

REGULATION OF ROMANIA'S LABOR MARKET BETWEEN FLEXIBILITY AND SECURITY – PRESENT TRENDS

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1. Introduction

European Union aims to develop policies addressing the employment's security-safety and social security and, at the same time, the flexibility of labor market and labor relations. The European Union is far more interested in modernizing the legislative and institutional framework of the social policies, help being offered through the European Social Fund and the European Investment Bank.

The European Social Fund has granted financial support for professional training and retraining actions as well as for measures able to create new jobs. The major concerns of the European Social Fund were to reduce youth unemployment, socially reinsert the unemployed, promote equal opportunities and help employees adapt to the changes occurring in the economy. Another objective was to develop a package of regulations regarding the protection of workers at workplace and the retraining of workforce.

2. Flexicurity – a modern concept in the European Union

The concept of labor market flexicurity resulted from the contraction of two very important terms for both employees and employers, respectively:

- flexibility, an aspect particularly taken in consideration by employers and employer associations,
- security, an element relevant for employees and trade unions.

The popularity of the term of flexicurity comes primarily from its quality of political strategy, but it must be stressed on the fact flexicurity also represents the degree of security of a job, employment, income and of any combination that facilitate workers' professional careers and biographies, with a relatively weak position, allowing sustainable and qualitative participation on the labor market and social inclusion/integration, while providing a degree of numerical, functional and wage-related flexibility (external and internal), which allows the appropriate and timely adjustment of labor market at the changing conditions, for the growth of both competitiveness and productivity. Secondly, flexicurity can be considered an appropriate analytical framework for analyzing labor's flexibility and security by comparisons at international level or within certain branches and sectors of the national economy.

In the European Union the flexicurity is defined based on four elements:

- ✓ flexible contractual arrangements (both in terms of the employer and employee);
- ✓ active policies on the labor market enabling workers to cope with rapid change, unemployment periods and transitions to new jobs;
- ✓ reliable and well adjusted systems for lifelong learning meant to ensure the adaptability and skills of employees;
- ✓ modern social security systems to help provide an adequate income able to support mobility on the labor market.

3. Labor Flexicurity from the perspective of labor legislation

Labor legislation reflects in its turn the balance of power existing at political level. A center government can promote labor laws in which the balance between labor's flexibility and safety as well as between the interests of trade unions and employer associations is achieved. Likewise, it is expected that a leftist government will tip the balance towards employment security, in favor of the trade unions and employees in general, while a right-wing government is rather interested in making the labor market more flexible, more sensitive to the views expressed by employers' associations and employers in general.

In the long term a strong social consensus, based on a balance between flexibility and safety of labor, is required and the sudden changes of direction, populism and unpredictability of the legal framework for conducting labor relations must be avoided.

The Labor Code drafted in 2003 by a leftist government has not even sought to achieve a balance between flexibility and security. At the time of the elaboration of that Labor Code, the labor market in Romania was very strongly segmented, as follows:

- the main market, represented by large non-restructured state companies and budgetary institutions, had a very powerful syndicate, while employers' associations were almost non-existent;
- the secondary market, represented by small and medium-sized enterprises with Romanian or foreign capital, with almost non-existent labor unions and a strong employers' association that was however unaffiliated at international level.

In preparing the Labor Code of 2003, the union leaders practically imposed their views. Meanwhile Romania has joined the European Union; the share of foreign capital in the economy grew, holding the dominant position in

some branches of the national economy (75% of banking system's capital, for example) and, therefore, the need for a more flexible labor market in our country became obvious.

The growth in flexibility took place in a number of stages, as follows:

➤ Adoption of Ordinance 55/2006 published in the Official Gazette nr.788/2006 which made more flexible the collective dismissal procedures and established the development within the County Employment Agencies of pre-dismissal services by mean of information activities, placement on labor vacancies and professional retraining.

➤ Support for the training and achievement of managerial qualifications by allocating sums from the European Social Fund (ESF), for the period 2007-2013, and by encouraging corporate responsibility, but also by raising the awareness of employers and employees on the need of continuous professional training.

➤ Reducing social security contributions, such as:

- for 2007, they decreased by 2 percentage points from the employer;
- for 2008, they decreased by 2 percentage points from the employee;
- for 2009, they have decreased by 2 percentage points from the employer and a percentage point from the employee.

