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ORIGINAL PAPER

Establishment of the Employment Relationship: Conditions for Employment in EU Member States

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Abstract:
The most important document that sets out the conditions of work, the individual rights and obligations of the parties to an employment relationship is the individual employment contract. This is also the most important contract in the profesional life for the majority of people. Under current national labor laws, the individual employment contract is concluded between an employer and a worker. The individual employment contract stands at the foundation of labor relations, being common across most of the European Union's Member States, with the aim of establishing working and employment conditions, regulating relationships between employer and worker. The present study illustrates the employer's obligation to inform the employee about the future content of the individual contract and the mandatory provisions of the employment contract, the form of the individual employment contract, European Union's regulations for non-compliance with the written form of the contract, the probationary period, the working age in different EU Member States, prohibition of children's work, protection of young people at work in EU space.

Keywords: *employer; individual employment contract; labor law; employment conditions; worker/ employee.*

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General considerations

The most important document that sets out the conditions of work, the individual rights and obligations of the parties to an employment relationship is *the individual employment contract.* This is also the most important contract in the profesional life for the majority of people. Under current labor laws, the individual employment contract is concluded between an employer (or in some countries, defined by the law as between the owner of an enterprise, organization or institution or the authorized agency thereof, or an individual/natural person) and an employee.

The task of defining the terms "employee", "employer", "contract" and "employment relationship" rests with national legislators. In compliance with the provisions of the Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, the term "employer" has the meaning of a natural or legal person which concludes employment contracts or employment relationships with employees, in accordance with national legislation and practice. The other party of the employment agreement – the "employee" – could be any person who, in the Member State concerned, is protected as an employee under national employment law and in accordance with national practice.

The information of employee and the mandatory provisions of employment contract

Except short-term contracts or casual work arrangements, employment relationships in all EU member states should be legitimated in a written individual employment contract. Although in some member states national labor legislation do not expresslly stipulate that the employment contract must be concluded in writing or verbally, in the practice of employment relationships verbal agreements are used on a large scale in many countries of the European Union. For example, in Estonia, one can enter into a working relationship based on a verbal convention but only for fixed-term contracts not exceeding 2 weeks; the Slovak legislation provided two exceptions to the written form of the employment contract, neither of which giving rise to an employment relationship: the first exception concerns contracts whose duration does not exceed 300 hours per year and the second one refers to contracts concluded between an employer and a high school or a university student, as long as the duration of work does not exceed 20 hours per week in an average period of maximum twelve months (Kuddo, 2009:9).

Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship stipulates that an obligation to inform employees in writing of the main terms of the contract or employment relationship shall not apply to employees having a contract or employment relationship:

(a) with a total duration not exceeding one month, and/or - with a working week not exceeding eight hours; or

(b) of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.

Furthermore, by the Directive, the employee must be provided with information on any change in the essential elements of the contract or employment relationship except in the event of a change in the laws, regulations and administrative or statutory

provisions.

The same Directive establishes the essential aspects of the employment contract or relationship of which an employee should be notified:

"(a) the identities of the parties;

(b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;

(c) the title, grade, nature or category of the work of the employee or a brief specification or description of the work;

(d) the date of commencement of the employment contract or relationship;

(e) in the case of a temporary employment contract or relationship, the expected duration thereof;

(f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;

(g) the length of the periods of notice to be observed by the employer and the employee should their employment contract or relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;

(h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;

(i) the length of the employee's normal working day or week;

(j) where appropriate: (i) the collective agreements governing the employee's conditions of work; or (ii) in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded".

Permitting an employee to commence work is equivalent to entering into an employment contract, regardless of whether the employment contract has been formalized.

The deadline for the information to be sent to the employee is no later than two months after the beginning of the employment relationship, in the form of: (a) a written contract of employment; and/or (b) a letter of engagement; and/or (c) one or more other written documents, where one of these documents contains at least all the information. Setting a maximum of 2 months after the start of employment by the Directive 91/533/EEC denotes the intention of the European legislator to ensure that workers have a written record of the conditions under which the employment contract is concluded and is being carried aut (Panainte, 2017: 173-174).

