

Legal Nature of the Apprenticeship Contract

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Abstract

The qualification of the apprenticeship contract from the point of view of the legal nature is particularly important from the perspective of the rules applicable to labor relations. According to the definition given by Law no. 279/2005 on apprenticeship at the work place, the apprenticeship contract is an individual labor contract of a particular type. The apprenticeship contract is an individual employment contract because the apprentice, in terms of working relations, is subordinated to the employer, and the conclusion, execution, modification, suspension and termination of the apprenticeship contract are made subject to compliance with the Labor Code regulations, and is particular due to the legal characters it presents, but especially the subject of the contract: the provision of work simultaneously with the apprenticeship training in an organized framework, which enables him/her to acquire an occupation at the end of the contractual period.

Key words: apprenticeship contract, legal nature, legal characters, individual employment contract of a particular type

1. Introduction

The apprenticeship contract has always been considered in law a contract of labor, primarily because of its regulation in labor law.

The determination of the legal nature of the apprenticeship contract is made after the analysis of the legal texts governing it. From this perspective, initially, this contract was viewed legally as a *variation* of the individual employment contract (Florescu, 1973), and then the legislator explicitly named it an individual employment contract of a *particular type*¹.

2. Contents

According to art. 208 par. (2) of the Labor Code, the apprenticeship contract at the workplace is the individual employment contract of a *particular type*, under which the employer, a legal person or a natural person, undertakes, besides paying a salary, to provide the apprentice's professional training, in an occupation according to his/her field of activity, and

¹ At the beginning, art. 4 (now art. 6) of Law no. 279/2005 on apprenticeship at the workplace and subsequently the Labor Code, in art. 208, stated that apprenticeship at the workplace is organized based on an apprenticeship contract, which is an individual employment contract of a particular type.

the apprentice undertakes to form professionally and to work in the subordination of the respective employer.

In the doctrine, the apprenticeship contract at work was defined as an individual employment contract of a *particular type*, concluded for a fixed duration - determined according to the level of qualification for which the apprentice is to be trained and which cannot be less than 12 months (if the apprenticeship contract is concluded in order to acquire the competences corresponding to a level 1 qualification), than 24 months (if the apprenticeship contract is concluded for the acquisition of competences corresponding to a level 2 qualification), than 36 months (if the apprenticeship contract is concluded for the acquisition of competences corresponding to a level 3 qualification) - under which a natural person, called an apprentice, to form professionally and to work in the subordination of an employer (natural or legal person) who, in turn, assumes promptly to ensure payment of salary and all the conditions necessary for professional training (Ștefănescu, 2014).

In judicial practice, it was established that the apprenticeship contract meets the characteristics of an individual employment contract, characterized by the subordination of the person who carries out the work towards the employer, and therefore, from the point of view of the legal nature, it is an individual employment contract, but of a *particular type*, because has a complex subject, which includes not only performing work and payment of wages, but also what is decisive for this contract, namely vocational training in a certain profession, provided by the employer, the remunerated apprentice undertaking to attend the courses.²

Therefore, the legal relationship arising from the conclusion of the apprenticeship contract is a complex legal relation, which will include both elements of the legal relationship training and elements of the legal employment relationship, born under the employment contract (Florescu, 1973).

Thus, from the point of view of the object of the contract, the particularity lies in the fact that it's essential purpose is not the provision of a job in exchange for a salary, but the professional training in a profession of the one in question (Țiclea, 2016).

What makes it to consider it an individual employment contract are the legal features of the apprenticeship contract, which are the same as the individual employment contract, with some nuances, respectively, is an *appointed* legal act which has an express regulation both in art . 208-210 of the Labor Code, as well as by special laws, namely Law no. 279 of 5 October 2005 on apprenticeship at the workplace, republished and the Methodological Norms of 6 November, 2013, implementing the provisions of Law no. 279/2005 on apprenticeship at the workplace. At the same time, this contract also has a predefined form, called the Framework Model of the Apprenticeship Contract, included in Annex no. 1 to the Methodological Norms.

