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Actuality of Individual Partial Employment Contract (Part-Time Work)

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Abstract: Starting from the importance of atypical forms of employment (including the partial individual employment contract) in the current economic context and in the light of international regulations - to respond to an acute need for flexibility in terms of labor markets - the scientific article presents the importance and actuality of the individual employment contract part-time work (part-time work) well-known both internationally and national legislation. Likewise, the comparative law analysis carried out is equally important to establish to what extent other states legitimize part-time work contracts, because we witness to different perspectives about them. In the current context, part-time work contracts are a useful tool both for flexible work organization and for reconciling work and family life, especially for certain categories of people.

Keywords: individual employment contract; atypical employment contract; partial individual employment contract; flexible working time

1. Introducere

In the current context, part-time work contracts are a useful tool both for flexible work organization and for reconciling work and family life, especially for certain categories of people, such as: people close to retirement age, young people, women, people who cannot or do not want to enter into permanent, indefinite, full-time

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employment due to responsibilities towards family and children (Mihailov, 2020, p. 293).

But this flexible contractual option is also useful and attractive from the point of view of employers. From this angle of approach, part-time employment could allow certain competitive demands to be met and work more economically efficient. For employers, the use of part-time employees is a cheap way of using labor, if we refer to the hourly earnings of the part-time employee, which is lower than the hourly earnings of the standard employee (Marica, 2019, p. 73).

Some authors claim that flexible working time, adapted to family needs, can be a tool through which businesses can increase their productivity and efficiency, and women can multiply their employment opportunities, both arguments in favor of part-time work being associated with a demographic purpose, because the aging of the European population and the low fertility rate in most European Union countries raise serious long-term problems (Dimitriu, 2017, p. 118; Ştefănescu, 2012, p. 580).

But resorting to this form of part-time work can become involuntary, with negative implications for the economic and social life of this category of employees. The concept of an involuntarily concluded part-time contract denotes the hypothesis in which the part-time employee's option is not free, but is determined by certain constraints, circumstances independent of the employee's will (for example, the lack of opportunities to find a place to work) full-time work), despite his desire to work full-time (Coyle, 2005, p. 73). In these circumstances, the legitimacy of the intense need to "combine professional and personal interests" and to protect the interests of this category of workers, so virulently manifested in European legal theory, is seriously questioned (Dimitriu, 2016, p.118)

2. The Legal Nature and Current Importance of the Individual Partial Employment Contract

Thus, the fundamental documents, under the auspices of which the individual part-time employment contract falls, are the ILO Convention no. 175/1994 (the convention is not ratified by the Republic of Moldova), and Recommendation no. 182/1994, regarding part-time work, the latter representing a model and a source of inspiration for states.

In relation to the ILO's view on part-time contracts, the preamble of the convention reveals the considerations that substantiated the need for its adoption. Thus, the importance of part-time work for the economy, the need for employment policies to take into account the role that part-time work plays in creating additional employment opportunities, but also the need to ensure the protection social security of the employee in the areas of access to employment, working conditions and social

security are part of these considerations.

In relation to the definition of „part-time worker" in the vision of Convention no. 175/1994 this designates the salaried worker whose normal working hours are lower than those of full-time workers in a comparable situation (Popescu, 2008, pp. 229-230).

So, the convention states that the normal working hours covered in their case can be calculated per week or as an average during a determined employment period, without individualizing a monthly or annual calculation base for establishing the maximum number of normal working hours in the case part-time employment contract. This translates into the fact that the calculation base can exceed the employment period of up to one year.

On the other hand, for protective purposes, the regulations of the Convention also make express reference to the principle of non-discrimination in employment relations and the equal treatment of part-time employees compared to other full-time employees. According to them, the rights regarding health and safety at work and other such rights that cannot be divided apply fully to those who are employed with a part-time employment contract, without any distinction related to the type of contract. However, as is natural, the rights related to salary and social contributions are granted in proportion to the actual time worked by those employed through individual part-time employment contracts, by reference to the rights recognized to full-time workers.