The minimum content of the employment contract required by the labor laws of the Member States coincides, and even goes beyond, the requirements of the Directive 91/533/EEC – this is the case for Romania, the Labor Code requiring that, in addition to the aspects mentioned in the Directive, the person selected for employment or the employee, as the case may be, be informed also about the following elements: the criteria for assessing the professional activity of the employee applicable to the employer's level, the job-specific risks and, if applicable, the duration of the probationary period (Radu, 2015: 217). However, there are some cases in which the content required by the national labor law does not cover the list of issues contained in the EU regulation; this is the case of the Bulgarian and Slovakian labour laws. For example, the Bulgarian national law does not oblige to inform on employment

conditions relative to the title, grade, nature or category of the work, and, where appropriate, the collective agreements of application (Sashov, 2018: 104-106).

In a dispute before the Court of Justice, it was decided that the references listed in the Directive do not constitute an exhaustive list of the essential elements of the prior information / employment contract so that any element which, in the light of its importance, should be considered as an essential element of the contract or of the employment relationship to which he belongs, must be notified to the employee, including also any clause requiring the employee to work additionally whenever the employer so requests (CJEU, Case C-350/99, Wolfgang Lange and Georg Schünemann GmbH, par. 21-23).

Form of the individual employment contract

The signatory states of the European Social Charter have committed themselves to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of begining their work, of the essential aspects of the contract or employment relationship. The labor legislation in most EU countries is stricter in this regard: as a rule, an employee cannot start work for an employer without an employment contract being signed. The Polish Labor Code requires that, if an individual employment contract is not made in writing form, the employer shall, not later than on the day after the start of the work, provide the employee with the written confirmation of the identities of the contract parties, the type and the terms of the contract. The rest of the information provided by Directive 91/533/EEC should be communicated to the employee in a separate document, also in writing, within seven days from the date of starting the work (Kuddo, 2009: 10).

Non-compliance with the written form

Member states are required to implement in their internal legal order the necessary measures to approve any worker who considers himself injured by non-compliance with the obligations regulated by Directive 91/533 / EEC to assert his rights before the courts of law. The Directive also provides for the possibility for member states to regulate the worker's right to make a possible preliminary complaint to other competent authorities (Dima, 2012:78).

Regulations for non-compliance with the written form of the employment contract varies throughout the European Union space. On the one hand, in some countries, labor inspectors can fine the employer on the spot if they find out that somebody is engaged in the firm without a written employment contract, for example, in Romania. The individual employment contract is a consensual agreement, the simple agreement of the parties willing to conclude the contract being sufficient, the written form being required by law as compulsory only for a short period: 2011-2017 (Țiclea, 2011: 30-31; Ciochină-Barbu, 2012: 122). Therefore, the written form is not mandatory, which means that proof of the agreement of the parties, contractual provisions and benefits can be done by any other means of proof. The obligation to conclude the individual labor contract in written form is the responsibility of the employer; as a result, only he will be sanctioned for non-observance of the written form.

On the other hand, there are certain EU member states (Estonia) in which the national legislation formalizes the employment process by creating two copies of the individual contract (one held by the employer and the other by the employee), but does not state any legal consequences for cases of non-compliance with the written form of

the contract (Kuddo, 2009: 11).

Probationary period

In EU countries, according to the national labor law, an employment contract may prescribe a probationary period in order to confirm that the employee has the necessary professional skills and abilities, suitable social/ organisational skills and an adequate health condition to perform the work agreed on in the individual employment contract. It can be set in favor of the employer with the goal of assessing the suitability of an employee for the envisaged work (position), or in favor/ at the request of the employee in order to define his/ her suitability for the offered job (position) or in favor of both parties. In Bulgarian law it is expressly stipulated that if the contract has not been specified in favor of whom the trial period has been agreed, it is assumed that it has been agreed in favor of both parties (Sashov, 2018: 106). The Romanian Labor Code does not contain any express provision in this respect, but form the interpretation of the legal text results that the probationary period, if included in the contract, is in favor of both parties.

