The Collective Labour Contract at the Organization Level

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Abstract: The paper presents considerations regarding the collective labour agreement, basic instrument of regulating labour relations at the organization level. It analyzes its contents at different development stages of the Romanian economic system. It also highlights the main provisions of the collective labour agreement currently applicable in Romanian organizations.

Keywords: labour relations, joint negotiation, collective labour agreement, provisions, mutual rights and obligations of employers and workers

Introduction
The collective labour agreement is the official document governing labour relations within organizations.

The collective labour agreement is the main result of joint negotiations taking place between the partners involved in the system of labour relations at this level (employer / employers and employees / unions or employee representatives). Joint negotiation and the inclusion of its results in contracts result from the need to harmonize the interests (sometimes divergent or even conflicting) of the participants in the work process. Therefore, the purpose of concluding collective labour contracts is to promote fair labour relations, which would ensure social protection of employees, preventing or limiting collective labour conflicts and, especially, avoiding strikes.

In Romania, the concerns for the regulation of labour relations emerged at the beginning of the twentieth century; they have been in a process of continuous development concurrently with the development of the socio-economic system.

1. The Evolution of Collective Labour Agreements in Romanian Organizations
In modern Romania, the first regulation of labour relations was done by means of the Law for Organizing Trades, Loan and Work Insurance, which was published in 1912. By analyzing the structure of this law, we can see that it contains a number of regulations that are referred to by the current labour code and social dialogue law.

The first labour contracts were concluded in 1919 at the Gas and Electricity Plant of Bucharest, at the “Cloth Manufactory” of Buhusi, at the oil companies from Prahova Valley and at the Romanian Railways.

In 1921 laws were issued regarding the organizing of trade unions, which recognized the right of workers to conclude labour pacts with employers and the union’s right to sue employers for breaches of these pacts.

In 1929 the Law on Employment Contracts appeared. It referred to the apprenticeship contract, the individual employment contract, the team contract and the collective labour agreement. The law defined the nature and legal manner of concluding the collective labour agreement; it officially recognized the right of unions to deal directly with employers on behalf of their members. Under the law, the collective labour agreement was “the written agreement regarding working conditions and pay concluded, on the one hand, by one or more entrepreneurs of groups or associations thereof and, on the other hand, by associations or groups of employees”. [1, Article 101]
The collective labour agreement had to contain minimum regulations on:
- mutual rights and obligations of the parties;
- the duration of the contract;
- any special conditions relating to labour or to clauses in individual employment contracts.

The collective labour agreements could be concluded:
- for an indefinite period of time;
- for a fixed period of time;
- during a determined work.

The collective labour agreements had effect on:
- professional associations and groups of entrepreneurs or employees signatories to the contract;
- workers and entrepreneurs signatories to the contract;
- employees or entrepreneurs who have not resigned from the association or group which they belonged to, within 8 working days from the date when they were notified of the conclusion of the collective labour agreement;
- entrepreneurs who adhered to the agreement and communicated this adhesion to the Labour Office which operated the recording;
- employees or entrepreneurs who adhere to a group or professional association that is part of the collective labour agreement.

Note that, in the case of a collective labour agreement, the individual employment contract could not contain clauses contrary to it. Any contrary regulation was null and replaced by the one existing in the collective labour agreement. Also, the provisions of the collective labour agreement regarding wages were considered minimal, and those relating to working hours as being the maximum.

The emergence in 1929 of the law regarding the labour contracts represented a milestone in the regulation of labour relations within organizations.

In 1930 the law was supplemented by the "Regulation on employment contracts".

The law of 1938 is also important as it supplements the law of 1929 with the stipulation concerning the obligation of employers to grant employees annual leave to rest.

Unfortunately, the provisions of the law on employment contracts were abrogated by the provisions of the first Labour Code in Romania [2]. This code established rules for collective and individual employment contracts, labour and wages standards, working time and rest time, material liability, labour protection, social security, as well as for all labour-related issues.