➤ Adoption of Law no. 40/2011 for amending and supplementing Law nr.53/2003, the Labor Code, published in Official Gazette no. 225/31.03.2011, through which the increased flexibility of labor is achieved, due to:

- increase of the probation period and other periods in which successive probation employments can be made;
- possibility of reducing working hours from 5 to 4 days a week, with a corresponding reduction in salary for the temporary reduction of activity;
- regulation of temporary labor contracts;

- possibility of establishing individualized working program;
- making more flexible the termination of employment relations and regulating the fixed-term employment contracts to a maximum of 36 months.

The most important problem of labor law in Romania, in terms of employers, is the inability to eliminate the incompetent employees if they comply with their normal working hours even if they show no regard to the quality of work. Romania ranked 114 of 139 countries in a world ranking of labor market rigidity, published by OECD in 2009. The rigidity is determined considering three criteria:

- difficulties manifested in employment;
- difficulties manifested in dismissal;
- making flexible the working hours.

One of the biggest news of the Labor Code that came into force in 2011 is the introduction of performance criteria and operation of collective dismissals based on the achievement of performance objectives. Performance criteria are established by the employer and are communicated to the employee when signing the contract of employment.

Under the new Labor Code, employees must constantly qualify for their work, the European Union allocating significant financial resources for continuous professional training of adults. Ordinance 129/2009 regarding continuous training of adults establishes the criteria to be met by providers of continuous training. Adult vocational training has the following main objectives:

- facilitating the social integration of individuals in accordance with their professional aspirations and the labor market's needs;
- training human resources capable to contribute to the increase of workforce's competitiveness;
- updating knowledge and improving professional training in the

basic occupation, but also in related occupations;

- changing the qualification, caused by economic restructuring, social mobility or changes in work capacity;
- acquiring advanced knowledge, modern methods and procedures necessary to perform the duties at workplace.

The methods used for the professional training of adults are:

- courses organized by the providers of professional training;
- courses organized by employers within their units;
- internships and specialization courses in units found in the country or abroad;
- other forms of training provided by law.

Professional training programs should include, in principal, these elements:

- training program objectives expressed in the professional skills that must be acquired by every person who follows the program;
- duration of the training necessary to achieve the objectives;
- minimum and maximum number of participants for a cycle or a series of training;
- qualified individuals with theoretical and practical educational attributes, referred to as trainers;
- detailed training program;
- means and methods to ensure the transmission and assimilation of knowledge and practical skills training necessary for that occupation;
- equipments and materials necessary for training;
- assessment procedure in accordance with the specific objectives of the training program.

Flexicurity has become European policy and European Union's authorities have tried to harmonize the need to increase productivity and

competitiveness of the employers with the European social model. Thus, all European countries have expanded, in recent years, the use of fixed-term employment contracts, a flexible work schedule and even use of work at home.

Romania, as part of the European Union, recorded in 2009 the lowest number of fixed-term employment contracts, representing only 1% of total employment contracts.

4. Labor disputes of the employees

The new Labor Code defines labor disputes as conflicts of interests between employees and employers regarding the economic, social or professional interests of each part or the rights resulting from the operation of labor relations.

Romanian legislation in the field of labor disputes is considering only the right of employees to strike as a defense of their professional, economic and social interests. "The strike is the voluntary and collective cessation of work by employees."¹ Participation in the strike and its organization in accordance with the law does not represent a breach of the employees' obligations and may not result in disciplining the strikers (employees) or strike organizers.

5. Lock-out – labor dispute of the employers

European legislation has recognized the right of employers to labor disputes through the Lock-out. Lock out is the right of employers to close down the firm, business, department, during a labor dispute. French law defines the term as "Lock out is the closing of a unit, a building, a workshop or service, determined by the outbreak of a collective conflict"².

The legislation in our country, namely Law no. 15/1991 and Law no. 168/1999 regulating the settlement of labor disputes do not contain provisions on the lock out, but the Romanian legislation, from 1920 to 1950, on labor conflicts' resolution, defined the lock out as "the ability of owners to close the unit, service, workshop, when a collective labor conflict happens"³.

The lock out is a preventive measure taken by the employer to remove the possibility of a strike or as response to a partial strike with disorganizing effect at the level of enterprise, by refusing to provide facilities and equipment to employees and to pay them. The lock out can divide the strikers into two camps, in terms of continuing the strike, or can determine non-strikers to join the strikers so "To give a reply to this measure that is seen as an abuse of power done by the employer"⁴.

In the French specialized literature several opinions were expressed:

- lock out represents a replica to the non-performance or inadequate performance of the work done, which can not be assimilated with normal exercise of the right to strike;
- the employer is relieved of the obligation to pay the time not worked, proving the impossibility of the enterprise to conduct its activity (force majeure);
- order and security in the enterprise are compromised to such an extent that the lock out must used.

