INDIVIDUAL, EMPLOYERS AND ORGANIZATIONAL CITIZENSHIP BEHAVIOUR

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Abstract

The paper aims to analyze the idea of social solidarity from the perspective of legal constraints that characterize the labor relations between employees and employers and the growing need for community involvement of organizations. Therefore, the concept of citizenship-oriented behavior of organizations (OBSs) and the legal concept of subordinating employees to organizations will be at the center of attention. The first part of the article will be about defining the human being through the occupation or profession he chooses to practice (homo faber), we are what we work, and advance to the social dimension of any economic activity, and the second part will analyze these ideals such as altruism, solidarity or prosocial behavior, from the perspective of legal regulations in the labor code that emphasize the subordination of employees to employers who at least at first discourage the assumption of a civic dimension aimed at citizenship of employees. suggested possible solutions to improve these legal relations so that values such as solidarity are more present in the contractual relations between employees and employers in various social or economic contexts.

Keywords: citizenship; organizational citizenship behaviour; solidarity; employment

Homo faber

The past of human individuality has long been defined by the activities that the prehistoric human being was able to undertake, for example if he managed to control fire or process various materials such as stone or metals. And today many people answer the classic question in psychology who you are without hesitation that they are their profession. Simply put, we are what we do, we define ourselves by our occupation or the roles we assume, for example we say I am a mother, I am a lawyer.

Undoubtedly, these answers, even if they are not satisfactory for psychologists, offer important elements of the personality of the human being. It is a strongly felt need even today to indicate the defining elements through symbols of the profession, or of the social roles we play. What's the point of a business card that only our name would be written on without any other information?

In the absence of precise historical data, historians often reconstruct past, medieval, for example, life forms by grouping people into professional associations. When J. Le Goff (2006), for example, tries to restore the life of the medievalists as faithfully as possible, he uses professional indicators for the entire historical landscape. Thus, he presents the world in an occupational way: the merchant, the intellectual, the monk, the artist, etc. If we leave the occupational circle and try to relate to other members of the community, what we get is the idea of citizenship and citizenship. This is another distinctive note of the identity of each of us and refers to our relationships with others in a broad sense.

Professional identity occupies a large part of everyone's personal identity, but without being exhausted, the latter also includes the social roles assumed by each of us beyond the occupation itself. The question that needs to be asked is how we define today the relationships between these hypostases of the personality: employee, citizen, or, in other words, member of a professional organization in relation to a member of the community. Both groups have a dynamic character with many areas of interference. This article focuses on the Community capacities of employees in relation to the capacities of organizations and economic agents to generate social cohesion. We will see that in order to achieve this goal, this balance of capacities and authority between individuals and organizations, a legal reorganization of the employee-employer relationship is needed.

Voluntary subordination of the employee to the employer

According to the legal definition, the individual employment contract is the contract under which a natural person, called an employee, undertakes to perform work for and under the authority of an employer, natural or legal person, in exchange for a salary called salary.

It is the essence of the employment contract that the employee is "under the authority" of the employer. The relationship of legal subordination is born by signing the individual employment contract and is kept, regardless of the circumstances, the function of the employee or his qualities, until the termination of the employment contract.

The legal relationship of subordinating the employee to the employer is materialized in a series of prerogatives of the latter, in particular regarding the organization of work, the right to issue binding provisions and disciplinary action. Moreover, through the internal regulations, the employer establishes unilaterally, but within the limits of the law, both his rights and obligations, as well as those of the employees.

In the direct relationship with the employee, the employer establishes the attributions corresponding to each employee, the individual performance objectives, as well as the criteria for evaluating their achievement. The High Court of Cassation and Justice validated the allegations of the doctrine and established that the rights and obligations specific to labor relations are the obligation to perform sports (work) by the employee and the obligation to pay the employer (HCCJ, Civil Section I, decision No. 8661 of December 8, 2011).

Voluntary subordination, an essential feature of the employment relationship, is established not only at national but also European level. The Court of Justice of the European Union has ruled that „*the essential characteristic of the employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration*” (ECJ- July 3rd, 1986, C-66/85).

Even in the context of the emergence of new forms of contractual relationship, and we refer here mainly to the relationship between the individual service provider and the service platform, the Uber type relationship, the European Court remains faithful to the idea of voluntary subordination of the employee to the employer. element of identification of the employment relationship.

„The Court has held that the classification of an ‘independent contractor’ under national law does not prevent that person being classified as an employee, within the meaning of EU law, if his independence is merely notional, thereby disguising an employment relationship.

That is the case of a person who, although hired as an independent service provider under national law, for tax, administrative or organisational reasons, acts under the direction of his employer as regards, in particular, his freedom to choose the time, place and content of his work, does not share in the employer’s commercial risks and, for the duration of that relationship, forms an integral part of that employer’s undertaking, so forming an economic unit with that undertaking.”(ECJ, 22 April 2020, C-692/19).

The position of the European Court and the national courts, moreover, is relevant in that it denotes the importance which the courts attach to the preservation of the concept of hierarchy in the contractual employment relationship, despite the factual evolution of that relationship. Therefore, regardless of the role that the parties, employee and employer, want to establish for the employee and regardless of the employee's actual contribution to the company's activity, his mission, he is imprisoned in the status of subordinate.