According to the Labour Code of 1950, the collective labour agreement was defined as an agreement between the trade union committee of the enterprise, as a representative of the workers and officials and those who employ. It was concluded with the view of achieving the State Plan and of improving working and living conditions of employees. In addition, in the private sector, the collective labour agreement had to establish the employers’ duties to the State.

The main clauses of the collective labour agreement were replaced by law provisions; the collective labour agreement acquired the role of mobilizing and stimulating the creative initiative of the working people, of causing a forward attitude towards work and towards common property.

Therefore, both the rights and obligations of employees and the working conditions could no longer be negotiated as they were set by law. In this way, under the Labour Code, the legal nature of the collective labour agreement was diminished, being replaced by its political nature.

Collective labour agreements were concluded for periods determined by the decisions of the Council of Ministers, with the consent of the General Confederation of Labour.
Collective labour agreements had effects on all employees, whether or not they were members of the union which concluded the contract.

Both the Labour Code of 1950 and the one of 1972 stipulated the compulsory character of concluding the collective labour agreement. In order to ensure a unified view and the legal compliance, standard collective labour agreements, which contained pre-established clauses, were developed and used.

Since 1990 the regulations of the collective labour agreement have illustrated most eloquently the specific dynamics of labour legislation in the new socio-economic and political conditions. The laws adopted after this year restore the legal nature of collective labour agreement.

Initially, joint negotiation was decreed by Law no. 13/1991 regarding the collective labour agreement. By this law the collective labour agreement regained its role as an exclusive instrument of social partners. It was defined as "the agreement between employers and employees which establishes, within the limits of law, clauses on working conditions, wages and other rights arising from labour relations." [3, Article 1]

After five years of implementation, as a result of the experience of the social partners, the Law no. 130/1996 regarding the collective labour agreement was adopted. This law defined it as "an agreement concluded between an employer or the employers' organization, on the one hand, and employees represented by unions or otherwise provided by law, on the other hand, setting out the terms on working conditions, wages, and other rights and obligations arising from labour relations." [4, Article 1]

The 1996 Law was shortly amended by Law no. 143/1997. These two laws take into account the provisions of the International Labour Organization Convention on the promotion of joint negotiation.

Now, the organization and conduct of joint negotiations, as well as the conclusion, implementation, amendment, suspension and termination of collective labour agreements are governed by the provisions of the Labour Code (Law no. 53/2003, republished) and Social Dialogue Law (Law no. 62/2011).

The Labour Code defines the collective labour agreement as "the agreement concluded in writing between the employer or employers' organization, on the one hand, and the employees represented by unions or otherwise provided by law, on the other hand, setting out the terms on working conditions, wages, as well as other rights and obligations arising from the labour relations." [5, Article 229, paragraph 1]

The collective labour agreement may be negotiated and concluded at the level of units, groups of units and sectors. At each of these levels a single collective labour agreement can be concluded.

The collective labour contract is concluded for a fixed period (which shall not be less than one year and not more than two years), with the right to extend its application once, with up to 12 months.

According to the regulations of article 33 from the Law 62/2011 the provisions of the collective labour contract determine effects as follows:
- for all the employees of the organization, in case of collective labour contracts concluded at this level;
- for all employees of the organizations belonging to the group for which the collective labour contract was concluded at this level;
- for all employees of all the organizations of the sector for which the collective labour contract was concluded and which are part of the associations of employers which signed the contract.
In conclusion, in over a century of existence, the collective labour agreement has been improving continuously and has become the main instrument governing labour relations. This statement is supported by both practice and the content of the definitions regarding the collective labour agreement that we encounter in the regulations that refer to it.

2. The Provisions of the Collective Labour Agreement Applicable to Organizations in Romania

The labour relations within organizations are governed by the provisions contained in collective labour agreements, individual employment contracts and internal regulations.

