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THE LEGAL RELATION. A SPECIAL LOOK AT THE EMPLOYMENT RELATIONSHIP

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Abstract

A legal relationship represents the link that is established between two or more people within which they establish their rights and obligations by means of legal norms. This relationship may or may not be contractual in nature, and may involve various areas of law, including civil obligations, individual/collective contract, etc. A legal report consists of three elements: the subjects involved in the report, the rights and obligations of the parties that form the content of the report as well as its object.

The employment relationship represents an important type of legal relationship established between employers and employees. It regulates the conditions under which employees work for the employer, establishing the rights and obligations of both parties. The employment relationship represents an important type of legal relationship established between employers and employees. It regulates the conditions under which employees work for the employer, establishing the rights and obligations of both parties.

Keywords: *legal relationship; employment relationship; subjects; content; object.*

INTRODUCTION

In a society governed by legal norms, relationships between individuals and entities take the form of legal relations.

Any inter-human relationship or report assumes that it is established between two or more parties, has a content and an object.

Out of all of them, a fundamental component is labor relations, which establish the interaction between employers and employees.

Since the legal relationship is the whole, the legal employment relationship is the part, the latter having the same tripartite structure as the first, but also particularities that differentiate it from any other legal relationship.

As in the general theory of law, the elements of the legal relationship are the subjects, content and object, and the key elements of an employment relationship are the parties (subjects of the relationship), the obligations and rights of the parties materialized in the employment contract (the content of the relationship) and the activity actually carried out and payment of remuneration (object of the report).

▪ From the research carried out we will observe which are the particularities of a legal employment relationship.

I. DEFINING THE CONCEPTS OF LEGAL RELATIONSHIP AND EMPLOYMENT RELATIONSHIP

Not every social relationship has legal significance – *vinculus iuris* – but it is necessary for it to be provided by the rules. So, only normative regulation makes a social relationship become a legal relationship. The legal norm is the one that provides the conduct that the persons between whom the legal relationship is concluded must have (Genoiu, 2007, p. 1). Thus, the existence of legal norms is the essential premise for the appearance of the legal relationship, a premise without which we would not be in the presence of a legal relationship. (Cliza, 2022, p. 73)

Approaching a broader definition of the legal relationship, it represents any relationship between people, which is, however, regulated by objective law. In a narrower definition, the legal relationship is the connection between a legal obligation and a subjective right, legislated by the legal norm and producing legal consequences (Nefliu, 2021, p. 105).

From the definitions presented above, it follows that the legal relationship is a relationship between people/entities, which requires a certain conduct to be followed, giving rise to certain rights and obligations towards those involved in that relationship.

But not every social relationship represents a legal relationship, but the existence of an express regulation in the legislation of that social relationship is needed.

Thus, we can talk about a legal report of civil law, a legal report of criminal law, a legal report of fiscal law, a legal report of labor law, etc., depending on the branch of law in which the norm prescribes the conduct to be followed.

According to the doctrine (Genoiu, 2007, p. 7-15), the sources of the legal relationship can be classified as follows: *based on the dependence on the will of*

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the people: natural facts (events) and human actions. Events are the facts generated in the absence of any human will, to which the law assigns legal significance, once they occur, legal relations are born. In their category, by way of example, we mention the natural phenomena, the birth and conception of natural persons, the death of natural persons, their age. The law attributes to human actions the ability to issue legal effects, in the sense of creating, extinguishing or modifying legal relationships. Another classification is that of legal facts *lato sensu* (they bring together both events and human actions, both those carried out with the intention of producing legal effects and those committed without this intention) and legal facts *stricto sensu* (events and legal facts in a narrow sense, acts committed without intention). And, other classifications are presented as follows: events, human actions, states and human inactions (inaction represents the legal fact consisting of an abstinence that gives rise to, modifies or extinguishes a legal relationship); simple sources (they consist of only one element – the birth or death of the person) and complex sources (several elements brought together successively or simultaneously); sources of civil obligations and ways of acquiring property rights or other real rights, relative to the type of subjective rights, which it gives birth to.

Focusing on the legal employment relationship, its source is the legal facts, the conscious activity of the two or more involved actors that begins with the negotiation of an employment contract, continues with the fulfillment of the obligations assumed by each of them through the contract and ends with the agreement of the parties or the will unilateral of one of the parties, in the situations provided by law.

As we mentioned at the beginning, legal relations differ depending on the branch of law in which relations between persons are established.

