

The state's intervention on the labor market

Dumitru VIERIU

Bucharest Bar, Romania

eufemia_vieriu@yahoo.com

Abstract:

The state's intervention on the labor market, which is not a new concept, occurs today as a greater necessity of the state's implication in the process of ensuring general wellbeing, promoting social security as a state's duty towards its citizens.

The embodiment of the state's legislative implication is realised by numerous legislative acts, the most important being the Labor Code.

By legislative measures the state grants major importance to the social protection of employees, thus a series of imperative norms have been passed regarding: the minimum gross salary of the country guaranteed in payment, establishment of the maximum work time, the minimum rest time, regulation of the collective and individual dismissal.

According to law, the state deals with legalizing the protection and promotion of the rights of disabled people including their admission to employment.

We consider that by applying the appropriate measures regarding: workplaces, qualification and re-qualification, unemployment benefits for those that cannot find a workplace, the state will fulfill one of its most important functions, the one of protecting the members of the community.

Keywords: *Labor market, workplace, unemployment, social protection, social security.*

The state's intervention in labor relations mainly occurs by judicial norms to establish a beneficial general setting of the social partners' activity, of the development of collective negotiation, of professional training as well as of the stimulation of economical growth. This action of the state helps to control the manner in which the labor legislation, the rights and obligations of the employees are respected. [1, pp. 231 – 232]

Occasionally, through specialized organs, the labor allocation issues labor license to strangers but it also ensures the protection of Romanian citizens, residents of Romania, who work abroad.

The most important fields of state action in labor relations:

- legislative activity
- stimulation of economical growth
- stimulation of work force
- organisation of professional training

According to the object of the regulation, the norms that form the labor legislation are divided into two major categories:

- judicial norms that regulate individual labor relations;
- judicial norms that regulate collective labor relations.

Being a labor legislation, the norms of the labor legislation have a minimal nature except for the norms of the public sector personnel that have a quantum predetermined by law.

The materialization of the legislative intervention of the state has been realised in numerous normative acts, the most important being the Labor code (Law no. 53/2003), being considered a new type of Labor code.

Through legislative measures the state granted a major importance to the social protection of employees. Thus there are adopted imperative norms regarding: the minimum gross salary of the country guaranteed in payment, establishment of the maximum work time, the minimum rest time, regulation of the collective and individual dismissal.

According to Law no. 448/2006 the state handles the legalization of protection and promotion of the rights of disabled people, as well as their admission to employment.

To decrease the unemployment rate it is necessary to take some measure regarding the stimulation of the workforce, this being indirectly done by the state's intervention.

The measures necessary to occupy the workforce are found in art. 53 of Law no.76/2002:

- the increase of the chances to employ people looking for a workplace;
- encouraging employers to hire unemployed people and creating new workplaces;

The stimulation of the employers to hire unemployed people by virtue of art. 77 of Law no. 72/2002 is made by:

- financing the work places;
- obtaining the workplaces in favorable conditions in order to found new work places;
- granting some facilities.

The measures for encouraging the work force are supported by a complex of active measures stated in the National Strategy for Occupying the Work Force 2004-2010 [2].

The work assignment of some categories of people like: the unemployed, people who receive social aid, disabled people or people that perform alternative military service is made by the specialized organs of the state.

Law no. 76/2002 regarding the unemployment insurance system and the stimulation of employment has established a new perspective on social protection but has prioritized measures for employment.

Throughout time there have been several researches regarding the unemployment insurance system, the natural rate or the unemployment balance. The idea that the unemployment balance rate has grown in the same direction as the current rate has been emphasized by the high unemployment rate that has been persisting in Europe since 1980; this is caused by more generous unemployment benefits systems.

Nevertheless, the causes of a high and persistent unemployment rate are the increase of unemployment benefits. However we must not forget the ones that develop certain activities abroad. According to art. 1 of Law no. 156/2000 the Romanian state ensures the protection of the Romanian citizens, residents of Romania, who work abroad. The provisions of this normative act regards only Romanian citizens that are residents of Romania and who work abroad under an individual labor agreement.

At present, Romania has closed agreements referring to work places only with Germany, Czech, Liban, Hungary, Switzerland and other countries. Activities of mediating the employment of Romanian citizens abroad will be carried out by the agents of employment that meet the conditions provided by art. 9 of the law. [3, pp. 18 – 20]

The mediation of the citizens working abroad can only be done based on the agreements closed by the accredited employment agents with individuals, juridical person and foreign patronal organisations that have firm offers of work places. The labor legislation is of territorial application. [1, p. 231]

Therefore the Romanian state cannot unilaterally make a spatial extension of its labor law norms to the labor agreements of the Romanian citizens working abroad.