The importance of collective labour agreements is given by the fact that their conclusion "aims to promote and defend the interests of the signatories, to prevent or limit collective labour conflicts, in order to ensure social peace." [6, Article 1, letter i]

The negotiation and conclusion of collective labour agreement is binding for organizations, except for those with fewer than 21 employees.

The provisions of the collective labour agreement have normative value, but they can be set only within the limits and conditions provided by law. It is the law that establishes the general framework of labour relations; the collective labour agreement at organizational level carries out and develops the legal stipulations.

Regarding the provisions of the collective labour agreement applicable to organizations in our country, the current law states:

- by the collective labour agreement "clauses shall be set on the rights and obligations arising from labour relations"; [6, Article 1, letter i]
- by the collective labour agreement "clauses are set on working conditions, wages, and other rights and obligations arising from labour relations." [5, Article 229, paragraph 1]

In the act of negotiating collective labour contracts we must distinguish between:

- non-negotiable rights and obligations, incumbent as such on one of the parties according to the various existing rules and laws;
- rights and obligations that can be regulated only through negotiation and which are stipulated as such in legal regulations;
- rights and obligations which are not expressly referred to in regulations, but are included in the collective labour contracts by the agreement of the negotiating parties.

According to the law of social dialogue [6, Article 132]:

(1) The clauses of collective labour contracts may establish rights and obligations within the limits and under the conditions established by law.
(2) At the conclusion of collective contracts, legal provisions regarding the rights of employees have minimal character.
(3) The collective labour contracts must not contain clauses that establish the rights to a lower level than the one established by the applicable collective labour contract concluded at a higher level.
(4) Individual labour contracts must not contain clauses that establish rights at levels below those established by the applicable collective labour contracts.

Note that the subject of collective labour agreement can refer to situations that relate directly to labour relations (....) and to situations related to labour relations (building or providing housing, the transport of personnel from other places, building and using nurseries, kindergartens etc.). [7, 40]

* From the provisions of the Social Dialogue Law it results that, in the organizations with more than 21 employees, the compulsory character applies only to the joint negotiation and not to the concluding of the collective labour contract. The only compulsory instrument is the individual employment contract, which contains detailed provisions regarding the rights and obligations of the parties. This conclusion does not apply to practice.
**The terms of the collective labour agreement** govern the **rights and obligations** of the parties regarding:

- **working time and rest time**
  
  Working time represents the period in which the employee performs the work, is at the employer’s disposition and fulfils the required tasks and duties. Rest time refers to any period which is not working time. Through the collective labour agreement the following regulations are established:
  
  - the normal daily and weekly working hours (for full-time employees the normal working day is 8 hours per day and 40 hours per week, except for youths up to 18 years old, for whom the duration of working time is 6 hours per day and 30 hours per week);
  
  - jobs which, due to their specific activity, do not offer the possibility of employment in the normal duration of working time. For these jobs there are specific forms of organizing the working time duration and concrete ways of organizing and recording the performed work;
  
  - jobs for which partial work schedules are established, corresponding to a part-time duration of the working time of 6 or 4 hours per day. The rights of employees working in such situations will be awarded in proportion to the time worked;
  
  - the employees working under special conditions. These employees will benefit from the reduction of the normal working time under 8 hours a day, as provided by law, without their salary and seniority being affected;
  
  - the start and end times of the workday. In all cases where it is proved that it is possible, flexible working hours could be established without leading thereby to increased duties, deteriorating working conditions or reduced income;
  
  - the amount of overtime work that can be performed at the request of the management (it cannot be done without the employee's consent, except in cases of emergency or urgent activities meant to prevent accidents or eliminate the consequences of an accident or a natural disaster); young people under 18 cannot perform overtime work;
  
  - working time during the night (between the hours of 10.00 p.m. and 6.00 a.m.);
  