Like the individual employment contract, the apprenticeship contract is a *solemn* contract. According to art. 6 par. (3) of Law no. 279/2005, republished, the apprenticeship contract shall be concluded in written form in Romanian language and shall be registered within 20 days at the county labor inspectorate, respectively of the municipality of Bucharest, and the obligation to conclude the apprenticeship contract, in writing, rests with the employer.

² Civil Decision no. 175/9.02.2016 delivered by the COURT OF APPEAL TIMIȘOARA, Litigation and Social Security Division,

Source:<http://www.avocatura.com/speta/514460/asigurari-sociale-curtea-de-apel-timisoara.html#ixzz4jPaHuwTr>.

The obligation of the individual employment contract to be concluded in written form is expressly regulated by art. 16 of the Labor Code.

The apprenticeship contract is governed by the principle of free will, can only have two parts, the employer and the apprentice, and does not lose its bilateral character by supervising the apprentice by an apprenticeship foreman appointed by the employer. The synalagmatic (bilateral) character of the apprenticeship contract results both from the provisions of art. 208 par. (2) of the Labor Code, but also from art. 6 par. (1) of Law no. 279/2005. Thus, by this contract the employer or a natural person undertakes, besides paying a salary, to provide all the necessary conditions for the vocational training in a profession according to his field of activity, and the apprentice undertakes to form professionally and to work in Employer's subordination.

It follows that, in the content of the apprenticeship contract, the reciprocal obligations of the parties are complex, of primary importance, along with work performance, being the apprenticeship training in order to obtain a qualification. This complex character of the obligations makes the employee in the apprenticeship contract bear the specific denomination of the apprentice and not that of employee who is characteristic only of the individual employment contracts. However, it should be noted that as an individual employment contract, the first obligation of the apprentice is to perform the work for which he was employed. Obligations of the apprentice to perform work and to prepare himself/herself professionally are diligent, so if the apprentice does not promote the examinations in the final evaluation, he/she will not return the salary, which is why the apprenticeship contract, work performance and salary payment remain essential elements of the contract (Ținca, 2006).

Also, the apprenticeship contract is a *commutative* contract, the parties to the contract know from the moment of its conclusion what are their obligations as well as their extent.

The apprenticeship contract is also *onerous*, the employer wanting performance of work in return for payment of the salary, and the apprentice to get a salary and at the same time to form professionally in exchange for the work done.

The apprenticeship contract is by nature a contract with *successive execution*. The working time is 8 hours a day and 40 hours a week, and for young people up to 18 years, the working time is 6 hours a day and 30 hours a week. Also, the duration of the apprenticeship contract is determined by the level of qualification for which the apprentice is to be trained, but cannot be less than 12, 24 or 36 months, as the case may be³.

Last but not least, the apprenticeship contract has *intuitu personae* character, being concluded only with persons who cumulatively fulfill the conditions provided by art. 7 par. (1) of Law no. 279/2005, namely: they take steps to find a job by their own means or by registering with the employment agency in whose territory has its domicile or, where applicable, the residence or another provider of employment services, accredited under the law; have reached the age of 16; are not qualified for occupation where apprenticeship is organized at the workplace and meet the conditions for access to vocational training through apprenticeship at the workplace, by qualification levels, according to the provisions of the Government Ordinance no. 129/2000, republished, as subsequently amended and supplemented.

³ Art. 9 para. (1) of Law no. 279/2005, republished.

Another common element of the apprenticeship contract with the individual employment contract is determined by the subordination of the person who carries out the work towards the employer. At the same time, the conclusion, execution, modification, suspension and termination of the apprenticeship contract are made subject to compliance with the Labor Code regarding apprenticeship and the individual employment contract.

According to art. 12 par. (1) of the Methodological Norms, the apprenticeship contract at the working place must contain the mandatory elements of the individual employment contract stipulated in art. 17 par. (3) of the Law no. 53/2003, republished, as subsequently amended and supplemented, as well as the specific clauses provided by art. 6 par. (5) of the Law no. 279/2005, republished (Gîlcă, 2015), referring to: the name of the qualification to be acquired by the apprentice; the name of the training provider carrying out the apprenticeship training at the workplace; The name of the apprentice coordinator and his/her qualification; the place/places where the training takes place; the length of theoretical and practical training through apprenticeship at the workplace; the employer's additional obligations and the obligations of the apprentice.

