Jurnalul de Studii Juridice

Year XIII, No. 3-4, December, 2018, pp. 37-41

OBSERVATIONS REGARDING THE LEGAL DEDUCTION OF SOME MANDATORY CONTENT ELEMENTS FOR THE INTERNAL REGULATION

Raducan OPREA

DOI: <https://doi.org/10.18662/jls/31>

Covered in:

CEEOL, CrossRef, CrossCheck, Index
Copernicus, Ideas RePeC, EconPapers,
Socionet

OBSERVATIONS REGARDING THE LEGAL DEDUCTION OF SOME MANDATORY CONTENT ELEMENTS FOR THE INTERNAL REGULATION

Raducan OPREA¹

Abstract

As it is well known, the mandatory content of the internal regulation is regulated by the provisions of art. 242 of Law no. 53/2003 – Labour Code, these altogether referring to the possibility of including other elements (therefore optional).

However, there are a series of other disparate provisions, in the same code, or in other legislations, which refer to such mandatory elements for the internal regulation, in case they don't choose to include them in the collective labour contract or in the individual employment contract.

In this article we will highlight as an example, for a vision of ample perspective, those mandatory elements for the content of the internal regulation to which the Law no. 53/2003 – Labour Code refers to in other provisions than those of art. 242.

The utility of this step is both from the perspective of preventing some work conflicts and from the perspective of the control over the work inspection.

Keywords:

Internal regulation, mandatory content elements, indirect regulation, the system of labour legal acts, Labour Code.

¹ PhD. Univ. Prof. Oprea Raducan, Faculty of Legal, Social and Political Studies, Member of the Legal, Administrative, Social And Political Research Centre, "Dunărea de Jos" University Galati – Romania.

1. Remarks regarding the procedural technique

It is foreseen in the Labour Code ² the possibility of establishing some mandatory aspects of the work relations be it through the collective labour contract, or internal regulation, or through individual employment contract. The ones highlighted, however, do not result from the provisions which target their “usual” content, as is, for example, art. 17 paragraph (3) or art. 242 from the same Code, therefore they must be deduced.

The main idea regarding the procedural technique in connection with this aspect is a simple one: one must not conclude it is about the permission of choosing the matter itself, but only the possibility of choosing the legal act with normative or individual character applicable in the work relations of a certain employer. In other words, when it is foreseen in the Labour Code the possibility of establishing some mandatory aspects of work relations be it through collective labour contract, or internal regulation, or through individual employment contract, we will understand that this must be established at least in one of these acts or even gradually in the two or three acts listed taking into consideration their legal force within the system. The reason is that any essential aspect of the work relation must be brought to the attention of the employee, subject to the obligation to provide information through unilateral or negotiated acts.

2. Indirect regulations regarding the mandatory content of the internal regulation

Therefore, from a legal perspective, besides the categories of provisions foreseen in art. 242 from the Labour Code, in the internal regulation must be contained:

- If it is not included in the applicable collective labour contract,
- The evaluation procedure prior to dismissal for professional unfitness - in subsidiary – [art. 63 paragraph 2];

-The way in which the prior verification of professional and personal skills of the person requesting employment is going to be done, unless the

² Law no. 53/2003 – Labour Code, republished, with modifications and completions, in Romania’s Official Monitor, Part I, no. 315 from 10th of April 2017.

law provides otherwise - there is the possibility of choosing the act [art. 29 paragraph 2];

-The conditions in which the individual employment contract is suspended in the situation of the employee's unmotivated absences – there is the possibility of choosing the act [art. 51 paragraph 2];

-The concrete way of establishing the unequal work schedule in a 40 hours work week, as well as in a comprised work week – there is the possibility of choosing the act [art. 116 paragraph 1];

-The conditions in which the right to lunch breaks and other breaks are exercised by the employees – there is the possibility of choosing the act [art. 134 paragraph 1];

-The exceptions from the rule according to which the above-mentioned breaks are not included in the normal daily work time – there is the possibility of choosing the act [art. 134 paragraph 3];

-The days within a work week in which a weekly rest time can be given – there is the possibility of choosing the act [art. 137 paragraph 2];

