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Ceasing the Employment Contract

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Abstract: *The most suggestive expression of job stability, a pledge of defending the interests of employees, is given by the regulation by law of the conditions under which the termination of legal employment relations can take place. Termination of the individual employment contract is governed by the principle of legality, in the sense that the ways and cases in which it may occur, the reasons, conditions, procedure, effects and control of termination of such contract, and the responsibilities of the parties are regulated in detail by law. By regulating this termination, it cannot be considered that, thus, the right to work is restricted, which is not in accordance with the provisions of the Constitution or the Labour Code. There are situations in which the legal employment relationship can no longer continue for reasons beyond the control of its two parties, employee and employer. At the same time, the individual employment contract is a bilateral legal act, and the principle of freedom of will, must be manifested not only at its conclusion, but also at its termination.*
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Introduction

According to article 55 of the Labour Code, the individual employment contract may be terminated in one of the following situations [1]:

- right;
- by agreement of the parties;
- as a result of the unilateral will of one of the parties - dismissal and resignation.

Labour relations are governed by the principle of good faith. Based on this premise, when the parties decide to terminate the collaboration by mutual agreement, they will decide what rights and obligations are extinguished and what will be the legal effects by the termination act following which the employer will issue, through its management bodies, the decision termination of the individual employment contract.

The termination of the individual employment contract is also dominated by the principle of legality. Regardless of the situation, nothing can be stipulated or decided in any act except the legal provisions in the field, and not only. Thus, the ways and cases in which an individual employment contract may be terminated must be expressly stipulated by law, which also has the consequence that the protection of the employee's rights must be ensured at all times in order to remove the employer's decision regarding the employee in the sphere of possible abuses.

1. The Ending of the Individual Employment Contract

According to article 56 of the Labour Code, the situations in which the individual termination of the individual employment contract takes place are [1]:

- on the date of death of the employee or employer of the natural person, as well as in case of dissolution of the employer legal entity, from the date on which the employer ceased to exist according to law;
- on the date of the irrevocability of the court decision declaring the death or interdiction of the employee or employer natural person;
- on the date of cumulative fulfilment of the standard age conditions and of the minimum contribution period for retirement;

- on the date of communication of the retirement decision in the case of a third-degree invalidity pension, partial early retirement, early retirement, old-age pension with a reduction of the standard retirement age, on the date of communication of the medical decision on work capacity in the event of a first degree disability;
- as a result of the finding of the absolute nullity of the individual employment contract from the date on which the nullity was ascertained by agreement of the parties or by a final court decision;
- as a result of the admission of the application for reinstatement in the position occupied by the employee of a person dismissed illegally or for unfounded reasons, from the date of the final decision of the reinstatement court;
- as a result of the conviction to the execution of a custodial sentence, from the date of finality of the court decision;
- from the date of withdrawal by the competent authorities or bodies of the approvals, authorizations or attestations necessary for the exercise of the profession;
- as a result of the prohibition of the execution of a profession or a function, as a security measure or a complementary punishment, from the date of the finality of the court decision by which the interdiction was ordered;
- on the date of expiration of the term of the individual employment contract concluded for a determined duration;
- withdrawal of the consent of parents or legal representatives, in the case of employees aged between 15 and 16 years.

Following the amendments to the Labour Code by Law no. 40/2011, at least two more cases of legal termination of the individual employment contract were discussed:

- the situation provided by art. 50 paragraph (1) lit. h) Thesis II of the Labour Code, according to which "If within 6 months the employee has not renewed his approvals, authorizations or attestations necessary for the exercise of the profession, the individual employment contract terminates by right".
- the situation regulated by art. 80 paragraph (3) of the Labour Code according to which "If the employee does not request reinstatement in the situation prior to the issuance of the dismissal act, the individual employment contract shall terminate by right on the date of final and irrevocable judgment" - by which the dismissal measure ordered by the employer was annulled.

The expression "ceases by right" from art. 56 paragraph (1) of the Labour Code [1], "must be interpreted in the sense that the employment relations with the employer cease under the law, without taking into account the option of the employee", nor of the employer. Such termination is the result of the occurrence of a legal act or fact unrelated to the will of the contracting parties, which lies in the objective impossibility of fulfilling the obligations determined by the conclusion of an individual employment contract.

