BRIEF COMMENTS REGARDING THE INDIRECT (OR DERIVED) SOURCES OF LABOR LAW

Associate professor **Brîndușa VARTOLOMEI**[1]

Abstract

In the field of the law governing the legal work relations one of the features that also contributes to defining the autonomy of labor law is that of the existence of the specific sources of law consisting in regulation on the functioning of the employer, internal regulation, collective labor agreement, and instructions regarding the security and labor health. In addition, in the practical field of the labor relations some indirect (or derived) sources of law were also pointed out as coming from the employer and having general and permanent character. They are considered as being labor law juridical acts.

Keywords: *specific sources of labor law; indirect (or derived) sources of labor law; employers' unilateral juridical acts.*

JEL Classification: K31

1. Preliminary considerations

It is known that in the field of labor law relations one of the features that contribute to defining the autonomy of labor law is the existence of specific sources of law[2].

In accordance with the Romanian labor law those are: the collective labor agreement[3] regulated by the article 229-230 from the Labor Code[4] and the Law no. 62/2011 regarding the social dialog[5]; the internal regulation[6] regulated by the article 241-246 from the Labor Code; instructions regarding the safety and health on work[7] regulated by the Law no. 319/2006[8]; the organizational

---

[1] Brîndușa Vartolomei - Law Department, Bucharest University of Economic Studies, brandusa_vartolomei@yahoo.com .

[2] See I.T Ştefănescu (coord.), M. Gheorghe, I. Sorică, A.G. Uluitu, B. Vartolomei, A. Vidat, V. Voinescu, *Dicţionar de drept al muncii*, Universul Juridic, Bucharest, 2014; I.T. Ştefănescu, *Tratat teoretic şi practic de drept al muncii*, third edition revised and added, Universul Juridic, Bucharest, 2014, p. 57-63; A. Țiclea, *Tratat de dreptul muncii. Legislaţie. Doctrină. Jurisprudenţă*, IX edition updated, Universul Juridic, Bucharest, 2015, p. 54-55; M. Gheorghe, *Dreptul individual al muncii. Curs universitar*, Universul Juridic, Bucharest, 2015, p. 20-25; B. Vartolomei, *Dreptul muncii pentru învăţământul economic*, Economic Publishing House, Bucharest, 2009, p. 24-40.

[3] Represents, according to article 229 paragraph 1 from the Labor Code, the convention in written form between the employer on the hand, and the employees represented by the trade unions or employees representatives on the other hand which lies down clauses concerning the work conditions, remuneration, and any other rights and obligations raising from the work relation and according to article 1 letter i from the Law no. 62/2011 the convention in written form between the employer on one hand and the employees representatives on the other hand which lies down clauses regarding the rights and obligations raising from the work relations. As can be seen the two definitions are essentially consistent but which makes them different is the sphere of broader provisions of the Law no. 62/2011 which refers to the public servants also and the labor Code that refers to the employees remuneration. Collective bargaining is legally established with the employers with 21 or more than 21 employees. The concluding of the contract is not mandatory (if the partner does not get to an agreement) – article 229 paragraph 2 from labor Code and article 129 paragraph 1 from Law. no. 62/2011.

[4] Republished in the Official Gazette of Romania, part I, no. 345, 18 May 2011.

[5] Republished in the Official Gazette of Romania, part I, no. 625, 31 August 2012.

[6] Represents the internal act of a legal person, adopted by the advisory opinion of the employer of the employees represented by the union or otherwise provided by law, by representatives of the employees, setting out at least the following: a) rules on the protection, hygiene and safety in the establishment; b) the principle of non-discrimination rules and removing all forms of violation of dignity; c) the rights and obligations of the employer and employees; d) the procedure for handling requests or complaints of individual employees; e) practical guidelines on labor discipline in the unit; f) disciplinary offenses and penalties; g) rules relating to disciplinary proceedings; h) the implementing other specific legal or contractual provisions; i) criteria and procedures for evaluating professional employees. Drafting internal rules is mandatory in each employer, legal person (within 60 days of obtaining legal personality). It informs employees about and takes effect from the time of their taking into account. Rules are posted at the employer's premises. Any change that occurs in the content of internal regulations must be communicated to them. Employees dissatisfied with its provisions may refer the employer to the extent that proof of infringement of a right. If they are unhappy with the response of the employer or, if it is missing, may address the competent court which shall carry out the legality internal Regulation.

[7] Are documents developed by employers to complete and/or implementation of legal regulations relating to safety and health at work, taking account of the activities and the existing jobs at the unit level. Their elaboration is a legal obligation of the employer,

and functioning regulation that, without being regulated in the Law, his existence and content are deducted from the corroborate interpretation of the article 187 from the Civil code[9] and the article 40, paragraph 1, letter a from the Labor Code[10], but also from other specific legislation.

Those unilateral acts of the employer are sources of law with professional character, are professional sources[11] because they are not adopted by the state.

Among the specific sources of law mentioned above only the collective agreement is negotiated by the parties. All the others are unilateral employer's acts, specific sources of law, adopted by the employer with or without consulting the employees represented by the trade union or by the employees' representatives.

