

TURNING POINTS IN LABOR RELATIONS IN ROMANIA. REINTRODUCTION OF THE POSSIBILITY OF NEGOTIATING THE COLLECTIVE LABOR AGREEMENT AT THE NATIONAL LEVEL

Dan ȚOP*

Abstract: *The reappearance of the possibility of a collective labor agreement at national level, now expressly regulated in the new law, is one of the most surprising changes of Law no. 367/2022 on social dialogue. In the content of the collective labor contract at the national level, however, it will not be possible to find clauses regarding the level of the guaranteed minimum wage in payment. We can expect in the coming years the conclusion, once again, of a national collective labor contract.*

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ORCID 0000-0002-1695-9967

Collective labor contracts will be able to be negotiated from 2023 and at the national level, as provided by art. 96 para. 2 of Law no. 367/2022 on social dialogue¹.

The last single collective agreement at the national level was concluded for a period of four years, 2007-2010², ending its applicability on January 1, 2011, and a new collective agreement at the national level was not concluded, since Law no. 62/2011 of the social dialogue³ eliminated the negotiation of the collective labor contract at the national level⁴.

It was considered⁵ that this significantly diminishes the importance of the institution of the collective labor agreement and that the employees will be deprived of a level of social protection, since on a national scale there will be one less protection tool. It was said that "the fundamental argument for the abolition of the single collective labor contract at the national level with effects for all employees in the country was the damage to the economic viability of employers. (...) The legislator, under the pressure of employers, especially with foreign capital, introduced this measure. However, the argument is only partially accurate. It cannot be said that this collective labor contract, unique at the national level, was not the

* Professor PhD, School of Advanced Studies of the Romanian Academy, President of the Association for the Study of Labor Relations in Romania.

¹ Published in the Official Monitor of Romania, Part I, no. 1238 of December 22, 2022

² Dan Țop, *Labor Law Treaty*, Wolters Kluwer publishing house, Bucharest, 2008, p. 128

³ Published in the Official Monitor of Romania, Part I, no. 322, of May 10, 2011

⁴ Dan Țop, *Labor Law Treaty*, 4th edition, Universul Juridic publishing house, Bucharest, 2022, p. 139

⁵ R.R. Popescu, *Analysis of some controversial aspects of Law no. 62/2011 regarding social dialogue*, in Romanian labor law magazine no. 5/2011, p. 18.

result of the agreement of the trade union and employer confederations in question and therefore there were no imposed clauses. It is true that, being the result of a negotiation, there were clauses that entailed expenses for the employer that the legal norms simply did not impose. Only that the employer, as a party in the labor relations, whether individual or collective, assumes the risk of the respective contract, individually or collectively, and as a result it was not abnormal for there to be increases in labor costs"⁶.

Regarding the elimination of the collective labor contract at the national level, the Constitutional Court held⁷ that "the text of art. 41 para. (5) of the Constitution does not provide for and does not guarantee collective negotiations at the national level, so the framework in which they take place is the one established by the legislator. Otherwise, the right to collective bargaining would be absolutized, a right that must take into account the economic and social conditions existing in society at a given time. It is about maintaining a fair balance between the interests of employers and unions; of course, there will be areas in which economic and social conditions allow the conclusion of collective labor agreements much more favorable to employees, and others in which rights are negotiated at a lower level, so that through a national collective agreement the latter would have greater rights than what the field in which they work objectively allows, which affects the economic viability of employers in this field".

The Court's decision was assessed as clearly erroneous, the court allowing the applicability of legal provisions in deep conflict with constitutional norms. The single collective labor agreement at the national level, which had binding effects for all employees throughout the country, was abandoned, without removing the possibility of the parties to conclude a collective labor agreement at the national level, which would produce its effects only for the signatory parties, respectively a civil contract"⁸.

In the doctrine it was emphasized that "unfortunately, the regulation brought to collective labor contracts by Law no. 62/2011 led to a drastic decrease in their number (...) and as a result of the abandonment of the single collective labor contract at the national level⁹", but also that "it would have been natural and useful that Law no. 62/2011 to have maintained the possibility of concluding, in the future, the single collective labor contract at the national level. But, unlike the previous period, the effects of this contract would have been produced only between the signatory parties. At the same time, if it was deemed necessary, the effects of the collective agreement at the national level should have been able to be extended according to the procedure expressly provided by the law (when requested by the signatories, it would have been

⁶ R.S. Pătru, *Contracts and collective labor agreements*, Ed. Hamangiu, Bucharest, 2014, pp. 223-224.

⁷ Decision no. 574/2011 published in M. Of. no. 368 of May 26, 2011

⁸ R.S. Pătru, *Contracts and collective labor agreements*, *op. cit.*, p. 226.