A probationary period condition must be stated in the employment cotract and/or in the preliminary information. If no probationary period clause is included in the employment agreement, the candidate must be employed without a probationary period.

As a general rule, during the duration or at the end of the probationary period, the individual employment contract may be terminated solely by a written document (usually named notification), without prior notice, at the initiative of either party. If the probation period is set in favor of the employer, he evaluates the results of the employee's work and may dismiss him/her if the results are unsatisfactory. If dismissal is due to the unsatisfactory results, as a rule, the employer is not obliged to give prior notice or pay any compensation to the employee.

In many EU member states, the probationary period does not applied to minors (Lithuania, Estonia); disabled persons (Estonia) or some other categories of employed persons. On the contrary, in Romania, people with disabilities can be employed exclusively on the basis of a trial period of up to 30 calendar days without passing an examination, competition, interview or other practical test (Radu, 2015: 175).

Duration of the probationary period

The length of the probation period differs from the legislation of one EU Member State to another. During the trial period employees do not benefit from protection against illegal dismissals. Notification is a "simplified dismissal decision on the employer's initiative" (Timişoara Court of Appeal, Labor and Social Security Conflict Section, 2008) which must comply only with the written form, without prior notice and without motivation.The possibility of unilateral termination of the employment contract makes the complaints against unlawful dismissals impossible.

In terms of duration, in EU member states, the probation period varies according to the duration of the employment contract (contract for a fixed or indefinite period, temporary work contract), the position occupied by the employee or other particular aspects. The probation period ranges from a few weeks (no more than one month in Hungary) to a few months (6 months in Bulgaria) or even exceed six months (Germany) (Kuddo, 2009: 17).

The main criterion for differentiating the length of the probation period is the duration of the employment contract. In Romania, the parties to the employment contract

of indefinite duration may, by their agreement, determine the length of the probationary period, which must not exceed the maximum period laid down by law. Thus, the duration of the probationary period shall be no more than 90 calendar days for the execution functions, no more than 120 calendar days for the management positions and maximum 30 calendar days for the persons with disabilities; for graduates of higher education institutions, the first 6 months after the professional debut is regarded as a probationary period or an internship (except for those professions where the internship is regulated by special laws). Romanian employees under an individual fixed-term employment contract may be subject to a probationary period not exceeding: a) 5 working days - for a duration of the individual employment contract of less than 3 months; b) 15 working days - for a contract's length ranging from 3 months to 6 months; c) 30 working days - for a duration of the individual contract longer than 6 months; d) 45 working days - in the case of employees in management positions, for a contract longer than 6 months (Codul muncii, 2018: Article 85).

In the Netherlands, for an indefinite employment contract or for an employment contract fixed for more than two years, the trial period is of maximum two months. In fixed-term employment contracts of more than 6 months, but less than two years, the parties can settle a probationary period of maximum one month. Unlike Romania, it is not possible to stipulate a probationary period in a fixed-term employment contract of six months or less (OECD EPL Database, 2013).

In some countries, the length of the probation period may be stipulated in the collective agreement or agreed upon by the parties because the legislator has not set a limit for this duration (Hungary).

After the expiration of the probation period, the employer is obliged to put into practice the individual employment contract until the expiration of the term stipulated in the contract (whether it is a fixed-term contract) or until another legal situation of termination of the employment contract occurs. In turn, the employee is obliged to respect the conditions of the contract, but without being limited his/her right to resign.

If the term of a probation period expires but the employee continues to perform the work and the employer does not prevent him from doing so, it is considered that he or she has the necessary professional skills and abilities and become a stable employee, meaning that he/she will be protected against unfair dismissals.

Working age

EU Member states shall ensure, under the conditions laid down by Directive 94/33/CE on the protection of young people at work, that the minimum working or employment age is not lower than the minimum age at which compulsory full-time schooling as imposed by national law ends or 15 years in any event.

The EU norms, as well as the ones of the International Labor Organization, protect people younger than 18 years against economic exploitation and against any work/ activity likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education.

