

Romanian Commercial Companies and their Employees

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Abstract: In this article I'm referring to commercial companies from Romania and their moral dimension of business. I analyze the relation between employer and employees, the conditions that employees have at work, their obligations and rights and the fact that we assist to a crisis of personal in our country. In conclusion I suggest solutions to the problems that persist in romanian commercial companies.

Introduction

After the Romanian Revolution from 1989 we can see that democracy started to develop. A lot of commercial companies appeared and until now in 2008 a part of them managed to develop in difficult context of the romanian economy and the other part disappeared or had a difficult existence. The problem that persists until now is that a part of commercial companies don't respect the rights of employees which is not moral for a democracy where employees need to be respected and protected .

Chapter 1 - Definition of commercial company

Firstly we have to clarify the notion of commercial company.

A commercial company has its own judicial personality, it represents a contract, as well as a subject of autonomous law, and in the same time it has a lucrative purpose, because it wants to have material benefits, and benefits of another nature.¹

In the Romanian Civil Code is stipulated that a commercial company is a contract by which two or more persons agree to put something in common with the purpose to share the profit that may derive from it. The company has to have a lawful object that has to be made for the common benefit of the parties (art.1491 and art.1492).

The notion of commercial company is used in the legislations of the states in which the commercial law has an independent existence. The appreciation of the commercial character of a company is made after two criteria. In connection to the admitted solution one can use the criterion of the social object or the criterion of the way of establishing.

¹ C.Hamangiu, I.Rosetti-Balanescu, Al.Baicoianu, *Tratat de drept civil roman*, vol II, Ed.Nationala, Bucuresti, 1929, p.994 si urm; Fr. Deak, *Tratat de drept civil. Contracte speciale*, Ed Actami, Bucuresti, 1996, p.356 si urm.

The social object which is the first criterion, was consecrated by the French Commercial Code from 1807. This social object is a classical criterion, and it is an objective one. A company is commercial if it has been established with the purpose of making acts of commerce, acts that are stipulated as such in the Commercial Code.²

The criterion of the form of establishing is adopted by the French Law nr.537 from July, 24th, 1966 on commercial companies. This criterion is a modern and a formal one. A company is commercial if it was established under the form of a company in common name, company with a limited responsibility or as an anonymous company with stock.³

So a commercial company that was made in a legal manner, with the fulfillment of all the established conditions of content and form, gets a judicial personality. From that moment on, the commercial company has its own name that is mentioned on the social firm, the name of the company permits the individualization of the social activity, a social environment, a nationality and patrimony. The company can participate in its own name in the commercial circuit, it has the capacity to stand in court and it has its own patrimonial responsibility.⁴

The commercial company has its own domicile that becomes its social headquarters.

The establishing of the company's headquarter has important consequences. In connection to the social headquarters one appreciates: the nationality of the commercial company, the place where the procedure documents are communicated, the abilitated court to judge the litigation in which the company is a part of, the place where some publicity measures are taken, the place where the company can be executed.

In the Romanian law, in order to determine the nationality of a commercial company, we use the criterion of the social headquarters. Thus a company that has its headquarters in Romania has the Romanian nationality, is subjected to the Romanian laws, this criterion is applied also to the companies that have foreign participation⁵.

The commercial company has its own patrimony, that is distinct from the one of its associates and in the same time it has an autonomous character that is very important (I. Macovei, 2006, p.107).

The commercial company has its own nationality that is distinct from the one of its members. The notion of nationality expresses the affiliation of the company to a certain state and law system. The affiliation of the company can be determined after several criteria: the criterion of the registration, the criterion of the social headquarter and the criterion of control.

Now that the notion of commercial company was clarified let's see other important aspects: *moral dimension of business, company, employees, employer, crisis, low-incomings of employees, poverty. I will take in discussion these aspects in the next chapter.*

Chapter 2 - *Employees, employers and their problems*

Nowadays in Romania we assist to a large phenomenon which is the exploitation of employees at work. So what is the problem and why this situation that is not moral exists.

We can see that employers want to get rich very fast. So they use employees in this purpose. How? Employers don't respect the rights that employees have and don't offer conditions at work.

Firstly I will say that the first right that is not respected is the right to have a salary that assures a good life. Not all employers respect the disposition from article 154 alin.(2)

²A se vedea art.1.alin.(1) al Legii din 1990 privind societatile comerciale si art.3.C.com.rom.

³ I.Macovei, Institutii in dreptul comertului international, Ed. Junimea, Iasi, 1987, p.102

⁴ Pentru detalii, I.Macovei, Dreptul comertului interabntional, vol I, Ed.C.H.Beck, Bucuresti 2006, p.105 si urm.

⁵ Art.1 align.(2) si art.280 din Legea 31/1990

from labour code which stipulates that every salaried has the right to a salary expressed in money. Are many situations when salaried persons have not taken the salary in time or they haven't got the salary at all. Because of this appeared work litigations which are stipulated in labour code in articles 248 and 249 .Article 249 stipulates that the procedure of solving work litigations is established in special law.

Employees have to work a lot and are many situations when they are not paid for working more than 8 hours a day. So another major problem is the time of work and rest that is not respected.

In this sense article 108 from labour code stipulates that time of work represents the period where salaried persons work, are at disposition of the employer and accomplishes his obligations according to stipulations from individual contract of work, collective contract of work that can be applied and or the legislation in force. The big problem is the employers don't pay employees for supplementary work and salaries are insignificant in comparison to work that is done. Because of this low-incomings of employees we assist to a social crisis where people don't have enough money for food and a decent life. The result is that we will see more poverty and people will have to make more credits at banks for surviving.

Another major problem refers to conditions that employees have at work. A lot of commercial companies in Romania don't offer good conditions at work. The result of this problem is that at the end salaried people will have problems with their health and security at work.

Articles 171-181 from labour code stipulates general rules for health and security at work. The most important article is 171 :

- the employer has the obligation to take all the necessary measures for the protection of life and health of employees;
- the employer has the obligation to assure security and health of employees in all aspects according to work.

Another aspect that is present in Romania in commercial companies is the relation between employer and employees. This relation is not to good because nowadays persists the communist ideas .The result is a negative and destructive relation between employer and employees .There is no place for a good communication, an order is an order and needs to be accomplished. But not all companies confront with this problem. Companies that have good relation exists and the result is positive for both sides. Exists a good communication and collaboration between employer and employees. So at the end the result is positive and other companies will learn that they have to do the same so they can have a positive result.

Because of the conditions at work, low-incomings and negative relation between employer and employees romanians go to other countries to work where they have good conditions at work and salaries that permits a good life for their families. So nowadays we assist to a crisis of working places in Romania and the reasons for this crisis I have presented already.

Conclusion

In these conditions what do we have to do? What is the solution to solve these real problems for commercial companies in Romania?

Well the answer is complicated but not impossible.

Firstly the legislation needs to be changed in sense of being more severe to employers that don't respect legislation.

Secondly employers have to see that is very important to offer good conditions and security at work.

Finally employers have to offer good salaries to employee's .By taking this measures romanian workers will stay and work in our country.

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