

EMPLOYEES' RIGHTS IN THE CORPORATE GOVERNANCE CONTEXT

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Abstract

The recent redrafting of the corporate governance legal frame at the European level, with emphasis on its functions of valorization and security of shareholders' rights, maximizing profits and minimizing risks, raises the balance issue between the above stated goals and the necessity for compliance with employees' rights. In this context, we intend to analyze the possibility for the labour regulations to be completed or substituted by the "soft-law" regulations, product of corporate governance, to identify the degree of stability, transparency and predictability of the employer-employee relationship and to identify the reconciliation methods between the apparently differing objectives of corporate governance and protection of employees' rights.

The study performs an analysis of the cases in which relevant provision form both corporate law and labour law are applicable, providing also practical examples from the real business environment, a comparative analysis of the relevant legal provisions from the principal EU member states and also an examination of the relevant doctrine.

The research results indicate the negative effect of the poor implementation of the corporate governance rules over employees' rights, but also the fact that compliance with employees' rights can be and should be an instrument of the effective and transparent corporate governance rather than a barrier, providing several directions for improving the labour relations in the corporate environment.

Keywords: corporate governance, companies, employees, labour, collective agreements, soft-law

JEL Classification: K31

1. Introduction

The corporate governance field, on one side, having its legal origin within the provisions of corporate law in particular and commercial law in general, and the employees' rights field, on the other side, are two parallel and quite antagonistic worlds, both from the perspective of the object and purpose of the regulatory frame, as well as the protection given to different groups of persons and interests.

Thus, the very reason for the development of the corporate governance concept is the necessity of solving the duality between ownership and control, long disputed even from the early corporate law doctrine³, which has into consideration the separation between the shareholder (or the capital provider) and the corporate management, as well as the compliance with interests of the shareholder imperative, through appropriate management control leverages. In this context, the interest of corporate law stands with the limitation of shareholders liability, securing the financial interests of shareholders, responsibility and effective liability of the business administrators. From this perspective, the objective of corporate governance is equivalent with orienting the corporation management to maximizing the shareholders profit, by rising both the financial results and the shares value, and to minimizing the "agency costs", or, more briefly, to capitalize the financial investment.

By contrast, the labour law interest stands with ensuring the stability, certainty and predictability of the individual employment contract, the respect of employees' rights, long term commitments between corporations and employees. These elements of interest reveal the current phenomena of accommodation with the economic realities of the present, which marks inclusively the area of labour relations, threatening several core rights of the employees. With the continuous transformation of the economic environment, the radical flexibilization of both financial and human capital are required, at the expense of some of the traditional rights and guarantees for the employees,

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³ Berle, Adolf; Means, Gardiner, *The Modern Corporation and Private Property*, Macmillan, New York, 1932, revised edition, 1967

and this phenomena becomes even more significant for the countries with emerging economies, which are under the pressure of obtaining economical growth⁴.

Despite the antagonistically character of the two above mentioned areas of interest, which character derives precisely from the nature of the social and economic interests that are thereby protected, corporate governance and the rights of employees are in fact two sides of the same coin. The interests groups to which the rules of corporate governance and labour law apply are actors on the same stage, equally bearing the effects of the social and economic transformations of the present. The interaction between the two is unavoidable, the same as the convergence area between these two separate fields cannot be denied, even if nowadays the financial investment is put on a higher level than human capital investment.

From the scholars point of view, the two legal fields were traditionally separated. Thus, the study of the corporate law includes only tangentially labour law elements, the provisions of the latter being considered as non-corporative limitations of the corporation's activity. The recent studies on corporate governance, which tend to change the traditional view into a whole economic context approach of the corporate governance, pin down the fact that, even if the convergence of corporate governance and labour law was once ambiguous and subject of discrete analysis, nowadays the relation between the two cannot be denied, becoming "both complex and paradoxical"⁵.

While the systematic and integrated study of the two above mentioned concepts is recent in the foreign law literature, this approach of corporate governance in the context of the Romanian legislation is almost nonexistent, as labour law is primarily oriented, according to its provisions and the doctrinaire view, towards the rights of the employee, as a non-corporative element, and the corporate law is primarily oriented towards systems of company management. In this context, the present study constitutes a preface to what the authors expect to be a wider research of the convergence area of the two legal institutions.

