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PARTICULARITIES REGARDING SPECIAL ROMANIAN INDIVIDUAL EMPLOYMENT CONTRACTS

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ABSTRACT:
CURRENTLY, A SERIES OF SPECIAL INDIVIDUAL EMPLOYMENT CONTRACTS, WHICH ENJOY BOTH DOMESTIC AND INTERNATIONAL REGULATIONS, ARE BEING MENTIONED IN THE LEGAL DOCTRINE. IN THE PAST, THESE SPECIAL EMPLOYMENT CONTRACTS WERE NOT GIVEN MORE ATTENTION, BUT THE DIVERSIFICATION OF LABOR RELATIONS AND THE POLITICAL, SOCIOLOGICAL, IDEOLOGICAL CHANGES FACING TODAY'S SOCIETY, DETERMINED THE ROMANIAN LEGISLATOR TO BEND MORE TO THEM. IT SHOULD NOT BE NEGLECTED THAT THE CURRENT PROVISIONS OF THE ROMANIAN LABOR CODE ARE AT LEAST PARTIALLY IN LINE WITH REGULATIONS FROM OTHER EUROPEAN COUNTRIES AND, AT THE SAME TIME, THE COMPETENT INSTITUTIONS IN THE FIELD ARE REQUIRED TO MAKE EVERY EFFORT TO HARMONIZE THE LEGISLATION IN OUR COUNTRY WITH EUROPEAN UNION LEGISLATION. IN ORDER TO LEGALLY STRENGTHEN THESE INDIVIDUAL EMPLOYMENT CONTRACTS, THE ROMANIAN LEGISLATOR IMPOSED THAT THE WRITTEN FORM BE IMPERATIVE FOR THEIR VALID CONCLUSION.

KEY WORDS: TELEWORK, INDIVIDUAL EMPLOYMENT CONTRACT, LABOR CODE, EMPLOYEE

1. GENERAL ASPECTS

Given that "the main feature of employment relationships is the fact that a person performs work, in a certain period, for another person and under his guidance, and in exchange he receives remuneration"[2], legal employment relationships have been defined as “those social relations regulated by law, which arise between a natural person on the one hand, and as a rule a legal person (company, autonomous administration, institution or public authority, etc.), on the other hand, as a result of the performance of certain activities by a certain person, for the benefit of the second person, who in turn undertakes to remunerate him and to create the necessary conditions for the performance of the work. "[3]

It should not be neglected that these special individual contracts enjoy an exhaustive regulation in the current labor codification, and the complexity of labor relations has determined the legislator to pay special attention to them.

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[2] Sanda Ghimpu, Alexandru Țiclea, Dreptul muncii, ediția a II-a (București: Editura All Beck, 2001), 16
[3] Alexandru Țiclea, Tratat de dreptul muncii (București: Editura Universul Juridic, 2014), 20.

Labor relations regulated by special statutes or laws fall under the provisions of the Labor Code, only to the extent that their own special laws or professional statutes do not contain derogating provisions.[4]

2. TELEWORKING

The situation facing today's society, namely the fight to prevent the spread of coronavirus infection, has highlighted the special importance of work outside the employer's premises. In order to comply with the legal provisions, the performance of work outside the employer's unit can be done on two lines, either by concluding an individual work contract at home, a special contract, regulated by art. 108-110 of the Labor Code, or by concluding an individual employment contract having as object telework, another special contract, regulated by Law no. 81/2018 on the regulation of telework activity.

Between these two special individual employment contracts, many confusions have been created on the labor market because telework is often identified with work from home.

In accordance with art. 3 lit. of law no. 81/2018 on the regulation of teleworking activity, this special individual employment contract is defined as "the form of work organization by which the employee, regularly and voluntarily, fulfills his duties specific to the position, occupation or profession he holds, in a place other than the workplace organized by the employer, at least one day a month, using information and communication technology."

The literature[5] has pointed out that international regulations have not been so generous regarding this special contract which has some essential features for labor relations, so neither the rules of the International Labor Organization nor those of the European Union make exhaustive references on this subject. .

Given that attempts have been made to constantly clarify this notion of telework, the most commonly used by specialists[6] is that the employee carries out his activity, regularly outside the employer's premises, using computer technologies related to the employer's computer network.

The current labor legislation does not provide for any restrictions regarding the inclusion of telework once the individual employment contract is concluded, but also subsequently, by an additional act to this contract, which of course requires compliance with the agreement of the parties.[7]

In the legal literature[8] it was highlighted that it is forbidden to modify the contract at the unilateral initiative of the employer so that the employer does not have at hand the possibility to sanction or dismiss the employee who does not agree with telework.