Regarding the legal employment relationship, it is defined as a social relationship regulated by the rules of labor law (the situation of the employee) or of administrative law (the situation of the civil servant) or constitutional law (the situation of the official) that is born between a natural person and/or, a natural or a legal person, as a result of the performance of work by the first person for the benefit of the second person, who undertakes, in turn, to guarantee him the necessary conditions to work and to reward her for the work done. We are talking about such a report in the case of employees, public servants, civil or military (service reports), magistrates and other categories of personnel (Țiclea, 2023, p. 21).

Thus, if we place ourselves in the branch of labor law, we can talk about individual legal employment relationships, in the situation where they arise between a natural and a legal person (enterprise, autonomous management, etc.) in order to carry out work by the first for the benefit of the second, in exchange for a remuneration called salary, or about legal collective labor relations, which represent the social relations established between the associations of employees

and those of employers, through which they establish the working conditions, remuneration, working time, time of rest, safety and health at work, professional training, respectively, their rights and obligations.

As a conclusion, individual employment relationships are characterized by the quality of the parties, the employee being in all cases a natural person and the employer being a natural or a legal person who has the capacity to exercise and fulfills the conditions provided by law for employing natural persons, according to the individual employment contract.

II. THE ELEMENTS OF THE LEGAL RELATIONSHIP COMPARED TO THE ELEMENTS OF THE LEGAL EMPLOYMENT RELATIONSHIP

A legal report has a trichotomous structure: subjects, content and object. If any of these elements are missing, the consequence will be the non-existence of the legal relationship.

1. The subject of the legal relationship is the person who participates, individually or collectively, in the legal relationships, thus becoming the holder of rights and obligations. The attribute as subject of the legal report belongs to natural and legal persons alike (Genoiu, 2007, p. 67). The Civil Code stipulates the conditions that a person must fulfill in order to become the owner of rights and obligations.

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Thus, with regard to the conditions that the natural person must have, as the subject of the legal relationship, the Civil Code recognizes the civil capacity of all persons, respectively, the fact that any person has the capacity to use and the capacity to exercise, except in cases where the law provides otherwise (Art. 28). Art. 34 and 35 of the same code define the capacity to use as the person's vocation to have rights and obligations, expressly specifying the ab initio moment from which this capacity begins – from birth and the final moment – the person's death. Another important provision is the one that recognizes the child's rights from conception, the only condition being that he is born alive.

As for the exercise capacity, it is defined as the person's vocation to contract civil legal acts on his own. The rule is that it is acquired at the age of 18, but the Civil Code establishes two exceptions:

- minors can acquire full exercise capacity as a result of the conclusion of the marriage, and if the marriage is annulled, only the minor who was in good faith will retain full exercise capacity, while the one in bad faith will lose all the advantages that arise from the possession of a full exercise capacity;

- to the person who has reached the age of 16, the guardianship court can recognize his full exercise capacity for good reasons, it being necessary to listen to the person's parents or guardians, and if necessary, the opinion of the family council.

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Regarding the conditions that the legal entity must fulfill, as the subject of the legal relationship, the Civil Code provides that the legal entities for which registration is necessary shall benefit from legal capacity from the moment of their registration (Art. 205), but, since on the date of the act of establishment they can acquire rights and obligations, provided that they are indispensable to be established legally. The other legal entities will be entitled to rights and obligations from the date of authorization of their establishment, from their establishment or from the date of fulfillment of other conditions stipulated by law.

Thus, any legal person can have any rights and obligations, except for those that can belong only to the natural person, otherwise, the sanction involved is absolute nullity. As for legal entities that do not have a patrimonial purpose, they may have rights and obligations only to the extent that these rights and obligations are necessary for the achievement of their purpose. This purpose must be established by the legal rules, the statute or the deed of incorporation. In case of violation of these provisions, the sanction that intervenes is absolute nullity.

At the same time, the code provides for an exception, in the sense that any legal person is allowed to receive liberalities, even in the situation where they are not necessary to legally establish themselves.

Regarding the quality of the subject of an employment report, the Labor Code provides in Art. 13 that the natural person has the capacity to work from the age of 16. A natural person is allowed to enter an employment contract as an employee upon reaching the age of 15, but only with the consent of his parents or, if applicable, his legal representatives, for activities suitable to his physical development, skills and knowledge, provided that his health, development and professional training are not affected. The law also provides for two absolute prohibitions that consist of the employment of persons under the age of 15 and persons placed under judicial prohibition. At the same time, employment in hard, harmful or dangerous jobs can only be done after the person is 18 years old, and this category of jobs is determined by a decision of the Government.

A similar provision can be found in the Civil Code which stipulates in article 42, that only the natural person who has reached the age of 15 can be a party to a legal employment relationship, but the consent of the parents or guardians is required. But, although the consent of the adult under whose supervision is needed, the minor who is at least 15 years old exercises all the rights and obligations arising from the employment relationship, respectively, disposes of the income obtained by himself.