2. Ceasing of the Individual Employment Contract by Agreement of the Parties

The termination of the individual employment contract by the agreement of the parties can be done only under the conditions of art. 55 lit. b) of the Labour Code [1].

The basis for the termination of the individual employment contract in this form is the consent of both parties, as its conclusion was also made on the basis of the same agreement of will of both parties.

The provisions of the Labour Code do not result in provisions regarding the conditions and procedure for termination of the individual employment contract by agreement of the parties. [2, 264] By agreement of the parties, all kinds of individual employment contracts may be terminated - for a fixed period, part-time, home-based work etc.

The parties to an individual contract of employment may decide to terminate their legal employment relationship also by a legal act, but which is based on consent, which must combine all the requirements of common law, i.e. not be affected by any defect in consent, its form to be written

3. Ceasing of the Individual Employment Contract at the Initiative of the Employer. Dismissal

The dismissal represents the termination of the individual employment contract at the initiative of the employer and can be made for reasons related to the employee's person or not related to his person, according to the provisions of article 58 paragraphs 1) and 2) of the Labour Code [1].
Art. 61 of the Labour Code enumerate only the situations that may determine the dismissal for causes related to the employee, as follows [1]:

- if the employee has committed a repeated violation or deviations from the rules of labour discipline or from those established by the individual employment contract, the applicable collective labour contract or the internal regulations, as a disciplinary sanction;
- if the employee is remanded in custody for a period longer than 30 days under the Code of Criminal Procedure;
- if, by decision of the competent bodies of medical expertise, the physical and / or mental incapacity of the employee is found, which does not allow him to fulfil his duties corresponding to the job;
- if the employee does not professionally correspond to the place where he is employed.

Collective redundancy
Collective dismissal means (art. 68 of the Labour Code) the dismissal within a period of 30 calendar days ordered for one or more reasons not related to the person of the employee of a number of:

- at least 10 employees, if the dismissing employer has more than 20 employees and less than 100 employees;
- at least 10% of employees, if the dismissing employer has at least 100 employees, but less than 300 employees;
- at least 30 employees, if the dismissing employer has at least 300 employees.

In determining the actual number of employees dismissed collectively, those employees whose individual employment contracts have been terminated at the initiative of the economic agent are also taken into account, for one or more reasons, unrelated to the employee, provided there are at least 5 dismissals. For a dismissal to be defined collectively, it must meet three fundamental conditions:

- there must be a certain number of employees affected by this measure;
- the reason for the termination of the employment contract of those concerned not to belong to their person;
- the period of time in which the termination of those contracts is to take place shall not exceed 30 calendar days.

An important thing is that Article 74 paragraph (5) of the Labour Code specifies that the regulations on collective redundancies do not apply to employees of public institutions and authorities. [1]

If the economic operator intends to carry out a collective redundancy, he has the obligation, among other things, to establish a redundancy plan, which must include the following elements:

- the total number of employees existing at the date of drawing up the dismissal plan;
- the reasons that determine the application of the measures in the redundancy plan;
- the number of employees necessary to carry out the activity following the measures in the redundancy plan;
- the number of employees who will be affected by collective redundancies;
- the date from which or the period in which the collective dismissals will take place, according to the law.

If the dismissal is made in stages, the plan will also include the number of employees who will be affected by dismissals in each of the stages, determined in compliance with the conditions of collective redundancies provided by current legislation, as well as the period in which each stage.

The employer has the obligation, pursuant to art. 69 of the Labour Code, to initiate in due time and for the purpose of reaching an agreement, consultations with the union or, as the case may be, with the employees' representatives, regarding [1]:

- methods and means of avoiding collective redundancies or reducing the number of employees who would be dismissed;
- mitigating the consequences of dismissal by resorting to social measures such as: support for retraining, support for professional retraining of employees.

During the consultation period to allow unions or employee representatives to make timely proposals, the employer is required to provide them with all relevant information and to notify them in writing of the following:

- total number and categories of employees;
- the reasons that determine the expected dismissal;
- the number and categories of employees that will be affected by the dismissal;
- the criteria taken into account, according to the legislation in force and / or the collective labour agreements, for establishing the order of priority for dismissal;
- measures envisaged to limit the number of redundancies;
- measures to mitigate the consequences of dismissal and compensation to be granted to dismissed employees, according to the legal provisions and / or the applicable collective labour agreement;
- the date from which or the period in which the dismissals will take place;
- the term within which the union or, as the case may be, the employees' representatives can make proposals for avoiding or diminishing the number of dismissed employees.