Not every person who concludes a simple valid individual employment contract with his employer can acquire the status of teleworker, but the teleworker must meet a number of conditions[9] : be an employee under national law, the individual employment contract must not be occasional, the activity must be carried out regularly, not incidentally, through

[4] Dănuți Țop, Tratat de dreptul muncii. Doctrină și Jurisprudență. Ediția a III-a, revăzută și adăugită, (București: Editura Mustang, 2018), 12.
[5] Idem, 273.
[6] Ovidiu Macovei, Conținutul contractului individual de muncă, (București: Editura Lumina Lex, 2004), 178
[7] Alexandru Țiclea, Tratat de dreptul muncii- Legislație. Doctrină. Jurisprudență. Ediția a X-a, actualizată, (București: Editura Universul Juridic, 2016), 385.
[8] Idem.
[9] Ovidiu Macovei, Conținutul contractului individual de muncă, (București: Editura Lumina Lex, 2004), 185.

information technologies, the work must be performed outside the unit, without excluding such a possibility.

It was also shown that ,,in any field in which telework activity is possible, it can be practiced according to the agreement of the parties. It should be noted that teleworking can be carried out only on the basis of the quality of employee, as part of an individual employment contract. He cannot, therefore, be a civil servant. "[10]

Like the other employees who have an individual employment contract for an indefinite period validly concluded, teleworkers enjoy in full all the rights deriving from these contracts in compliance with the legislation in force. The employer may not impose on the teleworker restrictions on participation in collective actions at its headquarters or other prohibitions regarding the acquisition of a trade union membership or other form of employee representatives.[11]

The legislation in force, in order to provide a better protection of employees in special situations to carry out work outside the employer's unit, established in their task the obligation to "ensure the means related to information and communication technology and / or work equipment" necessary for the performance of the work, unless the parties have agreed otherwise. "[12]

3. INDIVIDUAL WORK AT HOME CONTRACT

Unlike telework, the individual work at home contract is regulated by the provisions of the Labor Code which is in accordance with the provisions of the European Union.

The provisions of the Labor Code do not provide a definition of the work at home contract, instead art. 108 specifies the fact that those employees who fulfill, at their home, the attributions specific to the position they hold are considered to be working from home. In this case, the work schedule is established by the employees and not by the employers, but the latter have the possibility to check the activity at home, in strict compliance with the conditions established by the individual employment contract.

In addition to the elements that any individual employment contract must contain, the provisions of the labor code in art. 109 indicates that this special contract must contain the following:

a) the express specification that the employee works at home;

b) the program within which the employer is entitled to control the activity of his employee and the concrete way of performing the control;

c) the obligation for the employer to ensure the transport to and from the employee's home, as the case may be, of the raw materials and materials he uses in the activity as well as of the finished products he makes.

The employee who carries out his work from home is the beneficiary of all the rights deriving from the law and from the collective labor contracts that usually are the prerogative of the employees whose job is at the employer's headquarters.[13]

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[10] Brîndușa Teleoaca Vartolomei, Reglementarea activității de telemuncă prin Legea nr. 81/2018, în Revista română de dreptul muncii, nr. 2/2018, 50.

[11] Alexandru Țiclea, Tratat de dreptul muncii- Legislație. Doctrină. Jurisprudență. Ediția a X-a, actualizată, (:București Editura Universul Juridic, 2016), 385.

[12] Legea nr. 81/2018 privind reglementarea activității de telemuncă, publicată în Monitorul Oficial al României, nr. 296 din 2 aprilie 2018.

[13] Alexandru Țiclea, Tratat de dreptul muncii- Legislație. Doctrină. Jurisprudență. Ediția a X-a, actualizată, (:București Editura Universul Juridic, 2016), 384.

The literature has stated that "the new framework created by working from home is more restrictive, and in the sense that it does not provide the possibility for those concerned to be helped by family members, or in such a situation, even if it is not expressly provided by law, he is not prohibited from the assistance that family members could give him in order to be able to execute in good conditions the concluded employment contract. "[14]

4. THE CONTRACT THROUGH A TEMPORARY WORK AGENT

According to art. 88 para. 1 of the Labor Code, temporary work is the work performed by a temporary employee who has concluded a temporary employment contract with a temporary worker and who is made available to the user to work temporarily under the supervision and management of the latter.

In the past, the old regulation by Law 40/2011 defined the temporary employment contract as "work performed by a temporary employee who, at the disposal of the temporary work agent, performs work in favor of a user."