Directive 94/33/CE gives legal definitions for the terms "child", "adolescent" and "young person". Acoording to the EU Directive, the meaning of the word "child" is "any young person of less than 15 years of age or who is still subject to compulsory full-time schooling under national law". On the other hand, the term "adolescent" signifies "any young person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law". Last but not least,

"young person" is "any person under 18 years of age having an employment contract or an employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State".

The person seeking employment must have a special legal capacity to designate "the ability to enter into an individual employment contract and to exercise the rights and actions resulting therefrom" (D'Agostino and Loiacono, 2009: 43). In labor law, dissociation of legal capacity in the capacity of use (as the ability of a person to have rights and obligations) and exercise capacity (as a person's ability to conclude civil legal acts) is of no interest (Ghimpu and Mohanu, 1988: 20; Ghimpu and Țiclea, 2000: 165; Athanasiu and Dima, 2003: 254; Athanasiu and Dima, 2005: 33) since the right to work, as a general aptitude and to perform a particular activity on the basis and under the conditions of an individual employment contract, can not be effectively detained and exercised until the age of employment stipulated by law (Radu, 2015: 154).

Article 4 par. 1 of Directive 94/33 / EC on the protection of young people at work prohibits, as a general principle, the work of children who have not reached the age of 15, with some exceptions referring to certain specific activities. These exceptions to the general ban on young people's work are represented by children performing cultural or similar activities (artistic, sports or advertising activities); of children of at least 14 years of age who work under an alternative or internship training scheme in the enterprise, to the extent that such work is done in accordance with the conditions prescribed by the competent authority and the children of at least 14 years of age performing light, non-cultural or similar work. Member States which recognize the possibility of child labor in these exceptional situations should lay down the working conditions specific to these light works, in compliance with the provisions of the EU Directive.

The employment of children for cultural, artistic, sporting or advertising purposes is subject to obtaining a prior authorization issued by the competent authority on a case-by-case basis (Article 5 par. 1). In this case, work must be light and can be performed by children from the age of 13 for a limited number of hours per week and for types of activities determined by national legislation. The term "light work" means work which, due to the tasks it entails and the specific conditions in which it is carried out, fulfills two cumulative conditions: it can not harm the safety, health or development of children; is not likely to prejudice the attendance of schools, participation in guidance or training programs approved by the competent authority or the ability of children to benefit from the instruction received. By way of derogation from the authorization procedure, Member States may, by legislative or regulatory means, lay down the possibility for children aged 13 or over to perform activities of a cultural, artistic, sporting or advertising nature.

Light work other than cultural, artistic, sports or advertising activities may, however, be performed by children of 13 years of age for a limited number of hours per week in the case of categories of work determined by national legislation.

In Romania, as in other EU member states, the individual acquires full employment capacity at the age of 16, assuming that from this age he has the physical and mental maturity necessary to enter into a work relationship. Minors aged between 15 and 16 have a limited capacity to engage in work and their employment is only possible with the consent of parents (both parents) or legal representatives, and only if "health, development and professional training of the minor are not jeopardized" (Codul muncii, 2018: Article 13 paragraph 2). Minors who have not reached the age of 15 years and

people who are under a judge's ban due to alienation or mental debility are lacking the ability to conclude employment contracts (Codul muncii, 2018: Article 13 paragraph 3 and 4). The prohibition to be employed concerns all minors under the age of 15, the Romanian legislation (as opposed to the one of certain European states) does not contain any provision regarding the situation of young people aged between 14-15 or even 13-15 years who can provide very light work, for example in artistic, cultural, sports, advertising. In the absence of an express provision in the Romanian legislation on the performance of certain work by children under the age of 15, the only legal solution is to resort to the rules of civil law and the conclusion of a civil convention (Ștefănescu, 2002: 7-11; Popescu, 2003: 60).

The minimum age for employment in Bulgaria is 16 (Labor Code, Bulgaria, 2018: art. 301 par. 1), the individual having a limited employment capacity between 15 and 16 years, under the same conditions as in Romania. As an exception, girls who reached 14 years and boys who reached 13 can be employed for filming, preparation and staging theatrical or other performances.

