If the employer does not undertake the obligation to start negotiation, it shall be done at the request of the trade union or employee representatives, as appropriate, within 15 days of the request.

Within 15 days from the date of application by a trade union or employee representatives, the employer must convene the parties to negotiate collective labor contract

At the first meeting of states parties:

- information which the employer will provide employees and delegates of the union or when it will meet that requirement, this information should allow a comparative analysis of the employment situation, the classification of occupations and professions, the salary levels , duration and organization of working time working hours;
- the location and timing of meetings.

Io one unit there can be concluded a single collective agreement.

The labor contract is concluded for a period, which can not be less than 12 months, or during a works contract. The 12 months term of is the minimum one required by law, but the parties may decide, by mutual consent a longer duration.

Parties may decide to further extend the application of collective agreement, provided it was completed or under other conditions to be agreed.

The labor contract is concluded in a written form required *ad validitatem*, signed by all the parties, filed and registered with the Directorate General for Employment and Social Solidarity county or Bucharest, where appropriate.

Collective agreements concluded in the group of units of industries or national level shall be filed and registered with the Ministry of Labor and Social Solidarity

Collective bargaining agreements shall apply from the date of registration. The date on which the parties may agree terms to be negotiated after the contract recording day.

Collective agreements will not be registered, according to art. 26 of Law no. 130/1996, if:

- the units in which the contract is applicable are not mentioned, in such cases,
- the parties does not fulfill the requirements of representativeness;
- the contract is not signed by all representatives of the parties to negotiate.

Notwithstanding the general rule, collective agreements may be made without the signatures of all parties' representatives, according to art. 26, par. 2 of Law no. 130 of 1996, if:

- some representative associations or trade union representatives were invited to negotiate and were not presented;

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- some representative associations or trade unions representative participated in the negotiations, agreed to the terms negotiated, but refused to sign contracts, a situation arising from the documents filed by the parties.

When registering collective agreements, the Ministry of Labor and Social Solidarity or, where appropriate, the Regional General Direction of Work and Social Solidarity will check if they contain clauses negotiated in violation of the laws.

If it is found that collective contracts contains such clauses, the Ministry of Labor and Social Solidarity or, where applicable, territorial general direction of work and social solidarity is bound to bring this fact to the Contracting Parties.

In the absence of side parts reactions, these clauses will automatically be replaced with more favorable legal provisions violated.

It should be noted that once completed, in compliance with legal provisions, collective agreements therefore represents the parties law. In these circumstances, the Ministry of Labor and Social Solidarity, which is not part of the contract, has no power to censor or interpretation regarding contract terms, reduced to its intervention powers covered by art. 26 of Law no. 130 of 1996 (Cazan, (2004), :180).

The legal actions submitted by any interested party, seeking to contest the registering of the contract shall be solved by the competent administrative courts.

Since the nullity of the collective labor contract clauses take effect only for the future (*ex nunc*), it can only be invoked for the contract in question in force.

Against the refusal of registration of collective agreements, any part can submit a claim to the court, according to Law no. 554 of 2004. The respondent shall be the institution that refused to register and verified the legality of the content of the clauses, namely: Directorate General of Employment and Social Solidarity County or Bucharest or the Ministry of Labor and Social Solidarity.

The Collective agreements concluded at the unit's level must be brought to the attention of all the employees, by the employer's duty, usually through its display.

The Collective agreements concluded at national and branch levels are published in the Official Gazette of Romania, Part V, within 30 days of registration. The procedure for publication in Part V, and not in Part I, will pursue the enforcement against third parties, the contract applying from the recording date and not from the date of publication.

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