Lately, it should not be neglected that all state institutions make a sustained effort to harmonize the labor law with European rules. Thus, Directive 2008/104 / EC of the European Parliament and of the Council of 19 November 2008 was transposed into national law by the Labor Code in art. 88-102.

However, between the internal norms and the European ones, there is often no concordance and, thus, according to art. 88 para. 3 of the Labor Code, the temporary work agent is a legal person, authorized by the Ministry of Labor, Family, Social Protection and the Elderly, while the European norms indicate that the temporary work agent can also be a natural person, not only a legal person.[15]

In accordance with the provisions of art. 94 of the Labor Code, the temporary employment contract is concluded in writing between the temporary employment agent and the temporary employee, during a mission, and in addition to the elements that must normally contain any individual employment contract, this special contract must also contain the conditions under which the mission is to be carried out, the duration of the mission, the identity and location of the user, as well as the amount and modalities of the remuneration of the temporary employee.

Regarding the written form, it was appreciated that "it represents an ad validitatem condition, the solution is a consequence of the general provisions provided by art. 16 para. 1 of the Labor Code. "[16]

The provisions of the Labor Code provide in art. 90 para. 1 an upper time limitation regarding the temporary work mission that is established for a term that cannot be longer than 24 months, and this duration can be extended in accordance with art. 90 para. 2 of the Labor Code for successive periods which, added to the initial duration of the mission, may not lead to exceeding a period of 36 months.

The temporary employment contract is appreciated by the doctrine as "a special individual employment contract, concluded for a determined duration ... The institution of temporary employment not only resembles that of a detachment, regulated by art. 45 C. Labor, but it really is a detachment, namely really special – sui generis. As in the case of the

[14] Dănuți Țop, Tratat de dreptul muncii. Doctrină și Jurisprudență. Ediția a III-a, revăzută și adăugită, (București: Editura Mustang, 2018), 272.

[15] Alexandru Țiclea, Tratat de dreptul muncii- Legislație. Doctrină. Jurisprudență. Ediția a X-a, actualizată, (București: Editura Universul Juridic, 2016), 372.

[16] Alexandru Țiclea, Tratat de dreptul muncii, (București: Editura Universul Juridic, 2009), 366.

actual detachment, according to art. 88 para. 1 the temporary employee works under the supervision and direction of the user. "[17]

The temporary employee enjoys salary rights like any employee who has concluded an individual employment contract under the law and thus it was found that the salary received by the temporary employee for each assignment is established by direct negotiation with the temporary work agent and can not be more less than the guaranteed minimum gross country wage.[18]

Temporary employment contracts have certain features in determining the probationary period, and in this respect it has been consistently stated that when a single assignment is considered, or identical or similar assignments, a single probationary period may be established.[19]

5. PART-TIME INDIVIDUAL EMPLOYMENT CONTRACT

Under an individual part-time employment contract, the work may be performed voluntarily, the employee carrying out such a type of work for family reasons or for professional reasons or involuntarily, under a legal provision, in a situation special, as in the case of the person retired for third degree disability.[20]

In the literature[21] it has been appreciated that part-time work presents many advantages, often pecuniary and sometimes even emotional. These advantages are numerous, some are related to the combination of salary activity with studies or professional training or with respect to family tasks, and others are related to the possibility of continuing the activity after retirement and even combating absenteeism.[22]

The conclusion of individual part-time contracts by the employer implies the use of a larger number of employees, leading implicitly to the significant reduction of the effects of unemployment, a phenomenon that the labor market is facing today.[23]

According to art. 103 of the Labor Code, the part-time employee is the employee whose number of normal working hours, calculated weekly or as a monthly average, is lower than the number of normal working hours of a comparable full-time employee.

Corresponding to art. 104 para. 1 of the same normative act, the employer may employ part-time employees through individual employment contracts for an indefinite or fixed-term period, called individual part-time employment contracts. Also, according to art. 104 para. 2 the written form is imposed for concluding this type of contract, there being no other way to conclude it.

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[17] Alexandru Țiclea, Particularități ale contractului de muncă temporară, în „Revista română de dreptul muncii", nr. 10/2014, 22.

[18] Dănuți Țop, Tratat de dreptul muncii. Doctrină și Jurisprudență. Ediția a III-a, revăzută și adăugită, (București: Editura Mustang, 2018), 292.

[19] Ioan Traian Ștefănescu, Tratat teoretic și practic de drept al muncii, ediția a IV-a, revăzută și adăugită, (București: Editura Universul Juridic, 2017), 577.