LABOR AUTHORISATIONS – HAVE AN IMPORTANT ROLE BOTH FOR THE EMPLOYER BUT ESPECIALLY FOR THE EMPLOYEE.

According to the Emergency Ordinance of the Government no. 56/2007 regarding employment and detachment on Romanian territory, the labor authorisations are official documents which entitle the holders (non-nationals) ought to be employed in or to be detached in our country.

The labor authorisation can be issued, at the employer's request, by the Romanian Immigration Office to citizens that meet the conditions provided by the specialized Romanian legislation.

This is also issued to foreigners who:

- come from states that have closed agreements with Romania;
- benefit from the right of temporary residence for family reunion;
- benefit from the right of temporary residence for studies and solicit employment based on an individual labor agreement part time with a programme of maximum 4 hours a day
- are detached on Romanina territory.

Types of labor authorisations that can be issued to foreigners:

- labor authorisation for permanent employees;
- labor authorisation for detached employees;
- labor authorisation for seasonal employees;
- labor authorisation for athletes;
- nominal labor authorisation;
- labor authorisations for interns.

In other words, the law takes into account the norms of international private law, of the communitary law but also, on a larger scale, the norms of general international law.

For a better functioning of things from an economic point of view the existence of an indisputable administrative organ is necessary, regardless if the state interferes or not in labor relations, this organ being knowm as Labor Inspection. Labor Inspection has been financed and organized by Law no. 108/1999.

According to article 1 of this law, Labor Inspection is a specialized organ of the central public administration being subordinate to the Ministry of Labor, Social protection and Family, that has legal personality.

It exercises authority attributions of the state regarding labor, labor relations, security and health in labor, more precisely, it controls the unitary application of legal dispositions in its competence domains, in its units of the public sector, private sector as well as of other categories for employees.

Labor Inspection has in its structures Territorial Labor Inspectorates that are organized both in Bucharest and in every county. The Territorial Labor Inspectorates are units without legal personality but through the organization and functioning regulation of the Labor Inspection, gain legal personality.

The personnel of this specialized organ is made of labor inspectors and other personnel categories.

THE ORGANIZATION AND FUNCTIONING OF THE LABOR INSPECTION

According to art. 2 of Law no. 108/1999, the Labor Inspection has as subordinates the territorial labor inspectorates that are units with legal personality organized in every county and in Bucharest.

The requirements regarding the organization of Labor inspection are an important part in a series of documents of the European Union. Besides, in the member states of the European Union, there are organized authorities of inspection and control over the way in which the labor social security regulation referring to employed people are applied and followed, such as:

- England;
- Belgium;
- Denmark;
- France;
- Germany.

The organizational structure of the Labor Inspectorate according to law provision is:

- a general inspector of state – who represents the institution in relation with the authorities of public administration, individuals or legal persons;
- two deputy inspectors of state;
- a control body for the quality of the inspection.

Within the Labor Inspection there functions a Colledge that meets periodically under the leadership of the general inspector of state, to establish the strategy and to debate the special problems. [1, p. 231]

Labor Inspection can found units with legal personality that develop their activity within its domain of competence, namely: [4, pp. 135 – 137]

- training and perfecting the professional training of the personell of the Labor Inspection;
- training and perfecting the personell of other activity sectors in the labor protection domain;
- other types of actions related to the specific of its activity.

THE MAIN OBJECTIVES OF THE LABOR INSPECTION ACCRODING TO ART. 5 OF LAW NO. 108/1999 ARE:

- controlling the application of legal provisions regarding labor relations, security and health in labor, protection of employees who work in special conditions and of legal provisions reffering to social ensurances;
- informing the competent authorithies of the deficiencies regarding the correct application of the current legal dispositions;
- providin information to those intrested about the most efficient ways to follow the labor regulation;
- technical assistance of employers and employees to prevent professional risks and social conflicts.

THE ATTRIBUTIONS OF THE LABOR INSPECTION ARE FOUND IN ART. 3 ALIGN 1 OF LAW NO. 08/1999 AS WELL AS IN THE GOVERNMENTAL DECIZION AND HAS THREE MAIN CATHEGORIES:

- general attributions;
- attributions specific to the establishment and control of labor relations;
- attributions specific to security and health in labor.