According to article 70 of the Labour Code (amended by Emergency Ordinance no. 55/2006), the employer has the obligation to notify in writing the union / employees' representatives, but also the Territorial Labour Inspectorate and the Employment Agency, with at least 30 days calendar prior to the issuance of dismissal decisions. [3] The non-observance of this obligation has as a consequence the nullity of these dismissals, since according to art.78 of the Labour Code: “The dismissal ordered with the non-observance of the procedure provided by law is struck by absolute nullity” [1].

Based on the Emergency Ordinance no. 36/2013, the persons dismissed by the economic agents benefit from certain rights [4]:

- unemployment benefit, established according to the legal regulations in force;
- monthly supplementary income, which is granted monthly for differentiated periods;
- compensatory payments granted by employers from the revenue and expenditure budgets, in accordance with the provisions of the applicable collective or individual employment contracts, respectively concluded at the level of each unit.

4. Resignation

Another unilateral way of terminating the individual employment contract is the resignation, not to be confused with self-dismissal, which is nothing but the employee's consent to the dismissal decided by the employer. Thus, the definition of resignation is “the unilateral act of will of the employee who, through a written notification, communicates to the employer the termination of the individual employment contract, after the fulfilment of a term” - art. 81 paragraph (1) of the Labour Code [1], and the term comes from the French language - dèmission, and according to the Explanatory Dictionary of the Romanian Language is an act or a request (written) by which an employee or dignitary withdraws from a position, from a job etc.

Because the law does not make any difference, it may be not only the contracts concluded for an indefinite period - article12 paragraph (1) of the Labour Code, but also of those for a determined duration - art. 82 of the same normative act, those of temporary work - article 94 of the Labour Code, part-time - article104 of the Labour Code, or with work at home - article 109 of the Labour Code etc.

As can be seen from the above, the similarities and differences between resignation and dismissal are as follows:

- both are unilateral acts;
- resignation is the will of the employee, the dismissal of the employer;
- in both cases it is necessary to notify the intention of the other party in writing and to communicate.

The purpose of the notice is to enable the employer to take the necessary measures to replace the resigning employee. During the notice period, the individual employment contract continues to produce its effects, according to art. 81 paragraph (5) of the Labour Code. [1]

In some cases, the resignation also has a totally unfavourable consequence for the persons whose individual employment contract has been terminated in this way, namely the impossibility to benefit from the unemployment benefit. At the same time, according to art.76 of Law no.76 / 2002 [5], the termination of the individual employment contract by resignation within a period of less than 12 months from employment attracts the obligation to fully reimburse the amounts granted as installation premiums.

5. The Situation of Termination of Employment in Romania, in April - May 2020

Here that in 2020, unfortunately, we face a situation of force majeure, a clause that until this year, no contractual party took into account. Thus, the rapid spread of Covid coronavirus19, which hit all countries around the world, from Asia to America, from Europe to Africa and the restrictions imposed by the Romanian state authorities to combat this pandemic severely affect all types of contractual relations, but also the environment business, small, large and medium-sized enterprises. In this context, employers have been faced with business decisions, which can have a major direct impact on their employees. The Ministry of Labour and Social Protection has issued, during the state of emergency and alert, public statements urging employers not to abuse the force majeure clause to try to avoid paying salaries to employees or other related rights, this option should be the one chosen only if they have no other solution. It is easy to say, but in practice, the situation is completely different, as can be seen from the data in the following tables.

Table no. 1 Individual employment contracts ceased in April 2020 in Romania

Data	01.04.2020	02.04.2020	15.04.2020	21.04.2020	28.04.2020	30.04.2020
Total, among which:	**155,675**	**173,834**	**226,962**	**240,151**	**266,473**	**276,459**
Manufacturing industry	27,174	34,273	39,530	41,891	46,958	48,880
Retail and bulk trade; vehicle and motorbike repairing	30,873	30,200	43,022	45,313	49,686	51,249
Constructions	19,254	21,431	30,579	32,402	36,937	38,760