From a structural and systematic point of view, the study opens with defining the two notions – corporate governance and the employees' core rights which are directly affected by the management systems of the corporation. In the second part of the study, we explore the corporate governance concept, examining the relevant literature and the evolution stages of the concept, referring also to the corporate governance implementation in Romania and the Romanian regulation of corporate governance with a possible impact on employees' rights. In the third part of the study we approach the labour law elements that are convergent with the corporate governance area. The last part presents the conclusions and results of the study as well as some suggestions for improving the functioning of the dual corporate governance-employees' rights mechanism.

2. The corporate governance concept

Product of the transformations within capitalist economies of the late XIX century – beginning of XX century, characterized by capital dispersion, economic domination of the large corporations and market fragmentation, the corporate governance is a creation of the juridical and economic doctrine and practice, conceived as an instrument for resolving an issue identified by Adam Smith, who observed that it cannot be expected that the managers of large corporations will be as careful with other people's many as with their own financial resources⁶.

Therefore, the origin of the corporate governance concept stands with the necessity to settle the effects of the "agency theory", which has into consideration the relationship between the ownership, shareholder or capital provider (generically called "principal") and the manager, the business administrator, who acts as an agent of the former and is empowered to exercise the control

⁴ Zumbansen, Peer *The Parallel Worlds of Corporate Governance and Labor Law*, Maurer School of Law, Bloomington, 2006, Indiana Journal of Global Legal Studies: Vol.13: Iss. 1, Article 9, available at: <http://www.repository.law.indiana.edu/ijgls/vol13/iss1/9>, last access 09.11.2014

⁵ Deakin, Simon, *Worker. Finance and Democracy*, in *The Future Of Labour Law: Liber Amicorum Bob Hepple* Qc 79, 79 (Catherine Barnard et al. eds., 2004).

⁶ Smith, Adam, *The Wealth of Nations*, Cartea V, Caitolul I, Partea a- 3-a, Articolul 1 (1776)

and effective management of the business. This theory emerges from the required separation between ownership and control- because of the capital dispersion and the increasing numbers of shareholders within the corporation, the shareholders were not able to exercise the effective and day-to-day control of the business, being therefore constrained to mandate these powers to the management - board of directors, directorate, supervisory board. The agency theory hypothesis is that the agent should act for the best interests of the principal, which unavoidably raises the question if the agent wouldn't follow his own financial, remuneration or other type of interests rather than the best interest of the shareholders, which are generally oriented to maximizing the profit.

In this respect, a set of "rules of the game" was designed, with the primary objectives of establishing an equal treatment among the shareholders, prioritizing their interests; structuring the shareholders' decision making and enforcement upon the management processes, through the shareholders general assembly; establishing the unequivocal management and senior officers liability (board of directors, directors committee), corporation transparency, reality and preciseness of financial reports, compliance with the market regulatory framework and institutional requirements.

In this view, corporate governance was primarily designed as a resolution dispute instrument between the contrary interests of shareholders and management and for calibrating the ownership-control risk distribution, with the result of reducing the "agency costs", namely the opportunity cost imputed to the shareholders for supervising the management activity, which, in the absence of the corporate governance mechanism, could exceed the investment return.

In the modern and contemporary age, new facets were added to the corporate governance, moving the focus from prioritizing the shareholder interests to the interest of other social partners of the corporation – employees, suppliers, creditors, etc. – this concept deriving from the global performance of the corporation notion. In this respect, it was observed that not only the rise of financial results, as maximum profitability, financial stability and ability to generate profit, either distributed to shareholders or reinvested, are important for the business performance, but also all the financial and non-financial aspects implied by the corporation's activity. Investors' interest stands not only with the financial indicators but also with the perspectives of future development of the business, given by the material, financial, human, informational and organizational resources of the company⁷.

The differences between the traditional and modern understanding of the corporate governance concept illustrate the two theories developed by the commercial doctrine and practice – the shareholder theory and the stakeholder theory. In the case of the former, the shareholders' interests are the first priority, illustrated by actual gain obtained from the business and increase shareholder value, so, in this respect, corporate governance should represent a set of rules that ensure resolving the conflict of interest between shareholders and directors, management. This is a narrower view of the corporate governance concept, which refers to business management systems, the exercise of control by the shareholders, the management liability, and internal control. All these elements are considered to be essential for achieving the primary management performance objective – maximizing shareholders gain.

