

COMMENTARY ON THE AMENDMENT OF UNEMPLOYMENT LAW

*Nicolae ROȘ**

Abstract

Unemployment¹ is an imbalance in the labor market, where supply and demand for labor is greater than labor demand provided by businesses. Essential changes were made to the unemployment law by Law no. 250/2013 amending and supplementing Law no. 76/2002 on the unemployment insurance system and employment stimulation and amending Law no. 116/2002 on preventing and combating social exclusion. Additions to the Law no. 76/2002 cover issues that aligns Romanian legislation to EU regulations regarding the application of social security schemes to employed persons, as well as aspects that facilitates promoting labor market participation of young people at risk of marginalization by standardizing the legislative framework and reduce the number of normative acts applicable. Also, bring new normative acts provisions for graduates of educational institutions, provisions that facilitate labor mobility and facilitate the certification provisions of those persons who have acquired professional skills through informal means. The changes are so informal nature, such as in legislation some definitions as "long term unemployed" or "young at risk of social exclusion" and structural changes that affect operators benefiting from subsidies for hiring unemployed or graduates some forms of education. Law reformulates the categories of persons who can provide optional system of unemployment and introduce a new procedure for calculating the subsidies received by employers and unemployed graduates framing.

Keywords: *long-term unemployed, mediation, apprentices, facilities, active measures, vacant posts.*

The term "work"² ("munca" in Romanian)-originating from Slavonic - monka - has many meanings. These include a primary and a secondary sense.

A first sense, principal: productive activity (to perform an efficient work, important), but also the outcome of this activity (successful work). The second meaning: workplace (having work, a service, a job) but also entire body of employees (work opposed to the capital).

Work can be perceived as a free action, creative, but also as an obligation. The term can signify pain and suffering (physical or moral), even torture. However, manual or intellectual work is a necessity vital source of livelihood, means of achieving the great works of art, instrument of accomplishment and affirmation of human personality.

* Assistant Professor, Ph. D., "Dimitrie Cantemir" Christian University Bucharest, Faculty of Law Cluj-Napoca, Romania.

¹ D. Top, *Dicționar de dreptul securității sociale*, Rosseti Publishing House, Bucharest, 2006, pp. 118

² See *Dicționarul Explicativ al Limbii Române*, 2nd Edition, Univers Enciclopedic Gold Publishing House, Bucharest, 2009, p. 682

The social crisis generated by the emergence and existence of unemployment³ shows that work is the most important factor for socialization.

It is at the center of society, the foundation, the condition of human existence⁴.

Unemployment as a complex social and economic phenomenon⁵, combines a status - that of being without a job, with a need – that of having such a place, with availability, desire and willingness to find a job and the activity of searching him.

The transition to a market economy in Romania after 1989⁶, generated major problems in all spheres of social life: change and liquidation of economic entities, have caused mass layoffs of employees / workers, extended unemployment, low labor productivity, increased inflation.

Romanian economy cannot avoid the phenomenon of unemployment⁷ that accompanies more or less, any economic system designed and developed by market rules, because unemployment is a permanent feature of the market economy.

The project for the amendment and supplementing Law no. 76/2002 refers to the simplification and flexibility of how to implement measures to boost labor force occupancy so that it becomes more attractive for both categories of beneficiaries – people looking for a job and employers.

Development and improvement of employment incentive measures will allow a more rapid adjustment to the economic circumstances and labor market requirements.

So, the new regulations will contribute to achieving the objective of the Government Program⁸ regarding the balancing of the labor market and reducing of sectorial workforce deficits by increase of employability.

After the amendment and completion of Law no. 76/2002 through Law no. 250/2013⁹, the mentioned normative act contains express provision, specific (special) concerning the promotion of labor market participation of young people with risk for social exclusion.

The main additions and changes are:

Romanian citizens working in the EU enjoy of social security schemes for employees

- People who are subject to the law of social insurance in Romania under the conditions set by European Union regulations on the application of social security

³ A. Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență* - , Ed. VII, revised and enlarged, Universul Juridic Publishing House, Bucharest, 2013, p. 7.