Internally, the regulations regarding the individual part-time employment contract are provided for in the Labor Code of the Republic of Moldova. From a legislative point of view, the rules regarding the individual part-time employment contract are provided by domestic law in articles 97-973. Article 97 of the CM of the Republic of Moldova regulates that athe employer can hire employees for a day or a week of partial work (on a part-time basis), the concrete duration of the partial work time being recorded in the individual employment contract, in accordance with the provisions of art. 49 para.(1) lit. l).

Indeed, the only condition that protects the part-time work relationship under this aspect is that the part-time employee has normal working hours - calculated weekly or as a monthly average - below the level of the number of normal working hours of a comparable full-time employee (Gheorghe, 2006, p. 275-276; Țiclea, 2002, p. 32-35).

So, as "the part-time work that represents the defining element of this type of contract must be lower than the standard of 40 hours per week provided for full-time, which means that the part-time employee must not reach the threshold of 40 hours per week or 170 hours per month" (Anisimov, 2009, p. 72).

The issue of the duration of the working time of an employee with an individual

part-time employment contract requires, in itself, some clarifications. In the doctrine, the opinion is expressed according to which there is a minimum limit of working time below which it cannot fall in the case of a part-time employment contract, i.e. below one hour per month, an opinion based on several arguments (Țiclea, 2016, p. 379; Țop, 2006, p. 109).

In another opinion, expressed in specialized legal literature, „the specification of the duration of working time in the case of a part-time employment contract is left to the full discretion of the parties without any interference" (Ștefănescu, 2012, p. 582).

Regarding the current legislative frame-work art. 97² para. (2) of the Labor Code of the Republic of Moldova establishesthat rthe reduced activity regime can be established for a period of up to 3 consecutive months, but not more than 5 months per year.

Moreover, in other legal systems as well, a minimum delimitation regarding the duration of working time is established at the legislative level in the case of those employed with part-time employment contracts. It was also found that in Belgium the part-time employment contract can be concluded for a working time that cannot be less than 1/3 of the working week of a full-time employee, who is part from the same professional category (Dimitriu, 2016, p. 121).

Consequently, we consider that for the same practical reasons it is requiredby law, the regulation in this case of a minimum working time limit for part-time employees, a limit that cannot fall below 2 hours per day.

Contradictions of opinion in the doctrine also exist with regard to work under one hour per day and to the extent that it should be considered to be carried out on the basis of a civil service contract, and not on the basis of an individual employment contract. Some authors thus state that, for objective reasons, the duration of working time consists of certain activities, such as: preparing the workplace, receiving the order to start the activity, performing work tasks, stationary times, etc., which, physically speaking, they could not be carried out in less than an hour (Barbu, Cernat, 2008, p. 41).

Usually, in practice, such contracts are concluded for a duration of 2 or 4 hours per day. Failure to include these specific elements in the content of the individual part-time employment contract will presume the existence of a standard employment contract, with a full-time work schedule (Țiclea, 2013, p. 148).

As far as we are concerned, we consider that the minimum duration of working time established in the contract does not represent a criterion that distinguishes an employment relationship from a civil service contract. Relevant in this sense is in fact the criterion of subordination as a fundamental and determining feature of the legal employment relationship, in relation to which the provider (employee)

becomes a member of the employer's work group, is subject to internal rules imposed by the latter, the work is carried out personally, the risk of the activity being borne by the employer, and not by the employee. Also, the continuity of work in the case of the individual part-time work contract, in terms of the existence of the contract over time, as a continuous necessity of the activity, represents another particularity associated with the individual work relationship, compared to an absolutely random, occasional character, of the work provided, in which case we are talking about a civil agreement for the provision of services.

Regarding the extent of the rights of the part-time employee, the provisions of art. 97[1] the Labor Code of the Republic of Moldova includes this rule of non-discrimination in labor relations, namely, less favorable treatment of part-time employees compared to full-time employees who perform equivalent work at the same unit is not allowed if a such treatment is based exclusively on the duration of daily or weekly working time and has no objective justification.