On the contrary, in the case of the latter, the stakeholder theory, corporate governance includes not only rules relating to shareholders rights, but also covers issues as commitments with the creditors, suppliers and debtors, rules on individual and collective labour conventions, employees' rights and benefits, clients treatment, compliance with the regulatory framework of the specific market on which the company operates and even aspects concerning corporate social responsibility. In this view, corporate governance expands its meaning and includes all the aspects of the commercial activity carried out by the company, emphasizing the inter-connection between these different aspects. The stakeholder theory develops the idea that preserving the rights of the stakeholders is a binding requirement, equally strong with maximizing the shareholders gain, being at the same time an

⁷ Robu, Vasile, Vatui, Mihaela s.a., *Analiza performantelor firmelor romanest cotate in contextul integrarii in Uniunea Europeana*, 2004, „Revista Economia ASE”, no. 2, p.381, available at <http://www.management.ase.ro/reveconomia/2004-special2/28.pdf>, last access 09.11.2014

instrument for management accountability and limiting the ways of the management to achieve the financial objective at any costs. This view is based on the economic efficiency and/or social justice idea within the corporation management system.

Given the amplitude and diversity of meanings conferred upon the business management, by inter-connection with all the aspects of economic life, the stakeholder theory was partially adopted in defining the corporate governance concept. Therefore, according to OECD Principles of Corporate Governance, this concept is defined as follows: "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined."⁸

From the authors point of view, a more succinct but complete definition it is preferred, given by recent relevant doctrine, which has the advantage to align either with protecting the shareholders or with protection of the stakeholders interests, depending on the economic environment and the specific conditions of each company. According to this definition, corporate governance describes the exercise of power in large companies, providing the answer for the following questions: who controls (or should control) the company, in whose interest the company is (or should be) controlled, and the ways in which control is (or should be) exercised⁹.

As we noted so far in the present study, the discussion about the convergence between the corporate governance and employees' rights fields cannot be divorced from the broader meaning of the corporate governance concept, close to the meaning given by the stakeholder theory. It must be accepted that the human capital investment cannot be underrated, in benefit of the financial investment, but that both of them are vital elements of the long-term performance of the company. Equally, the corporation cannot and should not be an instrument at the management's disposal solely for maximizing the shareholders' profit, and this objective is not the single requirement for a successful management. The financial investment can't be "put at work" without the human capital and a successful management is achieved by balancing all the elements that contribute to the corporation's activity.

Furthermore, we regard as posing interest for the present paper interests the presentation of both models in which corporate governance exists nowadays in developed countries, following the raising idea¹⁰ of a possible connection between the increase of corporate governance, under the intention of deferring more and more rights to the shareholders and the fragmentation of the labour market, thus creating negative effects in regard to labour intensity, work security, training investments and the overall development of employees skills.

The U.S.-British models of corporate governance is best suited for opened, liberal markets, best known for the liquidity of capital markets, the dispersion of shares amongst owners, the vulnerability of corporations towards hostile takeovers and last but not least by the presence of institutional investors interested especially in the net growth of share values. It has been described as being an outsider-based system exercised by active capital markets by means of acquisitions and mergers exercised upon listed companies. Elements like these, characterizing the economic climate, determines the restricted use of corporate governance in such systems and the fact that maximizing shareholders profit remains more than mandatory. In such systems we are witnessing a flexibilization phenomenon in regard of labour relations so that adjustments of personnel costs are to be made possible. Managers avoid making long time agreements with employees, as they are bound to short time financial indicators, even if they are not held responsible in a direct manner by the shareholders themselves. In such economies, the consultancy of such individuals or moreover, a reasonable social dialogue being consequences of corporate governance are frequently neglected for no other reason

⁸ OECD, 1999, Principles of Corporate Governance, p. 2, disponibil la <http://www.oecd.org>, data ultimei accesari 09.11.2014