Art. 14 of the Labor Code contains the conditions that the employer must fulfil as the subject of the legal employment relationship, providing a definition of the employer as the natural or legal person who is entitled by law to employ workforce under the individual employment contract. As an employer, the legal person is allowed to conclude individual employment contracts from the moment

it acquires legal personality, while the natural person may conclude individual employment contracts only once it has acquired full capacity to exercise its rights.

2. With regard to the content of the legal relationship, it comprises the rights and obligations of the subjects of the legal relationship. The active side of the legal relationship comprises subjective rights, while the passive side comprises obligations. Each right is matched by an obligation.

Subjective right is the attribution recognized by the objective law to the active subject of the legal relationship, i.e., the natural or legal person to follow a certain conduct and to require the passive subject to follow the corresponding conduct, in the sense of giving, doing or not doing something, and, if necessary, to resort to the coercive force of the State.

In conclusion, the prerogatives granted to the holder of the subjective right are (Genoiu, 2007, p. 166):

- the possibility to behave in a certain way in relation to his right (e.g., he can keep it or dispose of it);
- the power to require the passive subject to adopt an appropriate attitude consisting in giving, doing or not doing something;
- the power to request, if his right is infringed, protection of his right through the State authorities and institutions.

The legal obligation has been defined as the commitment of the passive subject of the legal relationship to conduct himself in accordance with the corresponding subjective right, consisting in giving, doing or not doing something, conduct that can be imposed, if necessary, by the coercive force of state institutions and authorities.

The legal characteristics of the obligation are as follows (Genoiu, 2007, p. 248-249):

- the obligation is a duty, correlative to the subjective right;
- the obligation lies in the liability of the passive subject who must follow the conduct claimed by the active subject;
- the conduct of the passive subject may be an action (giving something or doing something) or an inaction (not doing something);
- if the passive subject does not fulfil his own obligation, the active subject has the possibility of having recourse to the state's coercive force.

Thus, the link between rights and obligations individualizes the form of one or other category of legal relationships. Its immediate content will be the interaction resulting from a certain configuration dictated by the rule of objective law (Bontea, 2006, p.280).

In the field of labor law, its content consists of all the subjective rights and civil obligations of the parties to the employment relationship, which are expressly identified in individual employment contracts, collective employment contracts and/or internal regulations.

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Thus, Art. 16 Para. 1 of the Labor Code provides that the individual employment contract shall be concluded based on the consent of the parties, in writing, in Romanian, no later than the day before the employee starts work. The employer is obliged to conclude this contract in writing.

Art. 229 Para. 1 of the Labor Code defines the collective labor contract. It is an agreement concluded in writing between the employer or the employer's organization and the employees, represented by trade unions or otherwise provided for by law. This contract may lay down various clauses concerning working conditions, pay and any other rights and obligations arising from the employment relationship.

At the same time, the Labor Code contains the rights and obligations of each of the two parties involved, for example, Art. 39 – Rights and obligations of employees, Art. 40 – Rights and obligations of the employer.

3. With regard to the third element of the legal relationship, the object represents the totality of the elements of a material or spiritual nature by which the rights and obligations of the subjects are fixed (Genoiu, 2007, p. 264).

Thus, the objects of legal relationships can be (Bontea, 2006, p.282-283): *material goods* – typical for civil legal relations (money, assets, etc.); *non-patrimonial values* – typical for labor, criminal, administrative, procedural legal relations, etc. (life, liberty, health, dignity, etc.); *results of intellectual creation* – can be the object of labor, criminal, civil, etc. legal relations (inventions, scientific, literary, artistic works, etc.).); *services*, which are characterized by the fact that they do not exist prior to the parties entering into the relationship, which is precisely the purpose of the relationship; *documents and papers of value* – typical of procedural and administrative legal relationships (diplomas, passports, bills of exchange, cheques); *the conduct of the parties* (transport of goods and/or passengers, witness statements, etc.); *sanctions* - typical of legal relationships of constraint.

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As far as the employment relationship is concerned, for the employee, its object is the performance of work, while for the employer, it is the payment of

wages. Workers' compensation achieves an equation that somewhat stabilizes the sacrifices and benefits for both employers and employees. (Moran, 1987, p. 1095).

III. THE PARTICULARITIES OF THE LABOR RELATIONSHIP

According to doctrine, the legal relationship has been characterized as concrete-historical, social, volitional, value-based, immaterial, regulated by a legal norm in which its members behave as holders of rights and obligations through the realization of which the purpose of the legal norm is manifested (Craiovan, 2020, p. 486; Genoiu, 2007, p. 19-27; Nefliu, 2021, p. 107-109; Ungureanu, 2011, p. 51).

