

THE ENFORCEMENT ISSUES IN THE PERIOD 2013-2018 OF THE SOCIAL PROTECTION MEASURES FOR COLLECTIVE DISMISSAL

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Abstract

Given the current economic climate, it has become imperative – for social protection of people redundant – to adopt urgent measures to mitigate the social impact of the plans for layoffs. Immediate actions as those above – evident are based on the need to continue the economic recovery in accordance with the strategies in the field, to comply with state aid rules, to achieve the objectives of improving the activity of domestic companies, companies national or companies owned by the state, as well as companies and self subordinate local authorities.

Keywords: *the individual employment contract; the collective employment contract; collective dismissal; economic operators; completing monthly income.*

JEL Classification: K31

I. Introductory issues

The legal settlement of collective redundancy is a necessity in the market economy.

Under the Directive 98/95/EC on the approximation of laws of the Member States in relation to collective redundancies² in the context of national legal rules of the common law on this matter³ is contained in: Labour Code⁴ (art. 68-74) Government Emergency Ordinance No. 98/1999 on social protection of persons whose individual employment contracts will be terminated as a consequence of collective redundancies⁵.

In addition to the common law system, the legislature has adopted some special settlements⁶.

Thus, on social protection measures when people made redundant through collective redundancies under a redundancy plan, within national societies, autonomous, national companies and companies with majority state, national research institutes development and autonomous subordinate companies and local authorities, economic operators referred to as their exceptional effect of the common law of Government Emergency Ordinance no. 36/2013⁷.

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² Published in the "Official Journal of the European Union" (OJEU) no. 225 of 12 August 1998.

³ See on collective redundancies, Șerban Beligrădeanu, *Considerații în legătură cu măsurile de protecție reglementate prin Ordonanța de urgență a Guvernului nr. 9/1997*, in "Revista de drept comercial", no. 5/1997, p. 80-91; Gheorghe Bădică, *Soluții de principiu privind aplicarea Ordonanței de urgență a Guvernului nr. 9/1997*, in "Raporturi de muncă" no. 7/1997, p. 54-56; Magda Volonciu, Raluca Dimitriu, *Reglementări privind concedierea colectivă*, in "Raporturi de muncă", no. 11/1998, p. 34-43; Șerban Beligrădeanu, *Legislația muncii, comentată*, vol. XXXII (vol. 2/1999), p. 105-108; Alexandru Țiclea, *Concedierea colectivă*, Lumina Lex, Bucharest, 2001; Alexandru Țiclea, *Concedierea colectivă – o nouă reglementare*, in "Revista de drept comercial" no. 9/1999, p. 50-63; Ovidiu Ținca, *Dreptul muncii. Relațiile colective*, Lumina Lex, Bucharest, 2004, p. 250-281; *Unele observații referitoare la procedura concedierii colective*, in „Dreptul”, no. 7/2005, p. 69-77; Andrei Popescu, *Recentele modificări ale Codului muncii și dreptul social comunitar*, in "Revista română de dreptul muncii", no. 3/2005, p. 36-39; Alexandru Athanasiu, Lumina Dima, *Dreptul muncii*, All Beck, Bucharest, 2005, p. 140-146; Ion Traian Ștefănescu, *Tratat teoretic și practic de drept al muncii*, Universul Juridic, Bucharest, 2012, p. 425-440; Alexandru Țiclea, *Tratat de dreptul muncii*, VIIth edition, Universul Juridic, Bucharest, 2013, p. 494-498.

⁴ Republished in the "Official Gazette of Romania", Part I, no. 345 of 18 May 2011, as amended and supplemented.

⁵ Published in the "Official Gazette of Romania", Part I, no. 303 of 29 June 1999.

⁶ See extensively Ion Traian Ștefănescu, *Tratat teoretic și practic de drept al muncii, op. cit.*, p. 437-440; Aurelian Gabriel Uluitu, *Aspecte privind Ordonanța de urgență a Guvernului nr. 36 din 30 aprilie 2013 privind aplicarea în perioada 2013-2018 a unor măsuri de protecție socială acordată persoanelor disponibilizate prin concedieri colective efectuate în baza planurilor de disponibilizare*, in „Revista română de dreptul muncii”, no. 8/2013, p. 23-32.