  - the leisure time that employees benefit from during public holidays (the 1st and 2nd of January, the first and second day of Easter, the 1st of May, the first and second day of Pentecost, the Assumption of the Virgin, the 1st of December, the first and second day of Christmas);
  
  - other days off;
  
  - the amount of the paid annual leave (minimum 20 working days) and the means of carrying it out;
  
  - the additional amount of annual leave (minimum 3 working days, as a result of the difficult, harmful or dangerous working conditions and, also, for the blind and other persons with disabilities, young people to 18 years of age);
  
  - the amount of annual leave for those that are hired, rehired or resume their work during the year;
  
  - the amount of annual leave for those holding more than one office;
  
  - the number of paid days off which the employee benefits from, in the case of family events (birthday, birth, marriage, death, change of address etc.);
  
  - lunch break, daily and weekly rest;
  
  - the number of days of unpaid leave and the conditions under which an employee can benefit from this type of leave;
  
  - the number of days of leave for training, which can paid or unpaid;
  
  - the duration of leave (paid and unpaid) for the female employees who take care of children.

- **wages and other rights arising from employment relationships**
  
  - The salary constitutes consideration for the work done by the employee under the individual labour contract.
  
  - The salary system includes basic salary, allowances, bonuses, and other additions. The following can be mentioned regarding the components of the salary system of the staff:
    
    - The basic or tariff salary is the main part of the wage and of the labour income of employees; it is determined for each employee depending on the complexity and importance of the activity performed, based on criteria such as: the level of education and skills; the social importance of work; the complexity and diversity of activities; the responsibility and impact of decisions; the conditions of getting the job, etc. The provisions of the collective labour agreement establish the
minimum wage levels. The amount of money for the work cannot be less than the gross national minimum wage set by law.

- Most bonuses are awarded according to working conditions, for the time worked under these conditions; difficult working conditions, for hazardous and harmful conditions, for time worked during the night, increase for working on the construction site, for flight or isolation, etc. There are other types of benefits, such as the one for seniority; for hours worked overtime; for the use of at least one foreign language, where the job requires it; for the performance of an additional function; for work performed by the blind with a severe disability, within normal working hours, etc. The collective labour agreement establishes: the types and names of bonuses; the conditions for granting them; the categories of staff who may benefit from them.

- The collective labour agreement may contain stipulations regarding the providing of food, lodging or other facilities.

- In order to stimulate outstanding achievements at work, awards are granted, based on the criteria established by the collective labour agreement.

- From the wage fund all employees can be granted certain rights such as the annual vacation allowance, the Easter or Christmas allowance etc.; also, rights that are granted to employees under certain conditions established by the collective labour agreement (additional amounts in the event of marriage, birth, death, illness).

➤ **Conclusion, amendment, suspension and termination of the individual labour contract**

The individual employment contract is a contract under which a person, called the employee, undertakes to perform work for and under the authority of an employer, person or corporate body, in return for remuneration referred to as salary. [8, Article 10]

The individual labour contract shall be concluded on the basis of consent of the parties, in writing, in Romanian; the obligations related to the conclusion of the individual labour contract are incumbent on the employer who, previous to the beginning of activity, will record it in the general register of employees and send it to the territorial labour inspectorate. The conclusion of the individual labour contract is carried out after the employer ascertains that the conditions required by the legislation are met, by checking the supporting documents submitted by the person applying for the job.

Now in Romania, according to the Labour Code, the individual labour contract is concluded for an indefinite period, which is a guarantee of stability in employment. There are also exceptional situations, provided by the Labour Code and other legal regulations, when the individual labour contract may be concluded for a fixed term.

The amendment of the individual labour contract can only be done by bilateral agreement. The changing of the individual labour contract may concern: the duration of the contract, the place and type of work, working conditions, working time and rest time, salary.