As regards the social feature, this refers to the fact that the legal relationship is established only between persons. According to the Romanian legislation in force, we consider both natural and legal persons, institutions, authorities, etc., any entity that is the holder of rights and obligations.

Considering the double volitional feature, this refers to the fact that in a legal relationship the will of the state in the form of legal rules and the will of the individual always meet. Whatever conduct the person wants to follow, he or she must adapt it to the legal rules in force. Thus, even in the case of marriage, which is a free union between a man and a woman, certain conditions expressly regulated by law must be met. This is also the case when debating an inheritance, purchasing a property/vehicle, authorizing a commercial activity and, of course, employment.

With respect to the value feature of the legal relationship, this refers to the fact that legal rules protect important values of society: life and health of the person, inviolability of the home, property, etc.

As regards the immaterial nature of the legal relationship, it is a social, immaterial relationship, not an ideological, superstructural one.

With reference to the historical feature, the legal relationship differs according to the era in which we find ourselves, being in a constant state of change, adapting to the needs of society. Thus, in Roman law, slavery was considered a thing, being considered something normal, with the evolution of society, the right to life became a fundamental right of the person regardless of race, origin, nationality, however, it was necessary the intervention of the legislator to abolish slavery, violation of the imperative rule being a crime.

In the following we will present the particularities of a legal employment relationship.

The right to work is enshrined in Art. 41 of the Romanian Constitution. This fundamental right is the constitutional guarantee that ensures citizens the ability to choose their profession and place of work and to carry out, according to their own training, an effective economic, administrative, social or cultural activity for remuneration, while respecting the appropriate conditions of safety and hygiene (Moroșteș, 2020, p. 49).

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The legal employment relationship is characterized as bilateral, synallagmatic, commutative, social, onerous and involves relations of subordination between the two parties involved. At the same time, it enjoys stability, social protection and has a community of interests (Dorneanu, 2012, p. 96).

The legal employment relationship is always bilateral, being concluded between two persons, the one doing the work always being a natural person. Unlike the civil legal relationship, employment relationships do not involve several active and passive parties.

The legal employment relationship is synallagmatic, since both parties are at the same time both creditor and debtor, the rights and obligations of the parties being interdependent (Roş, 2023, p. 57).

The legal employment relationship is commutative because once the individual employment contract is concluded, the parties involved are aware of their rights and obligations.

The legal employment relationship is onerous, the work performed by the employee is always remunerated, one of the employee's rights is to be paid (Article 39(1) of the Labor Code) and Article 38 of the Labor Code expressly prohibits the employee from waiving his rights, so he cannot waive his salary either. Consequently, the employment relationship cannot be gratuitous.

The legal employment relationship is a legal relationship *intuitu persone*, being concluded both in consideration of the person of the employee and of the employer. It is precisely for this reason that the Labor Code also regulates the probationary period, both in favor of the employee and the employer, in order to observe whether they are compatible in the performance of the activity, i.e., the general objective of the company and the professional training of the employee. At the same time, the Labor Code prohibits forced labor.

The legal employment relationship is a relationship of subordination; during the employment contract, the employee is subordinate to the employer. At the beginning of the contractual relationship, the parties are in a certain legal equality, with the demand for work meeting the supply of work, through the conduct of contractual negotiations. Subsequently, however, the employee must be subordinated to the rules of the employer. This is different from the civil legal relationship because in the civil legal relationship the parties are equal.

The legal employment relationship is characterized by continuity and stability, the rule being the conclusion of the employment contract for an indefinite period, the exception being its conclusion for a fixed period.

The legal employment relationship is characterized by an increased protection of the state towards the employee, by regulating the employee's rights both in the Labor Code, the Social Dialogue Law and other normative acts.

At the same time, the legal employment relationship is characterized by a community of interests between the two parties involved, through a mutual

conditionality: if the employee performs his duties properly, the employer obtains performance, which is reflected in the granting of bonuses, salary increases.

CONCLUSIONS

Following our research, we have been able to observe which are the elements of a legal employment relationship and at the same time which are its main features. Of course, the list is not exhaustive.

The main difference between a legal relationship and a legal employment relationship lies in the nature and purpose of the relationship. While a legal relationship may include a wide range of relationships, as discussed above, an employment relationship refers exclusively to the relationship between the employee and the employer.

Legal employment relationships are a vital part of the legal landscape in Romania, based on a precise legal framework that protects the rights of employees and helps employers manage their human resources.

A clear understanding of the elements and particularities of these relationships ensures effective cooperation between the parties and a significant contribution to the development of society and the economy.

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