The personel of the Labor Inspection is made of labor inspector and other cathegories of personell. The function of labor inspector can be taken by people with superior technical, legal, economic, psychosociology and labor medicine studies.

THE RIGHTS OF THE LABOR INSPECTORS:

- to get evidence, to do investigations or examinations, to request the presentation of the necessary documentation, to make measurements or to collect samples of substances used in the production process;
- to request that the observed deviations to be fixed immediately or in a limited time;
- to request to the management of the legal person or individual the necessary documents and information in order to make the control or to investigate the labor accidents.

THE OBLIGATIONS OF THE LABOR INSPECTORS:

- to not be an associate or a member of the management, administration or control organs of the individuals or legal persons, public or private, that are verified; [5, p. 273]
- to not have any interest of any nature in the units that are under verification;
- to keep confidentiality over the identity of the person that reports the deviation from the legal provisions in the domain regulated by the current decision and to not tell the employer that the verification is the result of a report;
- to not divulge secrets of fabrication or trade, and ,in general, the procedures of exploration that they acknowledge while exercising their function both during the existence of work relations and for 2 years after their termination.
- to respect the ethics of the public function.

In 1944, in Philadelphia, The International Conference of Labor has completed the Constitution, the adopted text being named "The Declaration of Philadelphia".

The document has stated that "labor is not a merchandise" and that "the liberty of association is an indispensable condition of an uninterrupted progress."

After World War II, after the Treaty of Versailles of 11th of April 1919 The International Organization of Labor has been founded.

The first session of the International Conference of Labor, the supreme organ, took place in Washington in October 1919, where there was elected the director of the first International Bureau of Labor.

The International Organisation of Labor had an active role in promoting the international technical cooperation, adopting some judicial labor laws with worldwide vocation, preoccupied by the increase of the organization's implication in debating and solving the great problems of development and peace.

THE STRUCTURE OF THE INTERNATIONAL ORGANIZATION OF LABOR

- General gathering;
- International Labor Conference;
- an executive council – The Administration Council and a permanent secretariat;
- The International Bureau of Labor;
- other organs of work or regional conferences, different committees and expert reunions.

The International Labor Conference is the supreme organ and has the following attributions:

- elaborates the international labor norms and controls their application
- decides the admission of new members
- chooses the Administration Council;
- votes the budget of the organization.

The International Labor Conference is made of the ensemble of the delegations of the member states, it has sessions anytime necessary, at least once a year (usually in June).

The Conference has a president and a prime vice president elected from the governmental representatives and two vice presidents elected from the representatives of the workers and employers.

The conference designates in each session:

- a committee for the preliminary examination of every issue submitted to vote
- a committee for applying the conventions and recommendations, a committee of resolutions.

Four big international union organizations, namely the International Conference of the Free Unions, The Worldwide Conference of Labor, The Worldwide Union Federation and the African Union Unity Organization have the status of observers at the International Organization of Labor. This gives them the right to

participate at any conference and reunion of the other management organs but they do not have the right to vote.

The Administration Council – is the executive organ of the International Organization of Labor that leads its activity between conferences. It normally meets three times a year in a spring session (March-April), one immediately after the conference and an autumn session (November).

The Administration Council has 56 members:

- 28 governmental representatives;
- 14 representatives of the employees;
- 14 representatives of the employers.

Out of 28 governmental representatives 10 are named by the member states and the rest are elected by the government delegations of the Conference. The representatives of the employers and of the employees according to regulation represent the interests of the ensemble of patronates and of the employees of the member states not the states they come from. [5, p. 273]

THE ADMINISTRATION COUNCIL HAS THE FOLLOWING ATTRIBUTIONS:

- schedules the daily order of the Conference
- keeps record of the adopted acts and takes measures for their application
- controls the application of the international labor norms.

The International Bureau of Labor – is the permanent secretariat of the Organization and has its headquarters in Geneva. The structure of the bureau is:

- the general director;
- 3 deputy general directors;
- 7 general sub directors, several departments.

The attributions of the International Bureau of Labor are:

- elaborates documents and reports for the conferences and reunions of the organization and does secretary papers for them;
- recruits experts in technical cooperation and establishes the directives for the technical cooperation programmes of the whole world;
- gathers information and statistical situations

- publishes a wide range of papers and specialized periodics regarding labor and social problems
- supports the governments of the member states on problems related to its activity object.