In view of these specific clauses, its complex subject matter and the special regulation, we observe that the apprenticeship contract is part of the broad training framework corresponding to the provisions of art. 193 lit. d) of the Labor Code, which qualifies it from the point of view of the legal nature as being a *particular type* individual employment contract which is the source of an individual legal employment relationship.

In an opinion it was appreciated that the decisive factor in the qualification of the apprenticeship contract as an individual employment contract (*particular type*) is the fact that besides the main objective (vocational training), the performance of the work and the payment of the salary constitute benefits characteristic of this contract (Gîlcă, 2015). Given that periods of vocational training alternate with the work time allocated to the fulfillment of the tasks specified in the job description, which is prevalent in the apprenticeship contract and gives it the particular character of vocational training, not the actual work, the latter being the only way which ensures the qualification of the person concerned (Ținca, 2006).

As can be seen, the work of apprentices is included in the category of atypical legal employment relationships, they shall be subject regarding the rights and obligations arising from the employment relationship (with the purpose of vocational training), the common labor law, and regarding the organization of achieving the stated goal, the law of apprenticeship at the workplace (Țop, 2015).

In another opinion, considering the apprenticeship contract as a *particular type* employment contract is based on the following arguments: the apprentice, outside the time involved in theoretical training, carries out work in accordance with the employer's legal work program and is subordinated to it; the work done by the apprentice is paid, receiving salary and possibly other money entitlements; the apprentice must comply with the labor protection rules, receive protective equipment and enjoy the social protection measures of the employees, and the fact that the apprenticeship period is considered seniority in work is unquestionable⁴.

⁴ This conclusion results from the interpretation of the provisions of art. 209 par. (2) of the Labor Code, according to which the apprentice benefits from the provisions applicable to other employees, in so far as they are not contrary to those specific to his status.

The legal literature has stated that such a particular character of this contract is revealed by a special quality of the contracting parties, by object and duration of the contract (Țop, 2005).

The legal qualification of the apprenticeship contract as an individual employment contract of *particular type* engages in the natural consequence that the conflicts between the apprentice and the employer are conflicts of work according to art. 22 of Law 279/2005 (Ștefănescu, 2014).

The particular character of the apprenticeship contract results also from the provisions of art. 11 par. (2) lit. A) of Law no. 279/2005 republished, according to which, upon conclusion of the apprenticeship contract, the parties may agree that, upon termination, the activity of the apprentice, after obtaining the qualification, shall continue for at least a period equal to the duration of the apprenticeship contract, by concluding an individual employment contract, in the conditions of the law, to exercise the profession in which the apprentice was qualified. Therefore, the apprenticeship contract cannot be cumulated with the individual employment contract (cannot cumulate the quality of employee with that of apprentice) and *a fortiori* is not an individual employment contract in fact but a *particular type* contract.

Also, the apprenticeship contract is also customized by its duration, which is determined, unlike the individual employment contract itself, which has an undetermined duration as a rule, and determined exceptionally.

Also as a specific element of the apprenticeship contract is the financial support of apprenticeship at the workplace. This can be done according to art. 16 par. (1) of Law no. 279/2005, republished from: own resources of the employers; sponsorship of natural and/or legal persons; European Structural Funds; the unemployment insurance budget; other legal sources: donations, taxes etc.

3. Conclusion

What determines us to regard the apprenticeship contract as a particular type employment contract is based on the fact that the apprentice combines the theoretical training with the work within the employer's legal work program, being subordinated to him, the work done by the apprentice is paid, the apprentice must comply with the labor protection rules and enjoy social protection measures for the employees, the apprenticeship period is considered seniority in work, the apprenticeship contract is concluded only for a determined period, the employee is specifically named apprenticeship and compared with the individual employment contract, the apprenticeship contract includes also specific clauses.

All these specific elements distinguish it from the individual employment contract of common law and transform it into an individual employment contract of *particular type*.

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