CONSIDERATIONS FOR SOME SOCIAL PROTECTION MEASURES ADOPTED IN THE CONTEXT OF THE SPREAD OF SARS-COV-2 CORONAVIRUS

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Abstract

Against the background of the factual situation – characterized by the repeated prolongation of the state of alert due to the epidemiological situation – it was necessary to regulate in concrete terms support measures for employees, employers and other categories of economically active professionals. In the article we will make brief comments on a specific support measure for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus and the way in which it seeks to stimulate employment growth.

Keywords*: labor contract; reduction of working time; modification of the individual employment contract; pandemic; alert status; social protection.*

JEL Classification*:* K31

1. Introductory issues

Government Emergency Ordinance no. 211/2020 on the extension of the application of some social protection measures adopted in the context of the spread of the SARS-CoV-2 coronavirus, as well as for the amendment of the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as to stimulate employment growth[2] was approved by Law no. 58/2021[3].

The provisions of the normative act seen in the above are in the sense that, by derogation from the provisions of art. 112 para. (1)[4] of the Labor Code, in case of temporary reduction of working time, determined by the establishment of the state of emergency/alert/siege, in accordance with the law, during the state of emergency/alert/siege, as well as for a period of up to 3 months from the end of the last period in which the state of emergency/alert/siege was established, employers have the possibility to reduce the working time of employees by no more than 80% of the daily, weekly or monthly duration provided in the individual employment contract (art. 1 paragraph 1 of Law no. 58/2021).

The social protection measures that are the object of Law no. 58/2021 are applicable – in accordance with the provisions of art. 1 para. 22 of Law no. 58/2021 – also in the case of apprentices, provided that the employer provides the apprentice with access to theoretical and practical training for acquiring the skills provided by the occupational standard, respectively by the professional training standard (according to Law no. 279/2005 on apprenticeships, republished, with subsequent amendments[5]).

Law no. 58/2021 imposes the obligation that – where there are trade unions entitled to negotiate the collective agreement at unit level (as they are defined in the Social Dialogue Law no. 62/2011, republished, with subsequent amendments and completions[6]) or employee representatives – the measure to reduce working time must be ordered by the employer with the consent of the trade union organization entitled to negotiate the collective agreement or, if it does not exist, with the employees' representatives (art. 1 paragraph 2 of Law no. 58/2021).

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[2] Published in the "Official Gazette of Romania", part I, no. 1189 of December 7, 2020.

[3] Published in the "Official Gazette of Romania", Part I no. 345 of April 5, 2021.

[4] According to which, "for full-time employees, the normal working time is 8 hours a day and 40 hours a week".

[5] Republished in the "Official Gazette of Romania", Part I no. 498 of 7 August 2013.

[6] Republished in the "Official Gazette of Romania", Part I no. 625 of 31 August 2012.

It is necessary to specify that the normative act requires the procedure that involves requesting the agreement of the representative union or of the employees' representatives, as the case may be – the issuance of a compliant/obligatory opinion; we find that there is no reference to the consultation of the social partners – to the consultative/optional opinion of those concerned.

Consequently, if the employer complies with the limits resulting *ex lege*, he may change the work schedule whenever necessary, with the obligation to justify such an amendment (art. 1 paragraph 4 of Law no. 58/2021).

2. Measure to reduce working time. The legal regime

A) From a procedural point of view, it is necessary that, in order to reduce the working time, a decision of the employer be issued – a unilateral act that determines the modification of the individual employment contract; this internal act provides for the reduction of working time for a period of at least 5 working days, included in the period of 30 calendar days, starting with the first day of effective application of the measure (art. 1 paragraph 3 of Law no. 58/2021).

The content of the unilateral decision of the employer is in the sense of specifying: the measure of reducing working time; work schedule; how to distribute it by days; the related salary rights – being necessary for this document to be communicated to the employee, as a rule, at least 5 days before the effective application of the measure (according to art. 5 paragraph 5 of Law no. 58/2021). As an exception, the communication to the employee is made at least 24 hours before the effective application of the measure, but only in the following cases provided in concrete, respectively: ***a)*** when there is a change in work schedule caused by an increase in employment of the employer requires additional staff; ***b)*** or at the moment when it is necessary to replace an employee who is unable to perform activity according to his work schedule (art. 1 paragraph 6 of Law no. 58/2021).

B) During the application of the reduction of working time, a series of social protection measures are instituted – according to art. 1 para. 18 correlated with par. 19 of Law no. 58/2021 - respectively, the affected employees:

- they cannot perform additional work at the same employer – a measure that we consider to be judicious, being respected the legal regime of part-time work[7];

- cannot be affected by the reduction of the working week with the corresponding reduction of the salary from 5 to 4 days – pursuant to art. 52 para. 3 of the Labor Code – the employer being given this possibility in case of temporary reduction of activity, for economic, technological, structural or similar reasons, for periods exceeding 30 working days – until the situation that caused the reduction of the program – after consultation prior notice of the representative union at the unit level or of the employees' representatives, as the case may be.

C) The legal measure of reduced working time also applies to the shift work program, as well as to the unequal work schedule.

Moreover, in the months in which the reduction of working time is applied, the employer cannot initiate collective dismissals (art. 1 paragraph 21 of Law no. 58/2021). As it results from the underlined provisions, the legal text does not refer to the interdiction to order the measure of individual dismissal.

3. Procedural aspects

A) During the reduction of working time under the stipulated conditions, the employees affected by the measure receive an indemnity of 75% of the gross monthly basic salary related to the hours of reduction of the work schedule – income of a salary nature, subject to taxation and payment of social contributions; for the calculation of the income tax, the rules provided in art. 78

[7] According to art. 15^1 of the Labor Code, "undeclared work represents: (…) d) the hiring of an employee outside the work schedule established within the individual part-time employment contracts".

para. (2) lit. a) of the Fiscal Code[8].