The competence of the International Organisation of Labor is both material and personal.

In what concerns the material competence there have been some issues in the first years after its foundation. The Permanent Court of International Justice from Hague was solicited to give several consultative notices regarding the interpretation of the Constitution in what concerns the right of the organization to regulate certain relations. The conclusion of this notices was its general social and labor competence. The Declaration of Philadelphia has confirmed this conclusion through the conception of the general principles stated to replace the ones of the Treaty of Versailles. [6, pp. 15 – 20]

Instead, the personal competence regards both the manual and the intellectual workers, as well as co-operators, both the workers from the private sector and the ones from the public sector, including the public servants [7, 8, pp. 31, 28].

The Norms of the International Organization of Labor are divided in two categories:

- conventions
- recommendations.

Although the Constitution allows the adoption of both a convention and a recommendation, the two categories are different.

Conventions represent judicial instruments that regulate aspects of administrating the work force, the social welfare or of the fundamental human rights and liberties. The ratification of a convention implies a double obligation of the state.

Recommendations are judicial instruments similar to conventions but they are not submitted to ratification and include orientations, ideals or preferences addressed to the states.

The purpose of the recommendations is to state, to objectify the semnifications of the convention. The recommendation is not subjected to ratification, does not create obligations for the member states, it includes only simple directives having the purpose to guide the states' actions on a national level. Throughout time there have been ratified several Conventions, in the second session of the

Convention of 1920 there have been adopted three Conventions, Romania ratifying the Convention regarding the minimal age for admitting children in nautical work, of 1922.

But starting with 1940, without soliciting withdrawal from the International Labor Organisation, Romania stops being a member, not paying its monetary obligations. In 1942 the Conference has acknowledged that our country is no longer a member of the International Organisation of Labor.

It continued its activity, however, in 1956 as she was included on December 14th 1955 in the United Nations Organisation.

In our country there have been organized important international manifestations, such as:

- the 8th World Congress for preventing labor accidents and professional illnesses
- the symposium on practical application of the industrial ergonomics, agriculture and forest economy

The representatives of Romania have been elected in the management of the International Labor Organisation three times vice president of the Conference and three times member of the Administration Council.

Since 1976 Romania has not ratified any convention being simultaneously accused of not respecting the ratified norms especially those referring to the right to associate, union liberty, forced labor, labor duration.

During 1991-1992 the International Bureau of Labor through the Regional Bureau for Europe has undertaken 14 missions in favour of Romania regarding:

- union liberty
- professional relations
- collective conflicts
- social protection
- professional rehabilitation of the disabled
- assistance for union organisation etc.

At the 82nd session of the International Labor Conference of 1995 the government representative of Romania was elected vice president of the Confederation, facilitating the development of the technical assistance programmes.

Romania has made its presence known especially at the International Labor Organisation by assigning a governmental representative of our country as reporter of the Committee of applying the international labor norms of 1997.

Although the intervention of our country in the International Labor Organization has not been a very balanced one, Romania has managed to stand out through its many proposals and ratifications of conventions as well as occupying an important function within this organization by the governmental representatives of our country.

References:

- [1] Țiclea Alexandru, Popescu Andrei, Tufan Constantin, Țichindelean Mărioara, Ținca Ovidiu (2004), Labor Law, Publisher Rosetti, Bucharest.
- [2] Szekeley Cătălina Ștefania, The role of government in the European space, Jus et Civitas, Vol I (3XV) no 1/2014
- [3] Țiclea Alexandru (2010), Labor Law Treaty, IVth Edition, revised, Publisher Universul Juridic, Bucharest.
- [4] Vieriu Eufemia, Vieriu Dumitru (2010), Labor Law, Publisher Pro Universitaria, Bucharest.
- [5] Ștefănescu Ion Traian (2004), Labor Law Treaty, volume I, Publisher Lumina Lex, Bucharest.
- [6] Vieriu Eufemia, Circulation of the Labor Force Within the European Union, Bulletin Petroleum-Gas University of Ploiești, no. 2/2013, vol XIV
- [7] Rădulescu Lucian Dragoș, Legal nature of the actions taken by the employees during labor disputes. Case study, Petroleum Gas University Bulletin, Law and Social Science Series, Vol. LXIV, no. 1 / 2013
- [8] Apostolache Mihai Cristian, Apostolache Mihaela Adina (2014), Deontologia functionarului public, Publisher Universitară, Bucharest.