Individual labor contract law

Lecturer Lucia Maria COŞTIUG, PhD.
Avram Iancu University, Cluj-Napoca, Romania
costiuglucia@yahoo.com

Abstract
Labour law, as we know it in its entirety, was not always as distinct branch of law, this being the result of a continuous development process, constantly reflected in how society evolves. Autonomy sector labor law is ascribed to the emergence and continued expansion of employment, circumstances which implicitly prompted the adoption of appropriate legislation and its improvement due to diversification of social relations work.
Given that labor law is divided in turn into two branches: collective labor law and individual labor law, in the following we address issues related to the latter branch said, referring, in particular, the main object of its study, ie the individual employment contract.
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Introduction

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Because I've always known labor law as its own, no individual employment contract was not specifically object regulatory discipline concerned. Therefore, please note the initial legal approach under the previous Civil Code, art. 1470 pt. 1, along with the contract of enterprise and transport, being known as labor tenancy (art.1413).

For the first time in law distinct set of employment contracts in 1929, followed later become main regulatory Labour Code of 1950, one in 1972, and not least, the current Labour Code, in force 1 March 2003, as regards the Law 53/2003, republished in the Official Gazette of Romania, Part I, no. 345 of 18 May 2011.

Of course, we can not omit subsequent amendments to the legislation in question currently applicable: namely Law no. 40/2011 amending and supplementing Law no. 53/2003, published in the Official Gazette of Romania, Part I, no. 225 of 31 March 2011. The current Labour Code deals with individual employment contract

institution exhaustively in Title II, for which is considered to be primarily a law of this contract.

1.Definition

In the primitive, in the absence of law and State, there was no legal regulation on labor supply. Also, even during slavery there was no independent regulatory work on. During this period the work was indirectly regulated through legal norms on private property. The same can be noticed in feudal order - even if the lord did not have the same absolute rights over who's worked the land (compared with the slave master) - all work performed was regulated through legal norms regarding the property.

Between capitalist ownership proved to be insufficient for the worker to be required to work. With time appeared distinct rules of law, civilian in nature, related to work. For the first time in the history of civil society have become necessary specific regulations regarding labor relations.

In Romania, leasing services were governed by art. 1470 Civil Code in summary, this regulation only limited to the formulation of two reciprocal obligations, namely the obligation to work and the obligation to pay labor. The evolution of over 50 years in this area has caused separation of the individual employment contract of civil contracts and thus led to the creation of a separate branch of law - labor law.

The employment contract is the contract whereby a person undertakes to perform physical to personal service of another natural or legal person under the continuing dependence or subordination of the second and payment.

Not providing the service, is called employee who receives remuneration employer pays is called, whatever shape is called wage.

In legal doctrine in Western Europe while there were different theories regarding the source of legal labor relations of employees. Thus there:

I. necontractualiste theories:

1. institutional theory - was held in Germany, but with followers in Italy. Institutional theory held that the legal relation of employment source is the effective integration of certain establishments person team;

2. theory actually benefits - was presented especially in the Nordic countries. According to this theory, the source of the legal relationship of employment is the materiality of the fact labor supply, which is certainly a manifestation of the will expressed by conclusive facts.

II. contractualist theories:

1. adhesion contract theory - supported mainly in Italy and USA that the disposition of one party (the employer) to provide some employment in certain circumstances, it is free to join or not the other party (the employee). It is obvious, however, that an individual employment contract is the result of a simple membership, but usually is the result of individual negotiations free.

2. association contract theory. According to this theory between employer and employee are a unique combination, similar to the civil existence founded on the idea for a common purpose based on the overriding interests in common. In fact, despite the objective of achieving social peace, individual employment contract is a contract associative.

3. exchange contract theory. This theory is the majority opinion, that the source of legal labor relations of employees is the individual employment contract or a contract covering the provision of work for a salary.

Also in Western doctrine, due to the increasing role of the collective labor agreement in the standardization of legal work, it is estimated that manifests a decline in individual employment contract. Such an opinion but finds no counterpart in the case of labor legislation of our country.