⁹Gospel, Howard, Pendelton, Andrew *Finance, Corporate Governance and the Management of Labour. A Conceptual and Comparative Analysis*, „British Journal of Industrial Relations”, 2003, nr. 41, p. 560; Steve Letza, *Shareholding vs. Stakeholding. A Critical Review of Corporate Governance*, „Corporate Governance – An International Review”, 2004, no. 12, p. 242

¹⁰ Deakin, Simon, Beth, Ahlering, *Labour regulation, corporate governance and legal origin: A case of institutional complementarity?*, Centre for Business Research, University of Cambridge, Working Paper No. 312/2005

reason that they intervene with the freedom of the management in its desire of accomplishing the imperatives demanded by the shareholders. In extenso, frequent in usage amidst the corporate governance system is the remuneration of employees using the shares themselves, based on the idea of linking the companies' profitability, and therefore shares value to the remuneration awarded employees and moreover counterweighting the loss of employees' representation by means of donating a small part of control in the shareholders meetings. In ways as such of above are best optimized both the employees and shareholders interests. All these being said, the shareholders still have a more than obvious advantage over the employees in regard of social rights, seeing thou some employees benefits, such as pension funds are subject to the capital markets evolution.

The Germanic model of corporate governance, suited for the coordinated market economies, also known as "Rhineland capitalism" or "welfare capitalism", is traditionally seen in Germany, Sweden, Norway and Japan and is oriented towards the exercise of internal control of the corporation by the most powerful shareholders, which are usually the banks, being known as an insider-based system of corporate governance. This model is more or less forced upon the corporation by the banking credit, as basis of business development, and therefore allows an interconnection between the capital provider and ownership of the shares. As consequence, the capital provider is able to carry out a long-term monitoring of the corporation performance, shifting the primacy of the short-term financial indicators. This model of corporate governance intermediates the long-term cooperation between employer and employees, who are able to develop industrial strategies, to enter into credible commitments with regard to workplace security, investment in training and skills development, and also enter into commitments with regard to employees' involvement in the corporate governance system itself.

Corporate governance's importance for the stability and performance of the commercial actors led to the encoding of its essential principles into Best corporate governance practices codes, drawn by different national or European institution. According to a recent survey¹¹, 35 codes of corporate governance were issued at E.U. level, at least one code being enacted in each of the member states. The vast majority of the encoding was drawn up after 1997, ulterior to the financial scandals and bankruptcy of several publicly listed U.K. companies and was enhanced in the period of Asian economic crisis (1997-1998). The investors' shift of focus or even redraw from markets of global-wide importance – Asia, South America, Russia – induced a reorientation of the business community towards the basic principles of corporate governance, the ones regarding transparency, liability and shareholders equality of treatment, which resulted, at international level, in the encoding of the Corporate Governance Principles of OECD¹².

In Romania's case, the corporate governance concept was relatively recent introduced, in the year 2000, and had a rather difficult implementation to the present day, given the transitional status, from the planed economy to market economy, and the characteristics of the privatization process of formerly state controlled companies. In 2001, the Bucharest Stock Exchange (BSE) issued a first corporate governance code, applicable for the listed companies, which didn't gain popularity in implementation, being therefore revised in 2008, in a form close to OECD Principles.

As shown in the relevant literature¹³, as in most emerging economies, the Romanian corporate governance is inclined to the stakeholder model, as the management model of the company is focused on protecting the interests of all social partners of the corporation. This is justified by the fact that the corporations of the emerging economies are less motivated to act ethically in terms of social protection, if their actions are not related to their resources.

From another point of view, the corporate governance of the Romanian listed companies, which were formerly state owned companies, has the tendency to enhance the internal control element – "the Romanian listed on the stock market companies have resulted from the MEBO privatization process, mass privatization or the share sales, which determined, on one side, a dispersed share

¹¹ *Supra* 5, p. 382

¹² Adoptate de Consiliul OECD, 27-28 aprilie 1998

¹³ Niculae Feleagă, Liliana Feleagă, Voicu Dan Dragomir, Adrian Doru Bigioi, *Guvernanta corporativa in economiile emergente. Cazul Romaniei*, „Revista Economie teoretică și aplicată”, vol. XVIII, No. 9(562), p. 3-15

ownership, lack of shareholders involvement in the company management, and on another side, the emergence of a powerful group of majority or significant shareholders. The corporate governance of these opened companies dominated by management, employees or majority shareholder control, at the expense of minority shareholders and other social partners interests. The most important issue is the infringement of the minority shareholders' rights and the dilution of their wealth by the majority shareholders. The Board of directors and the auditors has only a formal role in approving the management's and majority shareholders' decisions"¹⁴.

