

# CONSIDERATIONS ON AMENDING AND SUPPLEMENTING LAW NO. 279/2005 ON APPRENTICESHIP AT WORK BY LAW NO. 179/2013

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## **Abstract**

*Changes and additions made to the Law on apprenticeship contract and call into question the manner in which the Romanian legislator understands that give efficiency to this legal institutions. The scientific research aims to identify substantive changes made to the legal text by Law no. 179/2013 and to explore opportunities in the current context of national and European legislation.*

**Keywords:** *apprenticeship, apprenticeship contract, employment contract.*

**JEL Classification:** *K31*

## **1. Analysis of the legal provisions**

Recently the Law. 279/2005 on apprenticeship at work was republished in the Official Monitor<sup>2</sup>.

Republication imposed as a result of amendments and supplements to this regulation by Law no. 179/2013<sup>3</sup>.

**A)** Among the amendments to the Law on apprenticeship contract work are attractive, especially the following:

**a)** the replacement, throughout the legislative act, of the term "apprenticeship contract work" with the term "apprenticeship contract" (article V);

**b)** the identification of training objectives which ensure, in accordance with legal provisions, the opportunity to obtain a qualification in adult vocational training system to allow filling a job and further learning; skilled workforce; quality in depending on their requirements employers, facilitating the social integration of the persons concerned; aged 16 years, in accordance with professional aspirations and labor market needs; a level of security appropriate; interested persons aged over 16 years to address segmented labor markets, contributing to economic growth; job creation, social cohesion and personal fulfillment and social dialogue and partnership at local level (article 1<sup>1</sup>);

**c)** the establishment of legal definitions for certain terms and phrases such as apprenticeships (article 1), the employer, apprentice training provider, coordinator apprenticeship contract for the provision of training services (article 13)<sup>4</sup>;

**d)** the legally binding clauses that identify apprenticeship contract must include, in addition to those set out in the employment contract (article 4 paragraph 5)<sup>5</sup>;

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<sup>2</sup> Republished in Official Gazette of Romania, part I no. 498 of 7 August 2013.

<sup>3</sup> published in Official Gazette of Romania, part I no. 348 of 13 June 2013, with latest modifications.

<sup>4</sup> According to the legal provisions contained in article 1 "discipleship training is accomplished at work under a contract of apprenticeship" and according to article 1<sup>3</sup> of the Act:

a) the employer is a natural person or legal person may, by law, to hire workers on individual employment contract ;  
b) disciple is a person aged over 16 years who, by her own, ending an apprenticeship contract with an employer in order to obtain a qualification ;  
c) apprenticeship training providers to work hereinafter suppliers are units and educational institutions, employers, other trainers, authorized /accredited for the qualification concerned;  
d) apprenticeship coordinator is employed by the employer or, where appropriate, individual entrepreneur organizer of discipleship at work and is required to cooperate with authorized training provider for organizing, conducting and evaluating continuous training of the apprentice, the appropriate occupational standard occupation in qualifying apprentice;  
e) contract for the provision of training services is the contract between the employer and the training provider for apprenticeships at work if another person under which ensures the training of the apprentice and the final exams at the end contract of apprenticeship".

e) the express mention of additional obligations on employers and those involving the apprentice for the first:

- the obligation to provide (disciple) all the rights which it confers a work contract of limited duration proportional to the time worked;
- the obligation to provide practical training in the skills necessary forms apprentice training;
- the obligation to ensure access to adequate theoretical and practical training program completed by adult vocational qualification certificate, under the Government Ordinance no. 129/2000 on adult training and funding of the apprentice training program<sup>6</sup>, if the program is not funded from other sources and

for the latter:

- the obligation to operate in accordance with the contract of apprenticeship;
- the obligation to participate in appropriate theoretical and practical training program;
- the obligation to support and promote the completion of the final examination of theoretical and practical training internships to obtain professional qualification certificate (article 4 paragraph 51 and 52);

f) clarifying that a person must meet in order to acquire the status of apprentice respectively the requirement to work towards finding a job by themselves or by registration at employment agency in whose jurisdiction territorial domiciled or, if appropriate, residence or to another employment services provider, authorized by law, to have reached the age of 16 and not have a qualifying occupation is organized apprenticeship at work and to meet the conditions of access to vocational training through apprenticeship to work on skill levels according to Government Ordinance no. 129/2000. "(article 5 paragraph 1);

g) the reference of the legal age of 26, which in accordance with the Civil Code, is the age in which the apprentices are entitled of maintenance and its assimilation to the period of further study;

h) the establishment in stages and the duration of the apprenticeship distinct, depending on the skill level for which the apprentice is prepared, namely:

- 12 months where the apprentice in the workplace is organized to acquire the appropriate skills level 1 qualification;

- 24 months, where apprenticeship workplace is organized to acquire appropriate skills qualifications at level 2;

- 36 months, if the workplace apprenticeship is organized for the relevant competencies Level 3 qualifications (article 7 paragraph 1)<sup>7</sup>;

i) the specifying of the concrete sources of funding training through apprenticeship or employer's own resources, sponsoring individuals and/or legal European structural funds, unemployment insurance and other legal sources such as the donations, fees, etc.;

j) the elimination of the situations in which the disciple does not enjoy paying 60% of the reference social indicator of unemployment insurance and employment stimulation provided by Law no. 76/2002<sup>8</sup> concerning the extension of another 60 days to the contract of apprenticeship as a result of not passing the final apprentice theoretical and practical assessment made by the employer;

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<sup>5</sup> According to article 4 paragraph 5 of the Law: "In addition to the mandatory individual contract of employment, apprenticeship contract includes the following clauses:

- a) the name of the qualification you are going to acquire disciple;
- b) name of training provider engaged in apprenticeship training program at work;
- c) the name and qualifications of its apprenticeship coordinator;
- d) the place / places in which the training activity;
- e) the necessary theoretical and practical training in the workplace apprenticeship;
- f) additional obligations of the employer;
- g) the obligations of the disciple;
- h) other clauses under the law. "

<sup>6</sup> Republished in Official Gazette of Romania, part I no. 711 of 30 September 2002, with latest modifications.

<sup>7</sup> Actual content of article 7 paragraph. 1 of Law no. 179/2013 was taken, with slight modifications, from the rules for the application of Law no. 279/2005 (published in the Official Gazette of Romania, Part I no. 196 of 2 March 2006).

<sup>8</sup> Published in Official Gazette of Romania, part I no. 103 of 6 February 2002, with the latest modifications.

k) the establishment of a legal regime more beneficial to employers if they wish to terminate their contract of apprenticeship in order to maintain the legal work only in two situations, namely: when funding is made from European funds or when it is realized from the unemployment insurance fund.

**B)** Analyzing the legal texts results the following aspects:

a) Corresponding the changes of the notion of "apprenticeship contract work" the legislature proceeded to the change of the definition of the discipleship expressly stating that it is "training done at work, under a contract of apprenticeship", highlighting specifically the place conduct of business by apprentice is even work past the contract of apprenticeship.

In an absolutely wrong way, as we consider, the legislature replaced the term "apprenticeship contract work" throughout all the enactment, but its title remains unchanged "the apprenticeship contract law".

Obviously, the intention of the legislature was to adapt the concepts used in the new phrase - that apprenticeship contract - omitting, however, even in Law no. 179/2013, to use the correct term of apprenticeship since, for example, article 11 and 13 of the law refers to workplace apprenticeships and not discipleship (notion that knows even a legal definition in article 1 paragraph 1 of Law no. 179/2013).

b) Establishing age that can enter into a contract of apprenticeship to the minimum of 16 years and eliminate specific provision to the maximum that can be achieved through the training contract (previously, it was the age of 25 years) without specifying the exception of the possibility of concluding the contract of apprenticeship with their parent or legal guardians at the age of 15 years is not likely to satisfy the current needs of the market economy and the reality on the labor market. Thus, although in accordance with article 16 paragraph 1 of Law no. 1/2011<sup>9</sup>, national education compulsory education in Romania is 10 classes, corresponding to the time the age of 16, would have been useful for the legislature to be maintained as an exceptional situation, the strict interpretation and application, the earlier provision relating to contract of apprenticeship and youth aged 15 to 16 years but only with the consent of parents or legal guardians. We would have covered such situations arising in practice, and simultaneously there was a match between the provisions of Law no. 179/2013 and those contained in the Labour Code and international standards of the ILO on individual employment contract<sup>10</sup>.