If the employer's budget for the payment of staff costs allows, the allowance provided may be supplemented by the employer with amounts representing the difference up to the level of the basic salary corresponding to the job occupied, without this difference being settled – duty of care (of means).

The allowance provided is borne by the employer, from the chapter related to personnel expenses from his income and expenditure budget, and is paid on the date of payment of the salary for that month, to be settled, within 5 days from the issuance of the decision, from the budget unemployment insurance, after the employer has fulfilled the declaratory and payment obligations related to income from salaries and assimilated to salaries for the period for which the request is made (in accordance with the provisions of the Fiscal Code).

B) If the employer does not recover the allowance granted from the unemployment insurance budget, he does not have the right to recover it from the employee.

C) If, during the same month, the employee obtains both income from wages and the allowance for the reduction of working time, for the purpose of taxation, they are cumulated, for the granting of the personal deduction; the monthly tax is determined according to the provisions of art. 78 para. (2) letter a) of the Fiscal Code.

D) During the period of applicability of the measure of reduction of working time, both the hiring of staff for the performance of activities identical or similar to those performed by employees whose working time has been reduced, and the subcontracting of activities carried out by employees whose working time is prohibited has been reduced. The prohibition refers to the level of subsidiary, branch or other secondary offices (defined by the Companies Law no. 31/1990[9], republished, with subsequent amendments and completions), at the level of which the provided measure applies.

E) By exception from the provisions specified above, it is allowed to hire for the replacement of employees whose schedule has been reduced under the conditions provided, if the termination of the individual employment contract takes place under the conditions: art. 56 (legal termination of the individual employment contract); art. 61 (dismissal for reasons related to the person of the employee) and art. 81 (resignation) of the Labor Code.

F) During the period of applicability of the measure to reduce working time, the employee benefits from all other rights provided in the individual employment contract or in the collective labor contract. As an exception, in the case of employers who apply the measure to reduce working time, the granting of bonuses or other income in addition to the basic salary established by contract, for persons who manage and/or manage companies (according to Law no. 31/1990) perform after the end of the period of application of the measure.

G) The employer may order the measure to reduce working time under the conditions provided and may request the settlement of the allowance for reduced working time if the following conditions are cumulatively met:

a) the measure affects at least 10% of the number of employees of the unit;

b) the reduction of the activity is justified by a decrease of the turnover from the month prior to the application of the reduction of working time or, at most, from the month before its previous month, by at least 10% compared to the similar month or compared to the monthly average business from the year prior to the declaration of the state of emergency/alert/siege, respectively 2019.

In the case of non-governmental organizations, as well as employers in the category regulated by Government Emergency Ordinance no. 44/2008 regarding the development of economic activities by authorized natural persons, individual enterprises and family enterprises[10], the decrease is related to the realized incomes.

As an exception, in the case of a newly established company between 1 January and 15 March 2020 and which has at least one employee, the decrease shall relate to the turnover achieved

[8] Published in the "Official Gazette of Romania", part I, no. 688 of September 10, 2015.
[9] Republished in the "Official Gazette of Romania", part I, no. 1066 of November 17, 2004.
[10] Published in the "Official Gazette of Romania", part I, no. 328 of April 25, 2008.

in the month preceding the application of the measure to reduce working time.

H) In order to settle the requested amounts, the employer must submit an application accompanied by the following documents: ***a)*** copy of the decision on reducing working time and proof of notification to employees, by any means commonly used by the employer to communicate with employees; ***b)*** statement on the employer's own responsibility; ***c)*** copy of the concluded agreement or, as the case may be, proof of informing the employees, where there is no trade union organization entitled to negotiate the collective labor contract at unit level or employees' representatives; the list of persons to benefit from the allowance provided.

4. Conclusions

The applicable legal regime with regard to the measure to reduce working time justifies the formulation of the following conclusions:

A) We consider it wise for the legislator to use the legal framework to ensure that emergency measures are taken, exceptionally, in the social and economic field – otherwise serious harm, with long-term effects, to employees, employers and other categories of professionals.

B) In the current economic context, we appreciate that it was necessary to adopt measures to prevent dismissal for reasons not related to the person of the employee.

C) Following the finality of avoiding the termination of the individual employment contract due to economic difficulties, the normative act subject to discussion was meant to save the individual employment contracts – the labor legislation being adopted *in favor of prestatoris*.

In the concretization of the above, we appreciate that the legislator's option was to create the possibility to choose between accepting a reduction of the working hours – or terminating the contract for reasons not related to his person (based on art. 65 of the Labor Code).

5. Proposal *de lege ferenda*

For practical reasons, we consider that it would be useful to regulate – with reference to the procedure prior to the application of the measure to reduce working time – the duty to consult the representative union or employees' representatives, as appropriate – the issuance of an advisory/ optional opinion.

Consequently, if the vision of the legislator were in the sense highlighted in the above, a legal solution will be created *in favor prestatoris* – the purpose of such an option being to facilitate the mechanism of conducting legal employment relationships.

Bibliography

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4. Government Emergency Ordinance no. 44/2008 regarding the development of economic activities by authorized natural persons, individual enterprises and family enterprises.
5. Labor Code.
6. Law no. 58/2021 for the approval of the Government Emergency Ordinance no. 211/2020 regarding the extension of the application of some social protection measures adopted in the context of the spread of the SARS-CoV-2 coronavirus, as well as for the modification of the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as for stimulating employment growth.
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