Regarding the corporate governance codes issued in the EU and also at the national level – the BSE corporate governance code – it is observed that they maintain a facultative and specialized character, meaning that, on one side, the implementation of their provisions is optional, opposite to Corporation Law 31/1990, which has imperative provisions, and on another side, the BSE corporate governance code is applicable only for the companies listed on the stock market. Nonetheless, the “comply or explain” principle puts pressure on the publicly listed companies, which are indirectly forced to apply the corporate governance good practices within their articles of association, or explain the lack of compliance, in the latter case taking the risk of being excluded from the regulated market.

In line with the interest are of the study, we have to note that, according to the 2008 BSE corporate governance code, Article 9, Principle XVII, under the the title “Corporate responsibility” it is stipulated that:

“Corporate governance structures have to recognize the legal rights of the stakeholders and to encourage cooperation between them and the company for generating prosperity, employment offers and sustainability of financially solid companies. The listed companies on the BSE regulated market will make all reasonable efforts to integrate economic, social and environmental preoccupations within their operations and in their interaction with the stakeholders. The listed companies on the BSE regulated market will emphasize the involvement of employees, employees' representatives and unions and also of other outside the company stakeholders – creditors, consumers, investors – in developing and implementing the corporate social responsibility practices”¹⁵

With regard to the above quoted article, we have to observe that, besides stipulating, at a declarative level, the importance of cooperation with the scope of prosperity, between the company and its social partners, of which the most important seem to be the employees (considering that they represent the instrument through which the financial investment is operating), there is no specification of accurate, feasible and effective methods for observance of stakeholders rights, methods which could be seen as elements of the corporate governance. On the other hand, it is certain that, as opposed to developed economies, where the concept of corporate governance was generated and in which the labour law has, under some aspects, a non-regulatory character, the Romanian Labour Law provisions are imperative for the employer, no waiver being allowed.

However, the much coveted cooperation between the corporation management an the employees, with the objective of achieving social justice, is likely to remain only a desiderate, considering that many Romanian corporations limit themselves in taking over in their own corporate governance codes, the coordinates given by the BSE code or the OECD principles of corporate governance in the field of corporate social responsibility, but only as a shallow, unsubstantiated form, that lacks any connection with the realities of the labour relations. As observed in the literature, the corporate governance codes and the codes of ethics issued by the corporations, which often include provisions regarding employees' rights, etic rules and employees rules of behavior when interacting on the same or on different hierarchical levels, are only illustrating the growing tension between the two separate groups of interests – employees and management – both on economic and on legal level¹⁶.

Regarding the effective methods of corporate governance influence on employees' rights, it becomes relevant a short analysis of several provisions of the Corporation Law 31/1990.

¹⁴ *Supra* 5, p. 385

¹⁵ Codul de guvernanta corporativa al Bursei de Valori Bucuresti, 2008, p.13, available at: <http://www.bvb.ro/info/>, last access 09.11.2014

¹⁶ *Supra* 2, p.295

Given the present regulatory framework regarding the commercial companies, it results that there are two tiers of influence of management on employees' rights. On the first tier stands the shareholders general assembly, the supreme decision making body of the corporation, which designates and revokes the management of the company (art. 111 lit. b) but also decides on the budget and business plan of the corporation at the beginning of each fiscal year (art. 111 lit. e). Generally the business plan cannot be divorced from the personnel strategy, therefore the human capital and its remuneration, expressed in an accounting figure, are subject to approval of the shareholders assembly, at the management's proposal. Thus, the shareholders general assembly determines the system and quality of the corporate governance, both by designating the management, possibly even some independent managers, and also, in direct manner, deciding on issues closely related to employees rights – the establishment plan, responsibility distribution, level of remuneration.