The suspension of the individual labour contract is in fact the temporary cessation of its main effects - work performed by the employee and payment of salary by the employer - but without cancelling the contract. There are a variety of cases in which the individual labour contract can be suspended, and they can be grouped as follows:

- the suspension according to law, which operates irrespective of any manifestation of the will of the parties. This applies to the following cases: temporary work disability leave; maternity (pregnancy and post partum period) leave; technical unemployment; quarantine; emergencies; exercising of the parliamentary mandate, the office of mayor or deputy mayor; the period during which public officials are elected or appointed for the exercising of public functions; employment as civil servants in the offices of officials; holding a salaried management position within the union; the period in which the professional caregiver does not have custody or foster children; the period in which the port workers do not work, becoming reserve staff; the period over which construction activities are interrupted due to weather conditions, etc.;

- the suspension by agreement occurs in the following cases: unpaid leave for study, unpaid leave on personal grounds;

- the suspension by the unilateral act of the employer takes place in the following situations: transferring the employee to another unit; during a criminal investigation, until the final decision of the
court; during the disciplinary investigation; over the period in which the activity is stopped or decreased because of the unit (for economic, technological, structural or similar reasons); during suspension by the competent authorities of approvals, permits or certificates required by the job.

- the suspension by the unilateral act of the employee occurs as a result of his/her options in the following cases: parental leave of up to two years and, if the child is disabled, up to 3 years; sick leave to care for sick child up to seven years of age and, in the case of children with disabilities, for intermittent illnesses, until the age of 18; leave for training; paternity leave; participation in a strike; the exercising of elective positions within professional bodies established at a central or local level all throughout the term; absences without leave.

The termination of the individual labour contract is governed, in most cases, by the Labour Code, which states that employment relationship ceases:

- under the law: at the time of the employee’s or individual employer’s death; at the time of the final court decision declaring the death or laying the employee or the individual employer under an interdiction, if this leads to closing a business; as a result of the dissolution of the employer as a corporate body, from the time when it ceases to exist; at the time of meeting the cumulative conditions of standard age and minimum contribution period for retirement; at the time of communicating the retirement decision for the disability pension, early pension and / or retirement pension with reduced standard retirement age; as a result of ascertaining the absolute nullity of the individual labour contract; as a result of criminal conviction to the execution of an imprisonment sentence, from the time the decision becomes final; from the time of revoking by the authorities or the qualified bodies of the permits, authorizations or certificates required by the profession; at the time when the individual labour contract concluded for a fixed period comes to an end; withdrawal of the parents’ or legal representatives’ consent, if the employees are between 15 and 16 years of age.

- on the initiative of the employee (resignation) who, in writing, notifies the employer of that event, after serving a notice period. The length of the notice period is specified in the individual labour contract or the applicable collective labour agreements. It cannot be more than 20 working days for employees with executive positions and 45 days for those in management positions.

- on the initiative of the employer (dismissal) for reasons related or not to the employee in the following cases: the employee does not correspond professionally to the job for which he was engaged; the employee commits a serious offence or repeated breaches of his/her job obligations, including rules of behaviour in the unit, as a disciplinary sanction; the employee is taken into custody for more than 30 days; by decision of the qualified bodies of medical expertise finding the employee unfit physically and / or mentally, which does not allow him/her to fulfil the duties corresponding to the position held; the unit reduces its staff by eliminating posts such as that occupied by the person concerned, as a result of reorganization; dissolution of the unit; the unit moves to another location and the employee is not willing to follow; the unit moves to another location and is able to ensure the necessary staff locally.

- **advancement and promotion of staff**

The advancement is the offering to an employee of a higher pay in the same position, job or trade. The promotion is the appointing of a person for a higher position, obtaining professional degrees or moving to the upper categories of activities.

- **mutual recognition, the trade unions’ and employers’ rights and obligations**

For smooth conduct of labour relations, trade unions (the workers' representatives) and employers shall inform and consult one another and negotiate.