In Romania, the legal regime applicable to the individual employment contract is governed by the Code muncii- Law. 53/2003, recently amended by Law No.40 / 2011, which aimed to conduct more flexible labor relations.

Starting regulating legal institutions laid down by the Labour Code, we consider it necessary to mention the following:

-River contract of indefinite duration individually and working full time is regulated in a dual perspective: on the one hand, itself, as an autonomous institution and, on the other hand, the common law rules as the other two individual contracts of employment categories: fixed-term and part-time;

-Works Temporary agency work is essentially an individual contract of employment itself but a species of individual employment contract of limited duration;

-Works at home not an individual employment contract themselves. In an individual employment contract of limited duration, indefinite, full-time or part-time employee's work place is not at the employer's residence.

According to Article 10 of the Labour Code individual labor contract is a contract under which a natural person, called the employee undertakes to perform work for and under the authority of an employer, natural or legal person, for remuneration called wages.

In legal literature specialist noted deficient and unilateral nature of that definition, especially because not expressly mentioned employer's obligation to pay wages, insufficient relevance of the reference to work performed for remuneration - salary.

The doctrine uses the concept of subordination of the employee to the employer during the performance of individual work. Defining the individual employment contract, the legislator preferred to use the term of authority; prestrază employee working for and under the authority of an employer.

In a concise manner, the individual employment contract is the agreement signed in writing, whereby one party - the employee - is committed to providing with continuity in time of work on the behalf and under the authority of the other party - the employer - and that in Then he shall, in turn, salary and appropriate working conditions.

According to art. 10 of the Labour Code, "individual employment contract is the contract under which a person, called the employee undertakes to perform work for and under the authority of an employer, natural or legal person, for remuneration called wages".

Although weak and incomplete, this legal text was not subject to amendments and completions by Law no. 40/2011, so that the doctrine formulated a series of definitions, considered more appropriate. In this sense, proposed the following definition: "An individual employment contract is the agreement under which a person, called the employee undertakes to perform a certain activity for and under the authority of an employer, legal entity or natural person, which in turn his undertakes to pay

remuneration, salary named and to ensure adequate activity, the maintenance of safety and health at work ".

2. Peculiarity

According to Mr Alexander Ţiclea, this definition is presented as one deficient. Because in our system of law, the term "contract" is synonymous with "convention" we concur with the proposal made by him for the purposes of reformulating the legal definition of "individual employment contract is the convention" to avoid the tautological argument this context.

An individual employment contract that puts the patterns in the sphere of civil contracts, but which he singles also. Thus, we talk about a contract - legal act, legal act bilateral mutually binding contract, called onerous and commutative, consensual contract intuitu personae, successive performance, which implies an obligation to "do" and that can not be ended with a condition suspension or terminate, but may be affected by the extinctive term.

a) The individual labor contract - legal act

We are a manifestation of the will in the presence of two people at determining the reciprocal rights and obligations and correlative, thus, the content of the legal relationship of employment. This manifestation of will on the principle of freedom of will, freedom can not be expressed only in accordance with the statutory provisions.

It is important in this respect, art. 11 of the Labour Code, which provides: "clauses individual employment contract may not contain provisions contrary to or below the minimum rights established by laws or collective agreements" and art. 38 of the same legislative source, which provides that "employees can not renounce their rights recognized by law. Any transaction that seeks waiver of rights recognized by law or limit such rights to employees is invalid. "

b) The individual labor contract - bilateral legal act

This feature we can easily identify from the definition of the contract in question. Therefore, it typically involves two parts: employee (employee), representing the natural person undertakes to perform work and the employer (owner), the legal entity or natural person may use paid labor law.

The plurality of subjects is excluded, both the active and passive, unlike civil and commercial contracts which sometimes may have a plurality of creditors and debtors. This implies that there may exist in and by the same individual employment contract more people who have, together, employee quality and usually no more people having together the employer.