On the second tier stands the management of the company, respectively, depending on the management system adopted by the company, the Board of Directors and the executive directors (in the one-tier or unitary system) or the Directorate and the Supervisory Board (in the two-tier or dualist system). These structures exercise the effective and day-to-day management of the business, being empowered to do so by the shareholders' general assembly¹⁷, and by virtue of this mandate, they effectively decide under all aspects regarding the employees – collective and individual bargaining of the employment arrangements, establishing the work conditions, the work schedule and jobs descriptions. It has to be noted though that, in the case of the two-tier management system, the Supervisory Board has only a Directorate monitoring role, not being allowed to interfere with the day-to-day management of the business. This management system was regarded to serve better the interests of the stakeholders, as it has a supervisory structure that reports directly to the shareholders general assembly (art. 153 ind. 9).

Also on the second tier of influence, stand the consultative committees organized alongside of the Supervisory Board, or, as the case may be, alongside of the Board of Directors, including the remuneration committee, with its function of proposing, both for management and the rest of the personnel, wage levels suitable with the stability of the company financial status and long term results and with the employees performance and skills.

3. Labour law impact on corporate governance

Regarding the relationship employer-employee, the corporate environment has its own characteristics, in relation both to the rights vs. obligations proportionality, as well as relative to the hard law provisions. Indeed, without an obvious intent to evade the regulation in force, in the majority of cases, the profitability imperative dictated by the corporate system has the tendency to waive, at least informally, from several core employees rights. It shall not be understood, not even in the slightest manner, that in such conditions, employees' rights are subject to such violations that the above mentioned waivers become flagrant. Rather, by reference to the flexicurity principles, the employees choose to neglect or not to claim their rights.

In order to accurately point out the typologies of the most breached employees rights, we have to note firstly the right to participate in unions, provided for article 218, alin. 2 of the Romanian Labour Code: "Any interference of the management or the employers organizations, directly or through their representatives, in the formation of the unions or in the exercise of unions rights is strictly prohibited."

Thus, by legitimate protectionist intent of the legislator, towards the employees involved in union's activities, the latter were put out of the management interference. The limitation of these rights, directly or indirectly, by substitution with economic benefits, represents *ipso facto* a law violation, and is both inexcusable and immoral. The unions' loss of power and also the restriction in union formation evidently unfavors the employees, by comparison with the multi-national employers.

¹⁷ Stanciu D Cărpănu, *Tratat de drept comercial român*, Universul Juridic Publishing House, Bucharest, 2012, p. 332

In this context, the already frail relationship between employer and employee is constantly being waived, disfavoring the employee “Indeed, along with the redimensioning the atypical labour, we observe also the standard labour *precariousness* phenomena. It is about the loss of protection for the employees working on the basis of typical, full time and definite duration agreements. This tendency has two coordinates: at the collective level, the participation at collective actions is less frequent and the power of unions is significantly diminished (especially by the modification of acquiring representativity criteria for the stakeholders); at the individual level, the rights of the standard employees are reduced”¹⁸.

A second inconsistency of the corporate system, that also points out the tendency of the corporate governance to substitute in fact the legal provisions, are the methods of collective labour agreements usage. In this regard, we have to observe that the above mentioned violations of employees’ rights target apparently insignificant waivers. The essential role of these exemptions is to maximize the corporation’s profit and to prevent the application of the legal sanctions.

In the relevant literature, the collective labour agreements are presented as imperative, according to legal provisions, and also “a *sui generis* act, being at the same time a legal agreement (contract, convention), a source for legal and mutual rights and obligations for the parties, but also a positive law source, a bargained conventional provision”¹⁹. If usually, the conclusion of the collective labour agreement doesn’t show inconsistencies in this context, there’s a different situation when it comes to the execution of the contractual provisions. This situation becomes important in the context in which the individual labour agreements include only provisions that are consistent with the internal limitations imposed by the collective agreements.