⁹ Alexandru Țiclea, *Labor Law Treaty*, 10th edition, Universul Juridic publishing house, Bucharest, 2016, p. 249

approved by the Tripartite National Council for Social Dialogue and would have communicated by order of the competent minister)"¹⁰.

Unlike the old social dialogue law, the new regulation provides for the possibility of negotiating a collective labor contract at the national level.

The parties to the national collective labor agreement are represented for the employer, according to art. 102 para. 1, by the legally constituted and representative employers' confederations, according to the law, and the employees/workers are represented by the legally constituted and representative trade union confederations according to the law.

They are representative at the national level, according to art. 54 para. 1 trade union organizations that cumulatively meet the following conditions:

- a) have legal status as a trade union confederation;
- b) have organizational and patrimonial independence;
- c) have their own structures in at least half plus one of the total number of counties in Romania, including the municipality of Bucharest;
- d) the member trade union organizations accumulate a number of members of at least 5% of the employees/workers of the national economy.

They are representative at the national level, according to art. 79 para. 1, employers' organizations that cumulatively meet the following conditions:

- a) have legal status as an employer confederation;
- b) have organizational and patrimonial independence;
- c) have territorial structures in at least half plus one of Romania's counties, including the city of Bucharest;
- d) have as members patrons whose units comprise at least 7% of employees/workers in the national economy, with the exception of employees/workers in the budget sector.

In the content of the collective labor contract at the national level, however, it will not be possible to find clauses regarding the level of the guaranteed minimum wage in payment, as the legislator considers it "necessary" to have this limit¹¹.

Art. 100 para. 6 shows that by exception to the provisions of para. 5, the collective labor contract concluded at the national level cannot include clauses regarding the level of the minimum gross salary guaranteed in payment, which is established by a decision of the Government.

In the legal literature it was mentioned that "through collective labor contracts, regardless of their level, any derogation in melius (in favor of the employees) is inadmissible if the legal norm has an imperative character and, at the same time, expresses an interest of public order (for example, the date of termination of the individual employment contract in the case of article 56 paragraph 1 letter c of the Labor Code), on the contrary, such a derogation in melius is admissible, if the legal

¹⁰ I.T. Ștefănescu, *Theoretical and practical treatise on labor law*, 3rd edition, Universul Juridic publishing house, Bucharest, 2014, p. 158

¹¹ Simona Voiculescu, *We could assist, this year, at the start of discussions for the conclusion of a contract national labor collective?* avocatnet.ro, January 2, 2023

norm (from which it is derogated), even if it has an imperative character, mainly protects the interests of the parties (for example, the clause according to which the employee, during the notice period, can request leave to look for another job)"¹²

The clauses of the collective labor contract concluded at the national level produce effects, according to art. 101 letter e, for all employees/workers in the units of the national economy for which the collective labor agreement was concluded at the national level and who are part of the signatory employers' organizations, respectively for all the employees in the units of the employers' organizations and of the employers who joined subsequently to the national collective labor agreement.

The collective labor contract negotiated at the national level is registered at the respective level, according to art. 110 para. 7, only if the number of employees/workers in the member units of the signatory employers' organizations is greater than 20% of the total number of employees/workers in the national economy, excluding employees from the budget system paid from public funds.

The collective labor contract negotiated at the national level can be extended, with the approval of the National Tripartite Council, by decision of the Government, according to art. 110 para. 8.

The national collective labor contract will be published, according to art. 111, in the Official Gazette of Romania, Part V and produces effects, according to art. 101, for all employees/workers in the units of the national economy for which the collective labor agreement at national level has been concluded and who are part of the signatory employers' organizations, respectively for all employees employed in the units of employers' organizations and employers who subsequently joined the national collective labor agreement.

As stated in the doctrine¹³, having a normative nature, its provisions have a direct and immediate effect on individual employment contracts already concluded or to be concluded, provided that these provisions are more favorable to employees.

The reappearance of the possibility of a collective labor agreement at national level, now expressly regulated in the new law, is one of the most surprising¹⁴ changes, in other words, we can expect in the coming years the conclusion, once again, of a national collective labor contract, as they have existed until the appearance of the former Law no. 62/2011.

¹² Ștefan Dan Pițigoi, *Discussions on several problems regarding the contradiction between some clauses of collective labor contracts concluded at the level of groups of units or departments of activity applicable for the years 2014-2015 and the labor legislation in force*, in "Dreptul" no. 11/2014, p. 186

¹³ Alexandru Țiclea, *Labor Law Treaty*, op.cit., p. 245

¹⁴ Roxana Abrașu, Daniel Stăncescu, *We have a new law of social dialogue. Significant changes of interest for the labor market*, juridice.ro, December 22, 2022