From this rule there are certain exceptions, in associative forms the profession of lawyer, notary (See article 14 of Law No.36 / 1995 of the notaries and notary activities and Article 12, art. 13 and 38 of the Order of the Minister of Justice nr.710 / 1995 for adoption of the Regulation implementing the Law on public notaries and notary activity no.36 / 1995, published in the Official Gazette of Romania, Part I, no.176 / August 8, 1995, the Minister of Justice by Order no.233 / 1996, published in the Official Gazette of Romania, Part I, No. 37 / February 21, 1996 and amended by Order of the Minister of Justice nr.1410 / 1996, published in M. Of. of Romania, Part I, No. 25 / February 15, 1997) or doctor (see article 10 and article 11 of the Government Ordinance no.124 / 1998 on the organization and operation of medical offices, republished in the Official Gazette Romania, Part I, no.568 / August 1, 1998, supplemented by Government Emergency Order no.152 / 2002 on the organization and operation of spa tourism companies and Recovery, published in Official Gazette Romania, Part I, nr.826 / November 15, 2002, approved by Law no.143 / 2003, published in Official Gazette Romania, Part I, no.280 / 22 April 2003 and 17 of Annex 1 to the Order of the minister of health and family no.153 / 2003 approving the Methodological Norms on the establishment, organization and operation of medical offices, published in Official Gazette Romania, Part I, nr.353 / May 23, 2003). In accordance with legal regulations, coordinating lawyer, notary public or commissioner authorized doctor may conclude, on behalf of those with whom they are associated, individual contracts of employment with trainee lawyers, notaries interns, doctors or staff. In all these cases, the subordination of their respective employees are not perpetrated exclusively to the attorney who concluded employment contracts concerned, but also with other partners.

If domestic workers (even if no legal norms showing directly that conclusion) subordinate employees to manifest and husband / wife of / that which concluded the individual employment contracts.

c) The individual labor contract - a mutually binding contract

Sinalagmatic contract is characterized by reciprocity obligations of the parties and the interdependence of mutual obligations. A contract is bilateral when the parties agree mutually to each other, which means that each of the parties mutually binding contract is simultaneously both a creditor and a debtor.

The basic principle is do ut mutually binding contract pro- give you to give me. An individual employment contract gives rise to reciprocal rights and obligations between the parties, because the obligation of one of them being a performance obligation other. Labor provision seeks, first, obtaining wage. Payment of wages is determined by the performance of work.

d) The individual labor contract - agreement called onerous and commutative

Clearly we are in the presence of a contract named, given the exhaustive regulation of the institution individual employment contract offered by the Labour Code in Title II, art.10-110.

The contract is the contract called corresponds to a specific legal operations and civilă- be nominated in law in the Civil Code or other civil laws. The individual contract of employment is governed as such by rules of labor law, rules that are contained in the Labour Code. It corresponds to a specific legal transactions (See Ovidiu Ungureanu, Cornelia Muntean civil law treaty, Publisher Hamangiu, Bucharest 2008, pag.168).

T he contract for consideration is that contract in which each party wishes to procure a avantaj- art.945 Civil Code. Onerous contract arising from dominating the purpose of the contract, to obtain some advantage as equivalent to the obligation assumed. The obligations of the parties shall be governed with greater severity if the contract is onerous.

For contracts that purchase consideration from the other party some advantage, aims instead to get another patrimony more or less equivalent. The contract for consideration each party has an interest and gets something from each other in exchange for what it gives. The parties are mutually consideration in exchange of which were forced to perform.

Commutative character - phrase that contract designates the existence and extent of benefits payable by the parties are clear and can be evaluated and assessed even when the contract, they do not depend in any degree of hazard.

Both benefit employee and employer benefit are known from the beginning, from the time the contract (ab initio); execution does not depend on an uncertain event. Consequently, fulfilling honorary activities can not take place, by definition, under a contract muncă- only under contract, as some civil-wage and the object respectively due to any employment contract.

e) The individual labor contract - consensual agreement

Contracts consensual nature are contracts ending by mere agreement of the parties, their mere manifestation of will, unaccompanied by any form, it is sufficient to form a contract valid. If the parties agree to accompany the declaration of intent with a document in which a record, do not give validity of the contract, but in order to provide evidence on the conclusion and content.