Table no. 2 Individual employment contracts ceased in May 2020, in Romania

Data	04.05.2020	11.05.2020	15.05.2020	19.05.2020	25.05.2020	28.05.2020
Total among which:	**303,945**	**337,593**	**362,520**	**384,826**	**410,649**	**429,585**
Manufacturing industry	53,238	59,223	63,596	67,726	72,717	76,543
Retail and bulk trade; vehicle and motorbike repairing;	55,395	60,712	64,890	68,759	72,833	75,848
Constructions	42,175	48,277	52,674	56,200	60,908	64,573

The data from tables no. 1 and no. 2 are taken from the Press Releases of the Ministry of Labor and Social Protection, published on the official website during the state of emergency and alert in Romania, in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus. From the presented data it is observed the dynamics of the increase of the number of terminations of the individual employment contracts. [6]

From the data presented in press conferences by the Prime Minister of Romania and the Minister of Labor and Social Protection, the number of people with individual employment contracts decreased by approximately 14,000 compared to May 2019. During the state of emergency and alert (until June 15, 2020, the date on which the research ended), over 1 million Romanians benefited from technical unemployment and another approximately 70,000 Romanians benefited from forms of support benefits. Also, approx. 750000 employees benefited from the active payment measure of 41.5% of the gross salary, employees who resumed their activity after the period of technical unemployment.

Conclusions

The Labor Code defines force majeure in the context of cases where the employer may require his employees, for example in situations of war, natural disasters or danger of disasters, such as fires, floods, earthquakes, epidemics, insect invasions and, in general, in all circumstances it could endanger the life or normal living conditions of the whole population or part of it. In principle, the parties may include in the individual employment contract rules on the circumstances in which the employing economic operator may consider that he is in the presence of force majeure. In this event, the clauses should follow, in any case, the general principles of defining force majeure in the Civil Code, art. 1351 alin. (2), "Force majeure is any external event, unpredictable, absolutely invincible and inevitable" [1].

The President of Romania decreed the state of emergency starting with March 15, 2020 for 30 days, a state that was subsequently extended for another 30 days until 14.05.2020 inclusive, after which the state of alert was established in Romania. Romania has never encountered such a situation, except during the two World Wars, but then it was war, not pandemic.

This state of emergency comes with some measures to prevent, limit or eliminate the negative results of a medical disaster on the population and implicitly on the economy, such as limiting the right to free movement of population, closing or suspending activities involving physical proximity.

In order to limit as much as possible the increase in the number of terminated individual employment contracts, the Government approved an Emergency Ordinance to amend and supplement normative acts, as well as to establish measures in the field of social protection in the context of the epidemiological situation caused by the spread of SARS-CoV-2. The normative act regulates, among others, the conditions for entering into technical unemployment, the continuation of the payment of some social benefits, the automatic extension of some documents, as well as the possibility of sending online the necessary documents for obtaining some benefits.

With regard to technical unemployment, the Government established that during the state of emergency, then extending these measures and for the state of alert, for the period of suspension of the individual employment contract at the initiative of the employer, in case of temporary interruption of activity, the allowance it benefits employees to be supported from the unemployment insurance budget. The level of the allowance was of at least 75% of the basic salary corresponding to the job paid from the salary fund, but not more than 75% of the average gross salary provided by Law no. 6/2020 on the state social insurance budget for 2020.

Employees who have met one of the following conditions have benefited from these provisions:

- they interrupted the activity totally or partially based on the decisions issued by the competent public authorities according to the law, during the state of emergency decreed and held the Certificate of emergency situations issued by the Ministry of Economy, Energy and Business Environment, provided in art. 12 of the Decree of the President of Romania no. 195/2020. The Ministry of Economy, Energy and Business Environment has issued online emergency certificates;
- reduced their activity due to the effects of the COVID-19 epidemic and did not have the financial capacity to pay all their employees' salaries. Employers were able to benefit from the payment of the allowance provided for up to 75% of employees who have individual employment contracts active at the date of entry into force of the ordinance.

The emergency ordinance also introduced some provisions to ensure the further granting of the insertion incentive and the support allowance provided in the Government Emergency Ordinance no. 111/2010 on leave and allowance for raising children. The Government has established that these rights should not cease if the parent, as a result of the establishment of measures generated by the state of emergency, is in situations of suspension or even termination of employment or service by restructuring / restricting the employer's activity. The measures were also applied during the state of alert that followed the state of emergency.

References

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