⁷ Published in the "Official Gazette of Romania", Part I, no. 251 of 30 April 2013.

Until 31 December 2012 and has produced legal effects of the Government Emergency Ordinance no. 116/2006 on social protection for people made redundant through collective redundancies due to restructuring and reorganization of national societies, autonomous,

Major reasons for the use of the adoption of this law are:

- The urgent measures to mitigate the social impact of redundancy processes, social protection of employees of economic operators;
- The urgent measures to mitigate the social impact of redundancy plans for social protection of people laid off;
- The immediate measures for financial and economic recovery leading to eliminating waste and streamlining their business long term, given the commitments undertaken by Romania memoranda of understanding with the International Monetary Fund and the European Union in the year 2011-2012 – documents by the Romanian Government has committed to resolve deficiencies found in some SOEs measures leading to their economic and financial restructuring and eliminating waste and improving long-term business;
- The ensuring implementation consistently and indiscriminate forms of social protection that does not lead to passive behavior towards work of the beneficiaries;
- The elimination of the main obstacles or shortcomings that public employment faced labor market reintegration of the beneficiaries of the Government Emergency Ordinance no. 36/2013 which may lead to imbalances in the economic;
- To avoid the loss of the financial resources passive protection to the unemployed and career behavior;
- The improvement of the control functions of the National Agency for Employment and Labour Inspection;
- To ensure the judicious management of the human resources.

II. Existing General Government Emergency Ordinance no. 36/2013

The analyze of the meaning of these legal rules involving presentation prior concise of the guidelines of Government Emergency Ordinance no. 36/2013. as follows:

- The provisions of this regulation apply only to national corporations, autonomous, national companies and companies with majority state, national R&D institutes and companies and self subordinate local authorities, hereinafter operators (art. 1);
- The Article 5 para. 1 expressly states that any collective redundancy is subject to conditions laid down in the Labour Code. However, the deadline for achieving collective redundancy provided by Article 5 para 1 was extended to 90 calendar days (versus 30 calendar days provided for by Article 68 para. 1 of the Labour Code).
- Devoted exclusively to employees employed under individual contracts of employment concluded for an unlimited period, or part time work, the law making any distinction. However, it should be noted that it is about the individual contracts of indefinite duration concluded with at least 36 months before the date of dismissal (art. 4). Thus, although the amendments and additions to the Labour Code allowed a flexible legal regime applicable to the individual employment contract of limited duration⁸, though employees employed under a contract so do not benefit from social protection conferred by Government Emergency Ordinance No. 36/2013.
- The persons laid off under this legislation have the following rights: unemployment benefits, monthly additional income⁹, compensation awarded by operators in the revenue and expenditure, in accordance with the collective or individual contracts of employment, or concluded in each economic operator (art. 7). Completing monthly income is determined with unemployment benefits is equal to the difference between the

national companies and companies owned by the state, as well as companies and self subordinate local authorities (published in the "Official Gazette of Romania", Part I, no. 1042 of 28 December 2006).

⁸ Refer to, in this regard, Ion Traian Ștefănescu, *op.cit.*, p. 485.

⁹ The Supplementing monthly income is a personal right and ends on the date of death of the beneficiary (art. 13).

average individual net earnings for the last 3 months before the dismissal, based on the terms of the employment contract, but not earning more than the average net economy in January of dismissal has taken place, by the National Institute of Statistics, and the unemployment benefit.