French specialists in employment law consider the lock out a contractual fault⁵, rejecting the theory of "the right to lock out" symmetrical to the right to strike, because the employer has an obligation to provide work for employees

¹ Article 251, Paragraph 1 of the Labor Code, Law 40/2011

² Gérard Lyon – Caen, Jean Pélissier – Droit du travail, Editions Dalloz, p. 824.

³ I. Tr. Ștefănescu, Dreptul muncii, Editura Lumina Lex, București, 2002, p. 89.

⁴ Denis Gatumel – Le droit du travail en France, Editions Francis Lefebvre, Paris, 2000, p. 331.

⁵ Gérard Lyon – Caen, Jean Pélissier – Droit du travail, Editions Dalloz, p. 824.

(as a form of exercising labor demand on the labor market).

Another orientation focuses on the substantiation of lock out as force majeure, considering it "an unpredictable, insurmountable, attributable event ...is making it impossible to continue the contract."⁶

In order to speak of lock out the employer must succeed in evacuating all workers from their jobs and the restriction of access to employment for all non-strikers must be absolute, not being enough for their work to be easier or more onerous. Another opinion considers the lock out can be justified by the inability to ensure order and safety at work⁷.

Justification of lock out by the employer does not depend on the employees' attitude; as such the remuneration of non-strikers will not be paid even if they intend to carry out their work.

The French Court of Cassation allows the notion of exception from the contract as the basis for lock out if the strikers ask, during the triggered strike, unlawful rights or use prohibited means of action, so that the strike is considered illegal and the employer is relieved of its contractual obligations and especially of the right to provide jobs.

Sometimes, strikes initially triggered as lawful can later become unlawful, due to strikers using machinery and plant and preventing the operation of enterprise's activity within its normal parameters, and putting, therefore, the health and lives of employees in danger. In the Romanian legislation, lock out is inadmissible because Article 19 of the Labor Code stipulates the principle established at workplace.

The Revised European Social Charta, ratified by Romania by Law 74/1999 stipulates the right to bargain

collectively as "the right of workers and employers to collective action in cases of conflict of interests, including the right to strike, but considering the obligations that might arise from the collective conventions in force"⁸.

We believe given the principle of symmetry, the right to lock out of employers should be introduced into the Romanian Labor Law for the following reasons:

- to make possible to trigger an action when a conflict degenerates in an illegal strike;
- "the unilateral treatment, in case of collective labor disputes, of the right to strike and his exercising is neither logical nor desirable, because not only the behavior of employees but also that of employers has consequences from the social and juridical perspective"⁹;
- inclusion in the Labor Code, article 5, of the principle of equal treatment of all employees and employers based on the constitutional principle of equality¹⁰.

6. Conclusions

Flexicurity holds an important position in the guidelines adopted by the EU Member States, on which the application of the Lisbon Strategy for sustainable growth and new jobs at European and national level is based. The European Commission encourages the Member States to work with the social partners to include components of flexicurity in the National Reform Programs under the Lisbon Strategy.

The European Social Fund, for the period 2007-2013, can contribute to the budgetary aspects of flexicurity by in-house training courses, lifelong learning programs and promoting entrepreneurship. The approach of

⁶ Denis Gatumel – Le droit du travail en France, Editions Francis Lefebvre, Paris, 2000, p. 150.

⁷ Raluca Cristina Radu – Dreptul muncii, Editura Alma, Craiova, 2006, p. 141.

⁸ Article 6, point 4 of the European Social Charta.

⁹ I. Tr. Ștefănescu, Dreptul muncii, Editura Lumina Lex, București, 2002, p. 298.

¹⁰ Raluca Cristina Radu – Dreptul muncii, Editura Alma, Craiova, 2006, p. 144.

flexicurity is different from state to state within the European Union in relation to the development and diversification of the labor market in each state. In some countries the efforts can focus within the companies on retraining, while other states should put a stress on professional training during the period of inactivity or unemployment.

For Romania, the balance between labor's flexibility and security gives the impression that can be

achieved only based on the principle "balance by imbalance" because the labor legislation of 2003 was focused on increasing safety at work, while the present labor law of 2011 focuses on making the labor market more flexible. The term of flexicurity is not fully adopted by labor law or specialized theoretical works and it has not yet become common in the everyday language of politicians, union leaders, employers or employees.

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