The collective labour contract at organizational level stipulates the following functions for the unions:

- negotiating and concluding collective labour agreements or, where appropriate, collective agreements;

- contributing, together with the employer, to the developing of internal rules of procedure;

- using, as provided by law and their statutes, specific means for union actions, such as negotiations, procedures of settling disputes through conciliation, mediation, arbitration, petition, protest picket, march, rally and demonstration or strike;

- defending the interests of their members, resulting from labour laws, statutes of civil servants, collective labour agreements and individual labour contracts and, also, from agreements on relations
of civil servants, in the courts of law, other institutions or state authorities, through their own or elected advocates;
- ruling, in an advisory manner, on employer’s programs that involve collective redundancies;
- participating, through representatives, in negotiations with the unit management, with the view of defending and promoting the professional, economic and social-cultural interests of the members.

The employers of the organization have the following main tasks:
- appointing representatives for negotiating and concluding collective labour agreements and individual labour contracts;
- preparing and approving organization and operation regulations;
- preparing and approving internal regulations, in co-operation with the unions;
- developing and promoting codes of business conduct;
- promoting the principles of social responsibility.

- **delegation, transfer and passing to another work**

The delegation is the temporary exercise, at the employer’s request, by the employee, of tasks or activities appropriate for duties outside his workplace. [8, Article 43] This is a temporary measure (up to 60 days in 12 months, with the possibility of extending it for successive periods of maximum 60 days, only with the consent of the employee). All throughout the delegation, the employee remains in a legal employment relationship with the delegating unit; he/she retains the position, degree or professional stage and the salary he/she previously had. The delegation is binding for the employee, although it is a measure unilaterally taken; the binding character results from his/her prior consent given at the conclusion of the labour contract. Also, the delegation involves the compulsory granting, according to legal norms, of certain rights, such as reimbursement of travel, accommodation and daily allowance expenses. In conclusion, in the case of the delegation, the usual place of work changes, the remaining elements of the individual labour contract remaining unchanged.

The transfer is the act by which the temporary change of job is decided upon by the employer, to another employer, for the execution of activities in the latter’s interest. Exceptionally, the transfer can change the type of work, but only with the written consent of the employee. [8, Article 45]

The transfer is a temporary measure during which the contract concluded with the first unit is suspended, being partially yielded for a specified period (a year at the most, with the possibility of extending it every six months, by both parties’ consent) to the unit that the person is transferred to. As a result, the wages and annual leave shall be granted by the employer who requested the transfer.

Switching to another job can be done both on the employer’s initiative (organizational needs), as well as on the employee’s (higher education, health problems).

- **the execution, amendment and suspension of collective labour agreement**

The collective labour agreement is executed, amended, suspended or terminated by the will of the parties.

The execution of the collective labour agreement (carrying out the clauses) is binding.

The clauses of the collective labour agreement may be modified during its execution, under the law, whenever the parties agree. Neither party can unilaterally change the terms of the contract during its execution.

The execution of the collective labour agreement or of some of its clauses shall be suspended in the following circumstances: during the strike, by agreement of the parties, in case of emergency.

The collective labour agreement shall cease in the following situations: when it expires or the work for which it was concluded finishes, unless the parties agree to extend the application thereof; at the time of dissolution or official receivership of the employer; by bilateral agreement.
Also, the collective labour agreement concluded at organizational level can contain clauses referring to:

- working conditions, protection and health insurance
- training and development of staff
- labour discipline – the rights and obligations of the job
- the organizing of staff committees

The possible inclusion in the collective labour agreement of all these types of clauses derives, economically, from the specific nature of the market economy, and legally, from the principle of freedom of contract.

**Conclusions**

The present paper analyses the concept of collective labour agreement and its evolutions throughout time.

It presents the legal regulations of the labour relations from Romanian organizations, starting from the first decade of the 20th century up to the present. It also presents the main clauses of the collective labour agreement which are applied in present Romanian organizations.

The entire content of the paper underlines the increased importance that the collective labour agreement negotiated and signed at organizational level has for the development of labour relations.

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