Contracts consensual nature can simply enter valid expression of the will of the parties, regardless of its form of expression.

Basically, the agreement is more a derogation from the principle of mutual consent with the fundamental principle value for labor relations, because according to Art. 16 para. (1) of the Labour Code, "the employment contract is concluded under the consent of the parties, written in Romanian. The obligation to conclude individual labor contract the employer in writing. The written form is required for the valid conclusion of the contract. "Or, these provisions are merely underline the necessity of the written form for the validity of the contract. Therefore, this form is a condition validitatem ad, unlike the old regulation, which required written form as a condition of probation (ad probationem).

Moreover, it is considered a prerequisite ad validitatem as a derogation from that principle, which "in this case, is the very negation of this principle."

f) The individual labor contract - the contract intuitu personae

Any employment contract is personal, but always concluded in consideration the training, skills and qualities employee. The contract can not be transmitted by

inheritance and employee performs its duties imperatively personally and not through other people (represented by delegates) or with their help.

g) The individual labor contract - a contract with successive performance

The employment contract requires mutual benefits and correlative, but this can only be achieved over time and not all at once (uno icto). Employee work time is provided for the benefit of the employer, in return for this, the employee should receive a permanent salary paid periodically (monthly or bimonthly).

Moreover, in case of default or improper performance of obligations, the applicable sanction is termination, resulting in termination for the future (ex nunc) and was not rescinded, which has retroactive effect (ex tunc).

Work is staggered over time even if the contract is for a fixed term or as a part-time employment contract. As a consequence, in case of failure or improper fulfillment of the obligations incumbent of either Party shall be termination penalty, which requires termination only for ex nunc- viitor- and not rescinded that produces effects ex retroactive- tunc.

h) The individual labor contract - involving the obligation "to do"

The obligation to make is, in general, the duty to perform any act other than to send or constitute a real right (teaching or restitution of property, carry a consignment or service etc.).

This obligation of the employee to do the work, be executed with natural by muncă- not be turned into dezdăunări. An example of this might be: employee to provide the employer in exchange for his work, material value. In turn, any employer can not execute himself obliged to work that lies employee's expense ..

i) The individual labor contract - can not be affected by the condition.

In general, the individual employment contract is simply an agreement without being affected by the arrangements. It can not be concluded under the condition precedent because it is impossible that the effects of this contract depend on the achievement of a future and uncertain events (art. 1399, New Civil Code) but at the same time can not be affected by a condition or terminate, the fulfillment of which would result in the termination of the obligation (art. 1401, New Civil Code). Otherwise, it would circumvent the labor law.

The individual labor contract can not be concluded under suspensive condition because it can not conceive of birth effects of that contract to be based on the achievement of both future and uncertain events (see Sanda Ghimpu Al. Ţiclea Labor Law Publishing All Beck, Bucharest 2001 p . 14). The individual labor contract can not be affected either by a condition to terminate because otherwise, would circumvent the Labour Code and the collective labor contract at national level which establish the basis and conditions limiting individual employment contract ends.

Although it is regarded as a condition to terminate the probationary period (art. 31-32 Labour Code) is considered to be generally a contractual clause of forfeiture appreciated by the parties.

j) The individual labor contract - affected by term

Exceptionally, the individual employment contract may be affected by the extinctive term ie when the law allows individual employment contract is concluded for a fixed term. Also exceptionally individual employment contract may be affected by a standstill period, but certainly (Certus dies et quando year) - when the parties conclude that the performance of the contract will begin at one time determined after the conclusion of the contract.

The individual labor contract can not be affected by a standstill period but uncertain (dies Certus year incertus et quando) as an obligation for the employee is an obligation of means, ie the concluding employment contract is held to make the effort to exercise due care and a creative, definite purpose or obtain a certain result, without itself being subject to the result sought its obligation, the contract of employment is not the result of work performed them.

Conclusion

In conclusion, in terms of legislation, it can be said that amendments to Law no. By Law No 53/2003. 40/2011 were determined mainly by the need to flex sprung in practice employment relationships after the European model.

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