It is to be appreciated that the legislature proceeded to remove the maximum limit up to which apprenticeship can be achieved, namely the age of 25 years, since the imposition of a ceiling on training through apprenticeship was not likely to stimulate the relevant competencies of qualifications by people who, though older than 25 years to take advantage of such a qualification.

c) Integrating between the requirements for acquisition of apprentice and conditions for access to training by level of qualification under the provisions of Government Ordinance no. 129/2009 is not currently applicable given that, according to the current legislation is not yet made the National Register of Vocational Qualifications. What works today in Romania is only the National Register of Qualifications in Higher Education<sup>11</sup>, a document likely to determine, based on information submitted by higher education institutions, professional qualifications that graduates acquire them due to browsing university.

d) Regulation express the concept of "contract for the provision of training services" representing "the contract between the employer and the training provider for apprenticeships at work if other legal entity under which the apprentice and provide training graduation exams at the end of the apprenticeship contract" entail the conclusion that the apprentice training in theoretical and practical, can be performed by another person than the one contract of apprenticeship, provided we appreciate that work of apprentice to be in the employer with whom it has concluded the

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<sup>9</sup> Published in Official Gazette of Romania, part I no. 18 of 10 January 2011 with the latest modifications.

<sup>10</sup> Contained in ILO Convention no. 138/1978 concerning Minimum Age for Admission to Employment and Recommendation no. 146/1973 on the same subject.

<sup>11</sup> Constituted under the provisions of the Order of the Ministry of Education, Youth and Sport no. 5703/2011 (published in the Official Gazette of Romania, Part I, no. 880 of 13 December 2011).

contract of apprenticeship. Basically, the legal mechanism are trained in this way, the original employer which concludes the contract of apprenticeship and apprentice training provider - authorized by law - which assumes the obligations under the contract to provide services to the employer but the disciple and not other. Specifically, the employer may not transfer responsibility apprentice resulting from the conclusion of the apprenticeship to another legal entity to the extent that the contract of apprenticeship as a special feature, the same individual labor contract, *intuitu personae*.

### 3. Conclusions

In addition to the above, we believe that the legal act must be filled with the following:

a) The ability of young people aged 15 to conclude a contract of apprenticeship even if they have not completed compulsory education to 10 years to respond to such situations in practice that young school leavers could be integrated into the labor market by attending courses apprenticeship training<sup>12</sup>.

b) Entrusting the territorial labor inspectorate increased by setting its right to suspend the contract of apprenticeship in the event of serious risk of prejudice to the health or physical or moral integrity of the apprentice.

c) Regulation of specific conditions for the termination of the contract of apprenticeship as its specificity in order to ensure greater protection of the apprentice (on employees)<sup>13</sup>.

d) Specific regulation of the legal institution of delegation disciples since the rules in this area, of Law no. 279/2005, shall be added to the Labor Code. Consequently, due to situations arising in practice of any delegation disciples think it would be imperative for the legislature to establish the legal regime applicable changes to the contract of apprenticeship under delegated<sup>14</sup>.

e) Introduction to the national legislation corresponding to the existing provisions in French law, of a new legal institution called "family apprenticeship" performed using major ascendants and collaterals of the disciple who, by means of a declaration signed by both Parties undertake to ensure its training necessary for a profit at issue. This legal institution and may prove particularly useful in making an entirely certain trades from one generation to another through family ties that are established within a family and increased interest of ensuring their ancestors descendants prerequisites pursuing a profession/occupations.

### Bibliography

1. I. T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, second edition revised and enlarged, Universul juridic Publishing House, Bucharest, 2012
2. Law no. 279/2005 on apprenticeship in the workplace (republished in Official Gazette of Romania, part I no. 498 of 7 August 2013.
3. Law no. 179/2013 amending and supplementing Law no. 279/2005 on apprenticeship in the workplace (published in Official Gazette of Romania, part I no. 348 of 13 June 2013, with latest modifications)

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<sup>12</sup> See I. T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, ediția a II-a revăzută și adăugită, Ed. Universul juridic, București, 2012, p. 521-522.

<sup>13</sup> *Idem*.

<sup>14</sup> On secondment disciples are fully agree with the view expressed in the doctrine according to which that principle is not applicable to the contract of apprenticeship as providing apprenticeship employer is the one who assumes legal enforcement of the plan to train apprentices, responsibility can not be transferred temporarily to another employer.