- These monthly income¹⁰ paid monthly periods established based on seniority dismissal under this ordinance as follows: 12 months for people who have work experience from 3 years to 10 years, 20 months, for people who have work experience from 10 years to 15 years, 22 months, for employees who have a work experience of 15 years and up to 25 years, 24 months for employees who have a working experience of at least 25 (according to Art. 8 para. 2).
- After cessation of payment of unemployment allowance under Law no. 76/2002, as amended and supplemented¹¹, people dismissed under this ordinance shall, until the end of the period referred to in art. Article 8. 2 Completing a monthly income equal to the difference between the average individual net earnings for the last 3 months before the dismissal, based on the terms of the employment contract, but no more than the average net wage in the economy in January year in which the redundancies, by the National Institute of Statistics, and the unemployment benefits on unemployment benefit termination payment.

III. The key issues existing contents of the Government Emergency Ordinance no. 36/2013

A). a). The Government Emergency Ordinance no. 36/2013 use – through art. 17 para. 2 – the definition of "*unjustified refusal to accept the job offer*".

It is unreasonably the refusal motivated by:

- receive a salary equal to or less than the monthly income of completion;
- not participating training programs provided free employment agencies as service initiation in training, retraining, training and specialization, where people do not participate in training programs organized under the law, which funding is provided financial assistance forgivable Romania as a member state of the European Union through the European Regional Development Fund, European Social Fund and the Cohesion Fund.

It is not considered, however, unjustified refusal – according to art. 17 para. 3 – poor health for performing a work, justified on the basis of a medical certificate confirmed by medical examination committees and presented by persons concerned within 30 days from the occurrence thereof. So, the person may refuse work offered only justified if health is poor - in which case the sanctions termination payment is monthly additional income.

Obviously, this assumption excludes the fault of the person concerned, being a case of inadequacy of medical reasons. The legal text aimed at a particular medical unfitness (to supply a specific work) and not a general medical unfitness.

b). Relating to the provisions of art. 17 para. 2 of the Government Emergency Ordinance no. 36/2013 which regulates where justified refusing employment to existing provisions in art. 89 para. 3 of Law no. 188/1999 on the Statute of civil servants¹² can be seen that the scope of situations in which a public official may refuse to justify a measure (it is true with respect to another hypothesis

¹⁰ The persons who work receive 50% of monthly income Supplementing in the following situations: **a)** if the period of granting income supplement provided in art. Article 8. 2 shall employ, in accordance with legal provisions, other than those of traders who were fired, receiving payments until the expiration of the period referred to in art. Article 8. 2, according to the suspension or termination of payment of unemployment benefit, **b)** if the period of granting income supplement provided in art. Article 8. 2 shall employ, in accordance with legal provisions, the operators of which were dismissed, until the expiry of the period referred to in art. Article 8. 2 if enrollment on those businesses no longer state owned.

¹¹ Published in "Official Gazette of Romania", Part I, no. 103 of 6 February 2002.

¹² Republished in "Official Gazette of Romania", Part I, no. 365 of 29 May 2007.

– that the posting) is covered in full. Indeed, the public official may deny the extent of posting if you are in one of the following: pregnancy, is a single minor child health, as evidenced by a medical certificate contraindicated detachment, detachment is a place where not ensure appropriate accommodation conditions, is the only breadwinner of the family, grounded family reasons justifying refusal to grant posting.

De lege ferenda, we believe it would be helpful if all these cases denial of certain measures by the public official to be regulated as such and the Government Emergency Ordinance no. 36/2013, enlarging thus the scope of situations that could justify the refusal of a job offer and, consequently, would eliminate the incidence of additional income payment penalty of termination¹³.

B). Currently, according to art. 15 para. 3, the period of suspension of payment of monthly additional income not part of the period for granting monthly additional income referred to in Article 8. 2 where persons receiving monthly additional income do not meet the obligation under art. 14 para. 2 letter. a – respectively to appear monthly, based on the programming or whenever requested to employment agency which registered to receive support to work – for the following reasons:

- was ordered against the person receiving preventive custody;
- the person, who has a supplementing monthly income or dependent child under the law it proved to suffer from a disease that prevents medical certificate to fulfill the obligation;
- intervened family events such as marriage, birth of a child, death of spouse or relatives up to the second degree inclusive, and in the case of a force majeure confirmed by the competent public authority.