In conclusion, it is clear that even though it has been consistently argued by the European Commission that „although reduced working hours often reduce productivity, they still contribute to the preservation of skills, jobs and confidence, and their costs are generally lower than the cost of unemployment benefits" (Dimitriu, 2016, p. 116). Therefore, in the legal provisions regarding the individual part-time employment contract, the flexible vision of the local legislator can be observed, but susceptible to be improved in some places.

3. Elements of Comparative Law regarding the Part-Time Contract

Germany. In Germany, the specific regulations for part-time work are provided by the Act on Part-time Work and Fixed-term Contracts. Drawing inspiration from European regulations, the act includes both defining elements for the notion of a part-time employee, in the sense of „an employee whose usual working time is less than that of a comparable full-time employee", as well as provisions aimed at the principle equal treatment and non-discrimination regarding this category of employees (Marica, 2019, p. 98).

The Federal Labor Court's consistent practice of virulently condemning the discriminatory treatment of part-time employees was instrumental in promoting and reinforcing this principle. Many provisions in collective agreements have been declared void by the courts due to discriminatory treatment of part-time workers in terms of overtime pay and access to the company's pension scheme. It is also the reason why the number of collective agreements that established a differentiated status for employees with a fraction of the name decreased significantly (Kothe, Rosendahl, 2013, p. 71).

It should be noted, with regard to individual part-time employment contracts in Germany, that the minimum daily or weekly duration (4 hours/day have 20 hours/week) was one of the key elements regulated by collective agreements regarding part-time work normally. Thus, in order to come under the protective umbrella of the social protection systems that ensure them certain benefits in case of unemployment or that allow them access to the company's retirement grid, this category of employees should meet the requirement of a minimum working time (of 15 hours per week), the provisions of the collective labor agreement can be ignored only in the situation where the parties establish to this effect or if the specific needs of the respective unit require it.

Italy. The individual part-time employment contract is not widespread in the Italian labor market. The strong opposition of the trade unions, manifested for a long time, to the use of this flexible contractual variety - as having possible discriminatory implications for women and young workers - has made notable contributions to the poor development of this employment system in Italy, compared to the situation in other developed states. But the need to adapt the labor market to the economic, political, social reality and to the European trend oriented towards more flexibility in terms of contract has generated a legislative dynamic also in the matter of flexible labor contracts that deviate from the standard form.

Although initially prohibited by law, flexible working time in the form of part-time working arrangements has grown significantly over the past two decades and has proven extremely useful for certain groups of workers who could not be accommodated under a standard employment relationship or who were in certain specific needs, such as during the period of study or disability. As a general rule, the principles and conditions stipulated in the case of the standard employment contract become applicable to part-time contracts, with the mention that certain specific rules are negotiated and included through collective agreements. The legal definition of part-time work states that: the hours are less than those of normal working time and may be distributed on a weekly basis (horizontally) or concentrated only on certain days or periods of the month or year (vertically) or distributed according to a combination of the two modalities (mixedpart-time) (Marica, 2019, p. 98).

Also, another peculiarity of the Italian legal system regarding part-time work is the possibility for the employer to ask the employee to work overtime within the limit of normal working time, in accordance with the provisions established by the applicable collective labor agreements or with the general contractual rules applicable in the matter, as the case may be.

Moving from full-time work to part-time workis conditioned by the partie written agreement to this effect and registered at the Provincial Labor Office. Also, the recruitment of full-time employees is done from among full-time employees, from

all production units within the same constituency, with a prior notification from the employer who expresses such an option.

Also, the Italian legislation contains provisions with reference to the support of part-time work among women who have entered the labor market after a period of inactivity of at least 2 years, but also the promotion of this flexible way of providing work in sectors of activity, such as the one aimed at environmental protection, urban restoration, protection of cultural assets (Treu, 2000, p. 47).

Slovenia. If in Germany and Italy public institutions and legislation have shown considerable activism in the field of labor relations, by emphasizing the need for flexibility and, implicitly, the ways to achieve it, Slovenia is part of the states that register a limited number of employment contracts with part-time work, in contrast to many other countries in the European Union.