Legal regulation lags behind both the technological evolution transposed in the relationship between the parties (as is the case with service platforms) and the concept of talent management, which recognizes that not all employees contribute equally to the success of the organization. The law, so careful to eliminate inequalities of treatment and discrimination, remains faithful, in terms of characterizing the employment relationship, the idea of hierarchical relationship, in which inequality, not equality is the legal criterion (Supiot, 2007).

Hence the question: are labor relations a way to "discipline" the citizen? According to the data provided by the Labor Inspectorate, as of May 31, 2021, the number of active employees was 5,625,089, in a population of 22,142,000. If we add the number of unemployed (267,456 people) and the number of pensioners (5,099,000 people), the proportion of employees (current or former) among citizens is obvious. Therefore, from a quantitative point of view, the analysis of the employee's status is relevant to determine his influence on the status of the citizen.

Bringing employees into the position of accepting legal status as a lifelong subordinate and fighting for only small financial privileges, instead of demanding autonomy and decision-making power, is a policy undertaken by the state to avoid "rebellions." "Of a

civic nature? Or is it just a simple legacy from the beginnings of industrialization, when employees were economically dependent on the employer, and working conditions so precarious that the main struggle was for survival rather than autonomy?

However, there are industries today in which the skills of employees and their degree of intellectual autonomy are not at all in line with working under the authority of an employer. However, at both European and national level, labor law reforms aim to make labor relations more flexible, to grant small freedoms within the status of subordinate, but not to reconsider the status of subordination. That is why it is important for lawyers to look for solutions beyond the sources of law.

Organizational Citizenship Behaviour

OCB is one of the areas that can best mediate between the hypostases of the individual and social and economic organizations. Without this mediation, the balance between the employee-citizen and the employer-organization can be easily endangered, the most common case being the one in which the employee's subordinate relationship to the employer prevails. Many of the legal systems of labor law still retain this status of subordinate for the employee, in a narrow transactional model: as long as the employee is in a contractual relationship with the employer, he cedes professional autonomy. In other words, the employee belongs more to the employer than to himself, during working hours and in accordance with the contractual provisions.

The result of this unbalanced relationship of autonomy and authority between employees and employers is a decrease in the exercise of citizenship as individuals. Given that employees mentally accept the feeling of belonging to the employer companies, they will be less willing to assume social and civic roles. Simply put, the stronger the relationship of occupational subordination in a community, the more individualized, disparate, and weaker social cohesion we will have. Obviously, this scenario can be improved, and this is exactly what OCB aims to do.

The OCB can be understood as a meeting place for both actions initiated by companies / employers in support of the community in general or even employees, in particular, outside strictly contractual obligations or vice versa, as deliberate actions of employees in support of companies, also beyond strictly contractual obligations. The concept of OCB is initially defined rather in the latter sense.

The most influential definition of OCB belongs to Organ (1988), resumed, among others, by Halbesleben and Bellairs, T. (2016): OCB is discretionary behavior that is not formally required, does not have embedded rewards (or punishments for not engaging in it), and that is assumed to promote organizational effectiveness and performance. The list of fundamental characteristics of a prosocial or community-oriented behavior that OCB includes concepts that begin with the politeness and kindness of employees, go through altruism promoted as organizational policy and end with civic virtues, team spirit, but especially solidarity social. Crisis situations such as the recent pandemic show a stronger need for solidarity between citizens in relation to their professional skills. It is no coincidence that in these moments the provisions of the employment contracts were rethought in the sense of their relaxation in order to open the organizations to the community.

Without affecting the fundamental reasons of the organization, such as the profit or productivity of employees, nowadays we have seen the civic and prosocial behavior of companies that have joined the classic economic values, human values united by the term solidarity. Education was one of the most affected areas of the coronavirus pandemic, but we could see in attitudes of solidarity such as opening databases or libraries that previously operated with limited or paid access, publishers that offered free access to many titles ebook, many of them being open and now, many educational software have switched to open mode. This is a lesson learned in civic behavior and corporate social responsibility (CSR).

Theoretical models of OCBs

The theoretical maturation of the concept of OBSs has led to the formulation of several models of concrete functioning of such a behavior of solidarity in the employee-employer relationship. A good example of this is Rioux & Penner's (2001) three-value model: OBSs involve prosocial motives of the organization, organizational care of employees, and opinion management. In other words, OBS can work if an organization overcomes indifference to the community and promotes an interaction based on the desire to actively help citizens.

Employees, in turn, are not strictly limited to professional obligations and show visible concern for the overall success of the company. Opinion management refers to trying to influence how an employee is perceived by others within teams or work units in order to increase self-confidence and employees' own abilities.

It can be easily seen that this model of OCBs, like any other, involves the involvement of both the individuality of the human being and the human resources policies promoted by companies. When analyzing such a model we may be tempted to look unilaterally, for example to reduce OCBs to human resource programs to increase the efficiency of work teams, if the focus is on the organization.

