PARTICULARITIES OF COLLECTIVE BARGAINING WITHIN CIVIL SERVANTS

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Abstract

Collective bargaining is defined in art. 1 of the Law no. 62/2011 of the social dialogue as the negotiation between the employer or employers' organization and trade union organization or the representatives of the employees, as the case, which regulates the working relations between the two parties, as well as any other agreements on issues of common interest. Collective bargaining is therefore possible in both the private and the budgetary sectors, but due to the restrictions set by the law, collective bargaining in the budgetary sector is more restrictive. In the present study, we will analyze the aspects that characterize the collective bargaining within civil servants, especially by highlighting the issues that can be found on the collective bargaining list between civil servants and the state institutions and authorities.

Keywords: *civil servants, collective bargaining, collective agreements, particularities.*

JEL Classification: K23

1. Introductory aspects

Collective bargaining is possible within the public service as the Law no. 188/1999 on the statute of civil servants stipulates for the first time[2].

Other relevant legislative instruments applicable to collective bargaining are Government Decision (G.D.) no. 833/2007 on the rules of organization and functioning of the joint committees and the conclusion of collective agreements[3] and the Law no. 161/2003 on certain measures for the provision of transparency in the exercise of public dignities, public services and the business environment, the corruption prevention and sanctioning[4].

The legal provisions relating to the public service were regulated in a rigid manner before 1989, since the state apparatus, as the civil servants were generically referred to, did not enjoy of any regulations in terms of collective bargaining.

The Law no. 188/1999 provides also the possibility of collective bargaining for civil servants as a premiere in this field.

The law mentioned above dedicates a single article (72) to collective bargaining and the conclusion of collective labour agreements.

The legal status of civil servants acquires this way a dihotomic nature as it is circumscribed to legal provisions on one hand, and on the other hand it is the result of collective bargaining materialized into collective agreements concluded under the law.

2. Collective bargaining for civil servants[5]

A. As for the obligativity of collective bargaining in the budgetary sector, article 23 of G.D. no. 833/2007 stipulates that the bargaining of the collective agreement is mandatory when it is expressly requested by either of the two signatory parties within 30 days since the date of approval of the budget of the public authority or institution. If the representatives of civil servants or the head of public authority or institution does not request the launching of procedures afferent to the

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[2] Republished in the Official Journal no. 365 of May 29, 2007.

[3] Published in the Official Journal no. 565 of August 16, 2007.

[4] Published in the Official Journal no. 279 of April 21, 2003.

[5] See R. Ș. Pătru, *Contractele și acordurile colective de muncă*, Hamangiu Publishing House, Bucharest, 2014, pp. 248 – 274, A. Țiclea, *Acordurile colective de muncă*, in „Revista Română de Dreptul Muncii", issue 5/2009, pp. 5-23, I. T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, 4th revised and extended edition, Universul Juridic Publishing House, Bucharest, 2017, pp. 202-208.

conclusion of the collective agreement within this period, it is considered that the right of conclusion thereof for the next year has been waived.

Mention must be made of the fact that the legislator did not impose the obligation of collective bargaining like in the case of employees for the units having at least 21 employees, social partners' express request activating the obligation of collective bargaining.

The result of collective bargaining for civil servants is represented by the collective agreement.

From the semantic viewpoint, the concepts of agreement and contract are synonymous, thus the dissimilarities between collective labour agreements and agreements reside in the content thereof, the collective agreements having a narrower area of bargaining.

The appointment of representatives for the bargaining and conclusion of the collective agreement is made by the representative trade union of civil servants within the public authority and institution or by the majority vote of the civil servants of such public authority or institution, if the trade union is not representative or civil servants are not organized in a trade union.

If there is not any representative trade union at the level of the public authority or institution, the civil servants shall elect their representatives by secret vote.

The legislator has expressly consecrated the principle of freedom of bargaining and conclusion of the collective labour agreements.

An important role in the collective bargaining is played by the joint committee having the following attributions in the field of collective bargaining, under article 13(1) from G.D. no. 833/2007:

- they take part with advisory role in the negotiation of collective agreements between the public authority or institution and the representative trade unions of civil servants or their representatives and elaborate the draft of the collective agreement;

- they permanently monitor the implementation of the collective agreements concluded between the public authority or institution and the representative trade unions or the representatives of the civil servants;

- they draw up quarterly reports on the observance of the agreements concluded under the law that they send to the management of the public authority or institution and to the management of the representative trade unions of civil servants or to the civil servants' representatives;

Pursuant to article 26 from G.D. no. 833/2007, collective agreements are concluded after the approval of the budget of the public authority or institution for a limited time period usually corresponding to the fiscal year. By way of exception, the collective agreements may be concluded for limited periods longer than one year subject to the justification of the need and opportunity to exceed the period afferent to the respective fiscal year.

When negotiating collective labour agreements, the parties are in a relation of legal equality just like in case of collective bargaining for employees.