From a legislative point of view, the framework norm in the matter of part-time work is the Employment Relationships Act regarding part-time work. The law provides for complete freedom of the parties regarding the length of working time, which can be established by mutual agreement between them. in addition, the document considers the promotion of the part-time contract for particular situations, namely in the case of raising children or in the case of partial retirements.

The Russian Federation. In this legal system, the general rule regarding part-time contracts enshrines the freedom of the contracting parties regarding their conclusion, with a few exceptions. Thus, with regard to certain categories of employees, the employer is obliged to conclude part-time employment contracts if such a request arises (Anisimov, 2009, p. 102), as also in the legislation of the Republic of Moldova according to art. 97 para. (2) Labour Code of the Republic of Moldova. It is the case of pregnant women, of the employee who has children up to 10 years of age or children with disabilities (including those under his tutelage) or of the employee who takes care of a sick family member, in accordance with the medical certificate, the employer is obliged to determine the day or week of partial work. At the same time, unlike the legislation of the states analyzed above, this legal system provides for the possibility that the modification of the individual employment contract, in terms of working time, can be produced by a unilateral act of the employer.

This decision is justified by certain reasons related to changes of a technological and organizational nature of the respective position, provided that the type of work of the employee agreed in the employment contract does not change. In the sense of these provisions, the employee affected by these changes must be informed by the employer, through a written notification, at least two months before the adoption of these changes (Luşnikov, Luşnikova, 2009, p. 502).

Beyond the high level of flexibility offered, part-time work contracts also generate a number of characteristic vulnerabilities. They can be expressed on several dimensions:

- under the aspect of job security, namely part-time work forms are often associated with a high level of employment insecurity;

- in terms of remuneration - in general, this category of workers faces a low level of remuneration, as well as reduced benefits compared to employees working under the standard contractual model;

- in the aspect of social protection and security - a limited application of some rights, diminished protection from legislation and labor protection bodies;

- lack of promotion prospects;

- the low skill level that these jobs typically require;

- negative consequences in terms of solidarity and the level of communication with other groups of employees.

Moreover, a general perception has been created that part-timers, in prioritizing family life, run the risk of weakening their identification with their profession and their team. They may fail to integrate into the team if their role model is different from that of other members, if they work fewer hours, and if they are not engaged in informal social events that support the team (Edward, Robinson, 1999, p. 156).

Another problem identified in the labor relations literature, associated with part-time individual contract staff, is related to their deprivation of main positions within the company. The situation could be attributed to the spread of a perception of incompatibility between the status of a part-time employee (which is also burdened by family responsibilities) and the decision-making factor within the unit. From a social point of view, such an approach creates a maximum level of frustration among the latter and, indirectly, can be identified, on the one hand, as a difference in treatment between the two categories of employees, full-time and partly work, and on the other hand, as a limitation of opportunities for promotion and professional consolidation, as the chances of accumulating experience are thus diminished (Kothe, 2013, p. 71).

4. Conclusion

For our part, we share a moderate view of this flexible form of work organization, which we consider beneficial in terms of labor markets only to the extent that it is assumed on a voluntary basis by employees, and only temporarily, in certain stages of the employee's life (for example, during the student period, close to retirement

age, during the child-rearing period). We believe that this type of contract should be used on a transitory basis, on the way to other permanent and stable jobs, and not as a result of constraints of any kind.

As it is easy to see, there is no balance between the advantages of the employee and the employer regarding the part-time employment relationship. Moreover, in opposition to the employer's situation, it is significant to underline the multitude of negative economic and social effects on the employee. Therefore, we cannot unreservedly attribute the qualification of "valuable jobs" to those that correspond to part-time positions, given the existence of obvious discrepancies between the employer's benefits, on the one hand, and the employee's, on the other hand. The problem that arises, however, is not related to part-time voluntary work, as an expression of a free option, which brings clear social and family benefits, through the possibility of reconciling professional life with family life, but in relation to established work involuntarily on a part-time contract, due to the risk of job insecurity and the reduction of their protection.

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