Analogously, we can conversely favor the individual and then OBSs becomes a kind of personal development program. In both cases we miss the whole OBS spirit that proposes a rethinking of the social relations between employees and employers, in other words a synthesis between the sociology of groups and the psychology of development under the conditioning of economic and legal realities.

The cardinal value of OBSs is solidarity between individuals with their own interests and unique ways of obtaining life satisfaction, therefore the challenge is addressed to those who are interested in increasing solidarity and social cohesion, ie educators or legal advisers. Their mission is to formulate coherent legal frameworks to regulate the relations between employees and organizations in such a way that the well-being is obtained in a balanced way between those involved.

Soft law - possible mediator between law and Organizational Citizenship

If the legal regulation remains inflexible in terms of subordinating the employee to the employer, regardless of the intention of the parties, the improvement of the employee's status can be achieved through soft law provisions. The legal basis for this approach can be the European Charter of Fundamental Rights of the European Union, which enshrines, under the title of "solidarity", a new type of fundamental rights, namely the right of workers to information and consultation within the company, the right to bargain and of collective action or the right to balance between private and professional life.

As Supiot (2005) sees, the notion of solidarity no longer has the role of only protecting employees against the risks that endanger their existence, but a role of establishing concrete means of exercising certain freedoms. The organization can thus substantiate a democratic approach to employee relations.

First of all, through collective bargaining, those principles and values that characterize the "citizenship" of that organization can be transposed at a contractual level. In this way, simple human resources practices become mandatory, the provisions of the collective labor agreement being imperative both for the parties, who are required to comply with them, and for third parties, who will analyze the existing legal relations within the organization through legal provisions, as well as the contractual ones.

In addition, the law on social dialogue itself recognizes the employment contract as having a broader role than simply transposing the law: social peace ". Collective bargaining at the unit level is mandatory in all organizations with more than 20 employees, so it covers a significant number of companies and employees.

It is true that the provisions of collective labor agreements can establish rights and obligations only within the limits and under the conditions provided by law, so it is not possible to reach an annihilation of the relationship of subordination between the employee and his employer. However, as at the conclusion of collective labor agreements, the legal provisions regarding the rights of employees are minimal, the parties are free to establish a framework in which the legal status of the employee is close to that of a citizen of that organization.

From the level of the organization, the values can be translated at the level of the activity sector, through collective agreements concluded at this level. Much less numerous, but in continuous development, transnational company agreements, concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organizations on the other cover working and employment conditions and/or relations between employers and workers or their representatives.

Second, the law recognizes the employer's right to unilaterally establish the framework of values and rules that govern the organization. The internal regulations are expressly mentioned in the Labor Code, but it is supplemented by a series of other mandatory acts, such as codes of conduct, codes of ethics or policies.

All these latter documents are generally drafted at the level of the parent organization or a group of organizations and then transposed into all the component undertakings. This leads to the creation of a status that exceeds the limits of a single employer, contributing significantly to redefining the employer-employee relationship.

Discussion

No one is above the law, the principle regulated by Article 16 (2) of the Romanian Constitution can not be interpreted in the sense of "blocking" employees in the status of legal subordinates established through the Labor Code. Above the provisions of Article 10 of the Labor Code are the aspirations of human beings who, although voluntarily accepting the hierarchical relationship required by law, aspire to deeper integration into the organization, going beyond the mere exercise of duties and claiming remuneration. The organizational reality demonstrates that, in fact, the employees' contribution acquires value when the strictly administrative aspects, such as the setting of professional objectives and their evaluation criteria, are complemented by the establishment of relationships that exceed the contractual limits.

Studies in human resources management and organizational psychology can be legally transposed through soft law, thus creating a legal framework for the implementation of new relationships established at the organizational level. Future research will focus on the analysis of such soft law tools and how they have generated change at the organizational level, in terms of the working community and performance.

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Indivizi, salariați și comportament pentru cetățenie al organizației

Rezumat

Lucrarea își propune să analizeze idea solidarității sociale din perspectiva constrângerilor juridice care caracterizează raporturile de muncă dintre salariați și angajatori și nevoia tot mai acută de implicare în comunitate a organizațiilor. Prin urmare în centrul atenției se vor situa conceptul de comportament al organizațiilor orientat către cetățenie (OBSs) și conceptul juridic de subordonare al salariaților față de organizații. În prima parte a articolului va fi vorba despre definirea ființei umane prin ocupația sau profesia pe care alege să o practice (homo faber), suntem ceea ce lucrăm, și avansează către dimensiunea socială a oricărei activități economice, iar în a doua parte se vor analiza aceste idealuri precum altruismul, solidaritatea sau comportamentul prosocial, din perspectiva reglementărilor juridice prezente în codul muncii care pun accentul pe subordonarea salariaților față de angajatori care la prima vedere cel puțin descurajează asumarea unei dimensiuni civice orientate către cetățenie a salariaților. În cele din urmă vor fi sugerate posibile soluții de ameliorare a acestor raporturi juridice în așa fel încât valori precum solidaritatea să fie mai prezente în relațiile contractuale dintre salariați și angajatori în diverse context sociale sau economice.