⁴ M. Antoine, *Droit du travail*, 6^e édition, L.G.D.J. Montchrestien, Paris, 2008, pp. 1-2.

⁵ E.P. Lavinia, C. Maria, *Șomerii – identitate și formare profesională. Cercetare, practică, ideologie*, Eftimie Murgu Publishing House, Reșița, 2008, p. 61.

⁶ A. Constantin, *Dreptul muncii și securității sociale. Curs universitar*, Pro Universitaria Publishing House, Bucharest, 2013, p. 58.

⁷ Ț. Alexandru, G. Laura, *Dreptul securității sociale. Curs universitar*, Ediția a 4-a, revizuită și adăugită, Universul Juridic Publishing House, Bucharest, 2013, p. 95.

⁸ *Explanatory statement*, Section 2. Pct.2 – Foreseen changes. Title of normative act project - Law amending and supplementing Law no. 76 on the unemployment insurance system and employment stimulation and to amend Law no. 116/2002 on preventing and combating social exclusion.

⁹ O.C. Lavinia, *Dreptul muncii și securității sociale. Curs universitar*, Pro Universitaria Publishing House, Bucharest, 2014, p.147.

schemes to employed persons, self-employed workers and members of their families moving within the European Union or European regulations on coordination of Social Security, with employer who has no head office or representative in Romania can be insured against unemployment in Romania through a contract for unemployment insurance, the Agency for Employment in whose territorial jurisdiction have where appropriate, domicile, residence or exercising their right of residence under the law, given that are provided in the public pension system and health insurance system and does not have the status of retired law¹⁰.

- The unemployment benefits received in the unemployment insurance system from Romania can be maintained in payment during the person moving within of another Member State of the European Union, of the European Economic Area and the territory of Switzerland, to search for a job under the provisions relating to unemployment benefit, set by European Union regulations concerning the application of social security schemes for employees, self-employed workers and members of their families who move within the European Union or, as the case, by the European regulations concerning the coordination of social security system, as well as the measures adopted, according to law, in application of these European regulations¹¹.

New provisions on job vacancies and skills assessment system

- County Agency for Employment (hereinafter CEA) will perform free of charge for that are in the database of institution, evaluation and certification of professional skills in other ways than formal access to free services for evaluation and certification of vocational skills is the result of business information and professional counseling or mediation¹².

- Employers are required to notify the CEA, filling vacancies that were reported under existing legal provisions, within one day after their employment under the law¹³.

Giving grants and subsidies

- People receiving employment bonus equal to the reference social indicator in force on enrollment, are entitled to maintain the premium granted and where, during the 12 months of employment, they terminated the employment or service the first employer and fall within 30 days, another employer, given that employment at the second employer is performed under the same conditions, i.e. full time, for a longer period of 12 months¹⁴.

- Bounding benefit and installation benefit, called the mobility benefits, are granted, at request, also to long-term unemployed registered at employment agencies, who do not receive unemployment benefits¹⁵.

¹⁰ See the art. 22¹ alin (1) from Law no. 76/2002

¹¹ See art. 37 alin (4) from Law no. 76/2002

¹² See art. 70¹ alin (2) from Law no. 76/2002.

¹³ See art. 10 alin (3) from Law no. 76/2002.

¹⁴ See art. 73¹ alin (6) from Law no. 76/2002.

¹⁵ See art. 75¹ alin (1) from Law no. 76/2002.

- Employers who hire, for an indefinite period, unemployed older than 45 years or unemployed which are the only breadwinner of single-parent family, receive monthly, for a period of 12 months, for each person employed of these categories, an amount equal to the reference social indicator in force, but they have the obligation to maintain the labor or service relationship at least 18 months¹⁶.

- Employers who hire, according to law, unemployed persons which, within 5 years from the date of employment, fulfill, according to law, the conditions to request partial early retirement or conditions for age limit pension, receive monthly, during the period of employment, until fulfillment of the conditions in question, an amount equal to the reference social indicator in force, granted from the unemployment insurance budget¹⁷.