[20] Felicia Roșioru, Dreptul individual al muncii, (București: Editura Universul Juridic, 2017), 449

[21] Alexandru Țiclea, Contractul individual de muncă pe timp parțial, în „Revista română de drept al muncii", nr.3/2002, 32-55.

[22] Dan Țop, Tratat de dreptul muncii. Doctrină și Jurisprudență. Ediția a III-a, revăzută și adăugită, (București: Editura Mustang, 2018), 268

[23] Ovidiu Ținca, Contractul de muncă pe timp parțial și contractul de muncă temporar, în „Revista de drept comercial" nr. 5/2002, 49.

The individual part-time employment contract includes, according to art. 105 par. 1 of the Labor Code, apart from the elements provided in art. 17 para. 3, the following items:

a) working hours and distribution of work schedule;

b) the conditions under which the work schedule may be modified;

c) the prohibition to perform overtime, except in cases of force majeure or for other urgent works intended to prevent accidents or to eliminate their consequences.

In accordance with the provisions of art. 106 of the Labor Code, the employee employed with a part-time employment contract enjoys the rights of full-time employees, under the conditions provided by law and the applicable collective labor agreements. This equality of treatment is not an absolute one, but a relative one determined by the partial time interval in which such an employee carries out his work.[24]

6. CONCLUSIONS

In conclusion, all these special contracts have a dominant position on the labor market given the diversity of ever-changing labor relations and beyond. Under the umbrella of certain contracts such as the work at home contract, the individual part-time employment contract, the telework, the employee is the beneficiary of all legal rights arising from a contract concluded under the law with his employer.

[24] Alexandru Țiclea, Tratat de dreptul muncii- Legislație. Doctrină. Jurisprudență. Ediția a X-a, actualizată, (:București Editura Universul Juridic, 2016), 384

REFERENCES

1. **Ghimpu, Sanda; Țiclea Alexandru**; Labor law, 2nd edition (Dreptul muncii, ediția a II-a). Bucharest: All Beck Publishing House, 2001.
2. **Law no. 81/2018 on the regulation of telework activity** (published in Official Gazette of Romania, nr. 296 of 2 aprilie 2018)
3. **Ovidiu, Macovei**; The content of the individual employment contract (Conținutul contractului individual de muncă). Bucharest: Lumina Lex Publishing House, 2004.
4. **Roșioru, Felicia;** Individual labor law (Dreptul individual al muncii). Bucharest: Universul Juridic Publishing House, 2017.
5. **Ștefănescu, Ion Traian;** Theoretical and practical treatise on labor law, 4th edition, revised and added (Tratat teoretic și practic de drept al muncii, ediția a IV-a, revăzută și adăugită). Bucharest: Universul Juridic Publishing House, 2017.
6. **Țiclea, Alexandru**; Labor law treaty - Legislation. Doctrine. Jurisprudence. 10th edition, updated (Tratat de dreptul muncii- Legislație. Doctrină. Jurisprudență. Ediția a X-a, actualizată). Bucharest: Universul Juridic Publishing House, 2016.
7. **Țiclea, Alexandru;** Labor law treaty (Tratat de dreptul muncii) Bucharest:Universul Juridic Publishing House, 2014.
8. **Țiclea, Alexandru;** Labor law treaty (Tratat de dreptul muncii). Bucharest: Universul Juridic Publishing House, 2009.
9. **Țiclea, Alexandru;** Particularities of the temporary employment contract, in "Romanian Journal of Labor Law", no. 10 (Particularități ale contractului de muncă temporară, în „Revista română de dreptul muncii", nr. 10), 2014.
10. **Țiclea, Alexandru;** The individual part-time employment contract, in "Romanian Journal of Labor Law", no. 32 (Contractul individual de muncă pe timp parțial, în „Revista română de drept al muncii", nr. 32), 2002.
11. **Ținca, Ovidiu;** The part-time employment contract and the temporary employment contract, in "Revista de diritto comercial" no. 5/2002 (Contractul de muncă pe timp parțial și contractul de muncă temporar, în „Revista de drept comercial" nr. 5/2002).
12. **Țop, Dănuți**; Labor law treaty. Doctrine and Jurisprudence. 3rd edition, revised and added (Tratat de dreptul muncii. Doctrină și Jurisprudență. Ediția a III-a, revăzută și adăugită). Bucharest: Mustang Publishing House, 2018.
13. **Vartolomei, Brândușa**; Regulation of telework activity by Law no. 81/2018, in the Romanian Journal of Labor Law, no. 2 (Reglementarea activității de telemuncă prin Legea nr. 81/2018, în Revista română de dreptul muncii, nr. 2), 2018.