Without the intention to unreasonably extend the analysis of these issues, we must note that “the individual labour agreements cannot, in a *sui generis* manner, stipulate rights of an inferior standard than the rights stipulated by the collective agreements”²⁰ and, at the same extent, the provisions of the collective agreements cannot overcome the limitations and conditions stipulated by law. Moreover, the Law on social dialogue stipulates the obligation for the renegotiation of several clauses of the collective agreement, usually on annually basis. It becomes evident that the renegotiation of the clauses regarding wages, work conditions or work schedule is not possible in the absence of a collective agreement *ab initio*, leaving such conditions at the whim of the employer. In a more specific manner, corporate management’s predisposition heads to neglecting such contractual provisions, within the individual labour agreements, that would entitle the employees with rights close to the legal requirements.

One of these rights is the professional development of the employees, often neglected or ignored entirely in the corporate system and considered less important for two conjunct reasons.

The first reason is that the profitability and opportunity of such costs for a high number of employees is questionable. Nonetheless, this reason is contrary to the legal regulation in force, that establishes the opportunity of continuous development of the human capital “The employer – legal person, with more than 20 employees, elaborates and applies annually schedules of professional development, in consultation with the union or with the employees representatives”²¹ (Labour Code, art. 195). Besides, such a legal provision couldn’t become applicable in the absence of unions or employees representatives, to carry out a bargaining process. Last but not least, we have to note that both the initial bargaining and also the periodical renegotiation are the responsibility of the employer, and in this context, it appears that is a double disregard of the labour law provisions from the corporate management: “In each case, starting the collective bargaining is the employer’s obligation. The breach of such obligation can result in a conflict of interests”²².

¹⁸ Dimitriu, Raluca, *Conceptul de "munca precara" si implicatiile sale in reglementarea raporturilor de munca*, „Curierul Judiciar” no. 2/2012, p.118

¹⁹ Ticlea Alexandru, *Tratat de dreptul muncii*, Ed. Universul Juridic, Bucharest, 2014, p.246

²⁰ Supra 17

²¹ Codul Muncii adnotat, Ed. Rosetti, Bucharest, 2014

²² Dimitriu Raluca, *Legea privind solutionarea conflictelor de munca*, Ed. C.H. Beck, Bucharest, 2007, pg.63

A second reason for the lack of professional development, even if at an informal level, is given by the undesirability of occupational conversion and acquiring of superior skills and abilities by the employees. Through such processes, it is considered that the fluctuations that may occur in the distribution of employees, in human resource management would be impossible to control. Moreover, such reconversions could generate inconsistencies at the financial, accounting and legal level departments within the corporation. It must be observed that such a restriction of the freedom of mobility among the employees cannot generate long-term profitability. If the individuals are restricted to a limited area of activities and forced to observe a set of extremely punitive internal rules, they become capped and rarely excel in the work area targeted by the employer.

4. Conclusions

In regard to all aspects presented in this study, we can conclude upon the corporate governance system, its functioning rules and on the relation between the corporate governance and the labour regulation in force, as follows:

- Regarding corporate governance implications on employees rights, it is preferred a corporate governance system oriented towards the protection of stakeholders.
- The provisions of the corporate governance codes and codes of ethics issued by corporations, have to be more than shallow, unsubstantiated forms, they have to be recreated in a strict manner, in order to confer effective guaranties for respecting the rights of employees
- The management and control methods provided by the corporate law and labour law have to be used with the objective of acquiring a balance between profit maximization and social justice
- The active cooperation between the decision making structures of the corporate management and employees is not only useful, but also necessary, especially in the present economic context
- The deliberate or fortuity circumvention of soft law's corresponding provisions of labor law, even if they seem to safeguard corporate management against unfavorable financial situations, it actually creates a vicious circle of damage to both players of the labour process
- Employees' mobility and specialization in connected areas of activity can generate profitability, by comparison to a constant but predictable regression, in case of human capital capping.

After corroborating at least some of the ideas presented above, the premises for an optimal employee-employer relationship can be created, tending to the harmonization of profit requirements with the safety and satisfaction of employees. Another legal aspect to be taken into consideration, in the context of compliance with several of the above recommendations, is the requirement of legislative harmonization between standards of hard-law and soft-law, that exist at the moment and often contradict each other. Moreover, the above mentioned contradictions tend to diminish the flexicurity and to prematurely outdate a concept of great importance in the current economic climate. Hoping for the reconciliation of corporate interests with those of employees, we conclude this study with the hope that the above lines were not found to be offensive by any of the parties concerned.

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