The option of the legislature not to take into account in calculating the monthly income of the period to complete the range of suspension caused by arrest of persons receiving income we consider to be natural, given that preventive custody is based not guilty – already proven – the person concerned. Naturally, in the event that a court would intervene final conviction – therefore, it finds fault of the person concerned – *per a contrario* interval suspend payment of monthly income is taken into account in calculating the monthly income of the period of supplementing.

C). The provisions of art. 24 para. 2 of the Government Emergency Ordinance no. 36/2013 reads as follows: "Employers who refuse employment, according to the law, persons receiving monthly additional income required to notify within 3 working days of employment agencies in the records which were found these people the reason for refusal".

So there is not an obligation on employers to hire under an individual contract of employment among persons supplementing monthly income beneficiaries, making it recognized the right to refuse employment (deducting logically if one does not correspond professional).

Failure to meet the two requirements specified in Art. 24 para. 1 and 2 – concerned not notify within 3 working days employment agencies employment or refusal of employment among persons supplementing monthly income beneficiaries – are offenses covered by labor laws and regulations belonging fined .

It is noteworthy that the legal regulation in the field, it was made possible offender to pay within 48 hours of completion or disclosure of the minutes of the contravention half of the minimum fine prescribed by law for the offense properly that the person concerned has been sanctioned. So do not become applicable provisions of art. 28 para. 1 of Government Ordinance no. 2/2001¹⁴ according to which in the law establishing offenses this possibility should be specifically mentioned.

It follows that, in the circumstances set out in art. 24 para. 1 and 2 of The Government Emergency Ordinance no. 36/2013, the offender shall pay all fines set by the inspector.

¹³ *De lege ferenda* , would have done so in the application of art. 46 para. 3 of the Labour Code relating to employee the opportunity to refuse deployment ordered by his employer only exceptionally and for serious personal reasons.

¹⁴ Published in "Official Gazette of Romania", Part I, no. 410 of 25 July 2001; to be seen in regarding Alexandru Țiclea, „Răspunderea contravențională în dreptul muncii”, in „Revista română de dreptul muncii”, no. 3/2005, p. 83.

D). a). The art. 18 paragraph 1 of The Government Emergency Ordinance no. 36/2013 specifies requirement for employment agencies to monitor: supplementing income beneficiaries who refused employment based on medical documents proving inadequate health to perform a work, to integrate as fast at work; daily offers jobs to employment, according to training, Supplementing income beneficiaries are out.

Analyzing the provisions of art. 6 of Law no. 202/2006 on the organization and functioning of the National Agency for Employment¹⁵ setting duties this public institution of national interest can be observed that the existing monitoring art. 18 para. 1 of The Government Emergency Ordinance no. 36/2013 is not in the list of law – enumeration which, moreover, is an enumeration.

De lege ferenda, we are of the view it would be reasonable that all of the National Agency for Employment – now scattered in various pieces of legislation – to be introduced by Law no. 202/2006 on the organization and functioning of the National Agency for Employment to ensure the uniformity of regulation.

b). As a consequence of legislative action highlighted in art. 18 of The Government Emergency Ordinance no. 36/2013 para. 2 states: "Labour Inspectorate is obliged to notify the National Agency for Employment, as controls, the name, address and identification number of people found that providing illegal activities".

In art. 6 para. 1 of Law no. 108/1999 on the establishment and organization of the Labour Inspectorate¹⁶ provided the specialized functions of this body of central government without, however, be determined and communicated to the National Agency for Employment name, address and identification number of people found that providing illegal activities. It's an example – possibly – the award of additional powers in relation to the Labour Inspection Basic Law no. 108/1999.

¹⁵ Republished in "Official Gazette of Romania", Part I, no. 294 of 6 May 2009.

¹⁶ Republished in "Official Gazette of Romania", Part I, no. 290 of 3 May 2012.