2. Indirect specific sources (or derived) labor law

In practice, in the everyday activity, the employer issues:

- unilateral acts that addresses to each employee (as, for example, the work rate, established in accordance with the article 129 from the labor Code, that express the amount of work needed for operations or works being performed by an adequately skilled person; the individual work orders; the individual work instructions etc.) which does not includes in the specific sources of labor law; and
- unilateral acts that addresses to all the employees and which are included in the category of indirect (or derived) specific sources of labor law as:

a) the professional formation plan which is decided annually in consultation with trade union or employee representatives, as appropriate, in the case of employers with more than 20 employees; Once adopted, it becomes an annex to the collective bargaining agreement (if any). If not, plan training is obligatory, but self-contained.

b) procedures/instructions relating to the organization and performance of employees (how they perform their work) that can target the confidentiality of information, the use of computer-electronic equipment (computer, fax, phone, tablet, etc.), the conduct of handling transactions relating to products covered by the employer's business (where it sells goods and products);

c) rules on product quality, including rules, the maximum fine, establishing perishable, if the activity of the employer is the marketing of such products[12].

These last unilateral acts are characterized as indirect (or derived) sources of labor law because:

- they are based on normative, either on article 40 paragraph 1 letter a of the Labor Code which enshrines the principle, the employer's right to determine the organization and functioning of the subsidiaries, either on article 242 paragraph 1 of the same Code regarding to which the internal rules include "at least" legal provisions listed herein deducting that may be contained in the rules and other provisions both internally and self-contained;

- have content that falls under legal duties, such as management's employer;

- is with general nature, meaning that the unit is targeting all employees and usually permanent, applying, while an extended period.

Classification as indirect (or derivatives) of this category of sources of law in the fact that each of them is governed by a stand-alone or category to which they belong (and as such, can not speak of a direct regulation). Sources in question appear as indirect (or derived) as unilateral acts of

---

their contents referring to both the general instructions for safety and health at work (such as the organization of health and safety at work, work organization and workplace, hiring workers at employment, training and health security for workers, provision of personal protective equipment, sanitary materials and food protection, first aid, etc.) and the specific instructions for each job. Provisions of the Guidelines on occupational safety and health shall be notified at training workers in the workplace.

[8] Published in the Official Gazette of Romania, part I, no. 646, 26 July 2006.

[9] According to the legal text "Every person should have a stand-alone organization and its own patrimony affected to achieve a particular purpose and morally licit, in accordance with the general interest".

[10] According to the legal text "The employer has mainly the following rights: a) establish the organization and functioning of the establishment (...)."

[11] See, M. Gheorghe, *op. cit.*, p. 20.

[12] And that is useful for patrimonial liability, according to article 254 paragraph 2 of the Labor Code.

the employer - which we refer - issued on the basis of legal texts empowerment to as the manager (art. 40 of the Labor Code).

There are interesting provisions of the French Labor Code (art. L1321 - 5) according to which notices, or any other document entailing general obligation and permanent employees are considered as added/appended to the internal rules and shall be subject to the same legal rules. In our view, it would be necessary for full clarity, such legislation to be included in the Romanian Labor Code, article 242 on the content of internal regulations. It noted the need for such indirect sources of law (or derived) comply with the law, public order and morals. Thus, to give an example, it is not acceptable that such sources to modify the content of individual employment contracts because it would violate article 41 paragraph 1 of the Labor Code (which provides that "an individual employment contract may be amended only by mutual consent").

The employer has the right to elect either to make use of these sources of indirect (or derivatives), or include them, according to their content, in its internal regulations. Nothing precludes the contrary is consistent with the principle of good faith stated in Art. 8 of the Labor Code the employer to obtain prior When adopting these unilateral acts, the advisory opinion of the trade union or elected employee representatives, as appropriate.

3. Conclusions

Finally, as a last question, it must be a matter of a formal revealed: in practice, such unilateral acts of the employer are called administrative acts, especially in respect of civil servants. But in our opinion, it is a confusion that has, in respect of civil servants character interested namely: the need to substantiate, in this way that report public function as one belonging administrative law. Without going into detail on the existing controversy among specialists doctrine of employment law and the administrative law, I think it is an erroneous view. The ratio of public office is working and thus acts relating to it are unilateral acts of employment law.

Bibliography

1. I.T Ştefănescu (coord.), M. Gheorghe, I. Sorică, A.G. Uluitu, B. Vartolomei, A. Vidat, V. Voinescu, *Dicţionar de drept al muncii*, Universul Juridic, Bucharest, 2014;
2. I.T. Ştefănescu, *Tratat teoretic şi practic de drept al muncii*, third edition revised and added, Universul Juridic, Bucharest, 2014;
3. A. Ţiclea, *Tratat de dreptul muncii. Legislaţie. Doctrină. Jurisprudenţă*, IX edition updated, Universul Juridic, Bucharest, 2015;
4. M. Gheorghe, *Dreptul individual al muncii. Curs universitar*, Universul Juridic, Bucharest, 2015;
5. B. Vartolomei, *Dreptul muncii pentru învăţământul economic*, Economic Publishing House, Bucharest, 2009.