Collective bargaining in the budget sector may have the following objects:

a) creation and use of funds for the improvement of conditions at the workplace;

b) occupational health and safety;

c) the daily working hours;

d) professional development;

e) other measures than the ones provided under the law relating to the protection of the persons elected in the management bodies of trade union organizations or appointed as representatives of civil servants.

As for the content of collective agreements we mention that the main aspect discriminating the legal status thereof from the status of collective agreements is the narrow area of bargaining, since social partners have the possibility to negotiate only aspects established under the law.

The main disadvantage in terms of negotiation is that they cannot negotiate additional increments or wages increases since the quantum thereof is established under the law.

By way of exception, when the legislator regulated the wages of civil servants between maximum and minimum limits, the collective bargaining is possible only between these limits.

Social partners cannot negotiate contrary provisions or rights and obligations below the minimum level established by legislative instruments. The clauses of collective agreements cannot exceed or establish, as the case may be, the limitation of rights and obligations regulated under the law or rights and obligations additional to those regulated under the law in the unfolding of work relationships, pursuant to article art. 25 from G.D. no. 833/2007, this aspect being common to the legal status of collective bargaining carried out under the work legislation.

B. As for the content of collective bargaining and implicitly of collective labour agreements, certain provisions in terms of collective dismissal have been recently introduced in a collective labour agreement concluded by a group of units within the Ministry of Internal Affairs[6], in the context in which the Labour code stipulates that the relevant provisions shall not also apply to the employees of the public institutions and authorities.

As we have presented our opinion above regarding this issue[7], social partners acted correctly by inserting the provisions in terms of collective dismissal in the collective labour agreement because the legislator does not establish any interdiction in this respect, but only limits the applicability of the code provisions to the employees from the public institutions or authorities.

The social partners from public institutions or authorities may take over the legal provisions for collective bargaining in order to include them in the collective labour agreement.

Moreover, social partners, including public institutions or authorities, should constantly include provisions in terms of collective dismissal on the agenda of collective bargaining.

These arguments may be taken over *mutatis mutandis* in case of collective agreements as well, if we take into account the aspects mentioned above, and civil servants may include provisions regarding collective dismissal[8] in the collective agreements concluded with the public institutions or authorities.

C. As for collective bargaining, the Law no. 62/2011 has regulated the possibility for social partners to conclude other agreements, conventions and understandings as well; therefore, article 153 from the law mentioned above stipulates as follows: According to the principle of mutual recognition, any legally set up trade union organization may conclude any types of agreements, conventions or understandings, in written form, with any employer or employers' organization which represent parties' law and whose provisions shall apply only to the members of the signatory organizations.

Without insisting on the legal status of these agreements, conventions or understandings, we wonder whether this article is also valid for the civil servants. Can civil servants conclude agreements, conventions or understandings under article 153 from the Law on social dialogue?

We think that the principle of freedom in negotiation and of mutual recognition is also applicable to civil servants; therefore they too may negotiate agreements, conventions or understandings under article 153 from the Law 62/2011[9].

Furthermore, the legislator does not limit the conclusion of these conventions only to employees in the context in which the Law on social dialogue addresses both to employees and civil servants.

3. Conclusions

Collective bargaining is possible for civil servants as well, in compliance with the regime specific to the public service.

The legislator has imperatively established the field of collective bargaining and the parties must relate themselves to the applicable legal provisions.

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[6] Registered at the Ministry of Labour and Social Justice under no. 11 of January 15, 2015, published in the Official Journal, Part V, no. 1 of March 19, 2015.

[7] A. G. Uluitu, R. S. Pătru, *Observații și comantarii cu privire la Contractul colectiv de muncă încheiat la nivel de grup de unități din Ministerul Afacerilor Interne,* in „Revista Română de Dreptul Muncii", issue 9/2015, pp. 31-38.

[8] *Ibidem,* p. 38.

[9] See R. Ș. Pătru, *Contractele și acordurile colective de muncă, op. cit*., p. 267, 268.

Social partners may negotiate aspects relating to occupational health and safety, professional training, working hours or even aspects regarding emoluments but only if the law stipulates such emoluments between minimum and maximum thresholds.

Against the background of the current regulation of collective bargaining for civil servants and collective labour agreements, we think that the separate regulation of these aspects should be given up *de lege ferenda* and for reasons of legislative technique they should be inserted in the content of the Law no. 188/1999 on the statute of public servants[10].

Another important aspect is the provision of some flexibility of regulation in terms of the applicability of collective labour agreements; therefore, the legislator should institute more levels to which collective labour agreements apply, similarly to the conclusion of collective labour agreements.

This provision would favour civil servants by ensuring the applicability of collective agreements to more recipients.

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6. Labour code – Law no. 53/2003, as subsequently amended and supplemented.
7. Law no. 188/1999 on the statute of civil servants.
8. Government Decision no. 833/2007 on the rules of organization and functioning of the joint committees and the conclusion of collective agreements.
9. Law no. 161/2003 on certain measures for the provision of transparency in the exercise of public dignities, public services and the business environment, the corruption prevention and sanctioning.

[10] R. Ș. Pătru, *Contractele și acordurile colective de muncă, op. cit*. p. 278.