Article 6 para. 1 of Law no. 108/1999 provides: **I. Labour Inspectorate has the following attributions:** enforcement of legal provisions, general and special, in labor relations, occupational health and safety and market surveillance, providing information to employers and employees on the enforcement legal provisions in the areas of competence, inform the competent authorities about the shortcomings or abuse of the provisions in force, the provision of specific services to its field of activity; initiating proposals for improving the legal framework of its areas of activity, which we submitted to the Ministry Labour, Family and Social Protection. **II. Labour Inspectorate has the following specific functions:** **A). in labor relations:** controls the application of legal regulations, general and special, of the conclusion, performance, amendment, suspension and termination of employment contracts, controlling establishment and granting rights to the employees arising from the law, collective agreement applicable and individual employment contracts, controls compliance measures equal opportunities and treatment between men and women; ensure national record of work performed under individual contracts of employment, the general register of employees and day laborers record and beneficiaries of their benefits, controlling the use of labor in order to identify cases of undeclared work, receives and transmits system by labor inspectorates, the data submitted by employers and employees and beneficiaries on daily basis, ensuring registration of collective agreements work at facility and check their provisions, the procedure approved by the State Superintendent, and mediates labor disputes initiated at the level of, **B). security and health and market surveillance:** controls, coordinates and directs the methodological application of the safety and health at work, arising from national, European and International Labour Organization conventions, investigating events as powers, approves research, establishes or confirms the accident, working with institutions involved in the recording and reporting of occupational accidents and occupational diseases, controls the training, information and consultation of employees and provides information for its improvement; authorized in terms of security occupational health and functioning of individuals and legal entities may propose to withdraw or withdrawal of approval, under the law, reviews the external prevention and protection services and propose, where appropriate, external service enabling committee for prevention and protection and approval of documentation with technical information and training on health and safety at work in the labor inspectorates withdrawal of such authority; notices and authorizations issued under powers established by the laws applicable cease business or has stopped the operation of work equipment, if that there is a state of serious and imminent danger of injury or occupational disease, and refers, as appropriate, prosecution, the employer has to make measurements, determination and expertise to prevent the causes of events or events produced and checking the bodies, the classification level within acceptable limits occupational hazards in the workplace at the expense of the employer, controls the legal provisions relating to the placing on the market of products which carry out market surveillance, according competency restrict through legal measures established by law, marketing of products compliant and has measures to eliminate non-conformities found, take samples and perform tests to identify the suspected non-compliance products, working with customs authorities and other bodies responsible for border controls in to exchange information on products that present risks to use, working with national authorities and the European Union in all matters of market surveillance, including the safeguard clause notification of non-compliant products.

De lege ferenda, we are of the view it would be necessary for such changes that are currently in various laws proliferate be introduced by Law no. 108/1999 on the establishment and organization of Labour Inspection.

IV. Conclusions and suggestions of law

A). *Conclusions:*

As a result of legislative action highlighted should be noted that the Government Emergency Ordinance no. 36/2013 CD comprises unregulated of which reiterate the following:

- established for the area covered, the meaning of "*unjustified refusal to accept work offered*";

- provided in relation to the basic law, additional obligations on the employer, the employment agencies and labor inspection;

- it has strengthened the control functions of the National Agency for Employment and Labour Inspection.

B). *Suggestions of law:*

In future regulatory problems highlighted above-consider – as we have – that would be considered changing legal texts of which - having essential character – highlight:

a). Would be useful for all cases denial of certain measures by the public official to be regulated as such and the Government Emergency Ordinance no. 36/2013, enlarging thus the scope of situations that could justify the refusal of a job offer and, consequently, would eliminate the incidence of additional income payment penalty of termination.

b). It would be reasonable that all of the National Agency for Employment – now scattered in different laws – to be introduced by Law no. 202/2006 on the organization and functioning of the National Agency for Employment to ensure the uniformity of regulation.

c). It would be necessary that all the powers of Labour Inspection – currently proliferated in different laws – to be introduced by Law no. 108/1999 on the establishment and organization of Labour Inspection.

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