-Special family events and the number of paid days off in relation to those – there is the possibility of choosing the act [art. 152 paragraph 2 LC];

-The duration of the unpaid leave for resolving personal situations – there is the possibility of choosing the act [art. 153 paragraph 2 LC];

-The actual way of informing each employee about the content of the internal regulation- there is the possibility of choosing the act [art. 243 paragraph 3];

-If they are not included in the applicable collective labour contract or the individual employment contracts,

-The conditions in which the employees must abide to the confidentiality clause – there is the possibility of choosing the act [art. 26 paragraph 1];

-The rights and obligations of the parties that can exist during the suspension of the individual employment contract, exclusively the act of labour and the payment of the remuneration rights – there is the possibility of choosing the act [art. 49 paragraph 3];

-The day in which the salary is paid – there is the possibility of choosing the act [art. 166 paragraph 1].

3. Interpretation rules regarding the identity of the content matter and the possibilities of its development

In the case of the identity of the matter, total or partial (for example between the collective labour contract and the internal regulation) we must consider the superior judicial force of the first.

Therefore

-If there is an “applicable collective labour contract” at the employer’s level (that of “organization”, “group of organizations”, “activity sector”) and it contains clauses regarding those mentioned above, the employer will not establish through the internal regulation rules or provisions regarding the same object, only through derogation from the contract benefiting the employees, and

-If the employer established in the internal regulation provisions that have as subject those enumerated, before opposing a certain collective contract, at the moment of taking effect, there will be rightfully applied, the provisions of the collective contract, if they are more favourable.

In addition, the employer can provide, through the internal regulation, rules that concern the good execution of the contractual clauses.

The advantage of including the mentioned aspects in the internal regulation is the one that what has been unilaterally established, can be retracted the same way; of course, consulting with the syndicate or with the employee’s representatives.

The judicial force of the “applicable collective labour contract” manifests onto the internal regulation (which is created exclusively at the employer’s level), even when the Labour Code establishes the possibility of an alternative object of regulation. “The problem becomes more interesting, especially, when at the organization’s level has not been signed a collective labour contract, becoming applicable the one from the superior level”. (Ștefănescu, 2012: 63).

Of course, the result of the collective negotiation should be more favourable than the one of the individual negotiation (in case of the same content object), if we consider the syndicate’s (theoretically) stronger force of negotiation.

Such solutions – in the same matter – are the starting point for the individual negotiations which can lead to even more favourable solutions for the employees. However, if the solutions regarding a certain problem have already been contained in the individual contracts and later, comes into effect a collective contract containing even more favourable solutions in the matter, the latter will impose – the act with a normative character rightfully modifies the individual act (unilateral employment contract). (Ștefănescu, 2015: 129)

Situated on the same “branch” with the internal regulation (from the perspective of judicial force and unilateral character), the organizing and functioning regulation of the organization distinguishes through the fact that it has in its content rules regarding the general structure of the organization, the work departments (workshop, section, factory, office, service, direction, department etc.) and their attributions (skills), the cooperation between them and the relations with the leadership of that company, the internal circuit of the documents and their way of endorsement (Ticlea, 2016: 55), (Ștefănescu, 2017: 58-59).

Otherwise, the ones above materialize in practice, in the organization chart and in the state of functions, annexes to this regulation. The influence of the organization and functioning regulation of the company on the individual employment contract resides in the fact that in the job description, annexed to it, will be established the attributions according to those specific to the department in which the job belongs; similarly the employee’s functional relations will be transposed with the other job holders (of subordination, collaboration etc.).

References

Treatys, course of study and reviews

- Ștefănescu, I.T. (2017)- *Tratat teoretic Si practic de drept al muncii*, 4th Edition. Bucharest: Universul juridic Publishing House.
- Ștefănescu, A. (2012). *Resurse umane. Legislație și procedure*. Iasi: Lumen Publishing House.
- Ticlea, A. (2016). *Tratat de dreptul muncii*, 10th Edition. Bucharest, Romania, Universul juridic Publishing House.

Legislation

- Law no. 53/2003 – Labor Code, republished, with modifications and completions, in Romania’s Official Monitor, Part I, no. 315 from 10th of April 2017, amended.