Labor legislation in Cyprus allows young people to work from the age of 15 and beyond, unless they are employed in a family business. Foreign young people may start working from 14 years old. The law prohibits work for children under 13 (Law No. 91(I) of 2014 on Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography).

In Estonia young people under the age of 18 may receive permission to be employed depending on their age, the activity which is to be performed and whether they are subject to compulsory school attendance (until they acquire basic education or they reach the age of 17). Children aged 16 years who do not go to school and those aged 17 years may perform any remunerated activity that does not put into danger their health. Young people between the ages of 13 and 14 and pupils aged 15–16 may perform work that involves simple tasks and does not require great physical or mental effort. Of all EU Member States, Estonian legislation proves to be the most permissive in the field of child labor because it allows children aged 7-12 to provide light work only in the fields of arts, culture, sports or advertising (Eesti.ee, 2017). One possibility of children's employment in Estonia are the so-called "work and recreation camps" (Katteler and Warmerdam, 2008: 27). Work is usually provided by local governments, who are the organizers of these camps, in co-operation with nonprofit associations or businesses. Organized during school vacations (especially summer) and having a duration of between 2 and 4 weeks, these camps combine light work (such as cleaning, working activities in hiking trails, parks and other public spaces) with varied social and cultural activities. Child enrollment is voluntary and is based on the "first-come, first-served" principle. These camps are also an attempt to socially integrate children who are in disadvantaged social categories such as children from poverty-stricken families and young delinquents (Katteler and Warmerdam, 2008: 27).

The most restrictive legislation is the one of Spain where the employment law norms does not allow children under 16 to be legally employed, even if they are foreigners. Children over 16 and younger than 18, living independently, are allowed to work but only with the consent of their parents or legal guardians, or with the authorization of the person or institution they have been entrusted to (articles 6 and 7 of the Royal Decree no. 1/1995 of 24 March which approves the revised text of the Law on the statute of workers). However, the appearance of children under the age of 16 in public performances may be authorized by the labour authorities on an exceptional basis.

In many EU Member States, a high number of young people have temporary employment contracts and, despite the principle of equal treatment, have difficulties in transitioning to permanent jobs. A high prevalence of temporary contracts for young may be the result of youth participation in education and training, or of their lack of experience (Caliendo and Schmidl, 2015: 15). These shortcomings can, however, be counterbalanced either by establishing a probationary period or by concluding a contract of qualification or professional training as an annex to the employment contract.

Protection of young people at work

Member States shall ensure that young people are protected from any specific risks to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that young people have not yet fully matured.

The employer's general obligations regarding the protection of young people are provided by art. 6 of Directive 94/33 / EC:

a) ensuring safety and health, taking into account specific risks;

b) assessing the risks related to the work that young people perform, taking into account: the equipment and the arrangement of the workplace and the job it occupies; nature, degree and duration of exposure to physical, biological and chemical agents; designing, choosing and using work equipment and their interaction; the stage of training and informing young people;

c) informing young people about the potential risks and the measures taken regarding their safety and health; the employer must also inform the child's legal representative of any risks of work and the measures taken;

d) the obligation to associate the protection and prevention services provided by the Directive no. 89/391 on the safety and health of workers, with the planning, application and control of health and safety conditions applicable to young people during work.

According to art. 7 par. 2 of the Directive no. 94/33, it is forbidden to provide the following work by young people:

a) those objectively exceeding their physical or mental capabilities;

b) those involving harmful exposure to carcinogenic agents, agents causing hereditary genetic alterations, which have adverse effects on the fetus during pregnancy or which have any other chronic negative effect on the human being;

c) those that involve radiation exposure;

d) those that pose risks of injury that can not be identified or prevented by young people;

e) those that endanger their health by exposure to cold or heat, or due to noise or vibration.

Member States may allow derogations from the provisions of Art. 7 par. 2 where adolescents perform essential work for their vocational training, provided that the protection of their safety and health is ensured by the supervision of work by a competent person within the meaning of Art. 7 of the Directive no. 89/391 on the safety and health of workers.

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