Changes and additions granted to employers who hire graduates of educational institutions

- Graduates of educational institutions and graduates of special schools, that have at least 16 years, registered at C.A.E.F., if they have full time job, for a period exceeding 12 months, they receive, from the unemployment insurance budget, an amount equal to the reference social indicator in force when they were employed¹⁸.

These graduates, registered at C.A.E.F., if they have a full time job, for a period exceeding 12 months, they receive, from the unemployment insurance budget, an amount equal to the reference social indicator in force when they were employed.

- People receiving employment bonus equal to the reference social indicator in force on enrollment, are entitled to maintain the premium granted and where, during the 12 months of employment, they terminated the employment or service the first employer and fall within 30 days, another employer, provided that employment at the second employer is performed under the same conditions, namely full time for more than 12 months¹⁹.

- Bounding benefit and installation benefit, called the mobility benefits, are granted, at request, also to long-term unemployed registered at employment agencies, who do not receive unemployment benefits²⁰.

- Employers who employ, indefinite, graduates of educational institutions receive monthly over a period of 12 months for each graduate employed: ²¹

a) an amount equal to the reference social indicator in force when they were employed, for graduates of lower high school cycle or for graduates of schools of arts and crafts;

b) an amount equal to 1,2 x value of reference social indicator in force when they were employed, for upper secondary education graduates or post high schools;

c) an amount equal to 1,5 x value of reference social indicator in force when they were employed, for university graduates.

¹⁶ See art. 85 alin (1) from Law no. 76/2002.

¹⁷ See art. 85 alin (5) from Law no. 76/2002.

¹⁸ See art. 73¹ alin (1) from Law no. 76/2002.

¹⁹ See art. 73¹ alin (6) from Law no. 76/2002.

²⁰ See art. 75¹ alin (1) from Law no. 76/2002.

²¹ See art. 80 alin (1) from Law no. 76/2002.

Employers who hire graduates in the above conditions are obliged to maintain employment or service relationships with them at least 18 months from the closing date²².

Promoting labor market participation of young people at risk of social marginalization

Promoting labor market participation of young people at risk of social marginalization is achieved primarily by aggregating and supplementing Law 116/2002²³ to Law 76/2002 resulting in a single act completed and harmonized.

Thus, is defined the term "youth with risk of social marginalization"²⁴ - People with the age between 16-26 years, which fulfilled the conditions of point IV, is recorded at Employment agency in whose jurisdiction have, as the case may, domicile or residence and belongs at one of the following categories:

- a) is in the child protection system or comes from this system;
- b) have disabilities;
- c) has no family or whose family does not can provide maintenance;
- d) have dependent children;
- e) has executed one or several imprisonment sentence;
- f) is a victim of trafficking.

Promotion of participation in employment of young with risk of social marginalization is carried out, by the competent institutions through²⁵:

- a) Personalized social accompaniment;
- b) Activities of informing and promoting the interests of young people with risk of social exclusion among employers;
- c) Subsidized jobs.

Customized social accompaniment-is carried out, by the competent institutions, under a contract of solidarity, and is a set of services that are provided free of charge to young people at risk of social exclusion and consist of:

- a) information and counseling services;
- b) labor mediation;
- c) placing the people to an employer whose offer of employment has been selected as complying with professional preparation and to other conditions comprised in the dossier prepared in order to record as a person seeking employment²⁶.

The contract of solidarity is concluded between the C.A.E.F and the young people for a period of up to 3 year, but not less than one year, considering that, when the contract of solidarity was signed, the young man not reached the age of 26 years²⁷.

²² See art. 83 alin (1) from Law no. 76/2002.

²³ Law no. 116/2002.

²⁴ See art. 5 pct. IV³ from Law no. 76/2002.

²⁵ See art. 93¹ from Law no. 76/2002.

²⁶ See art. 93² alin (1) from Law no. 76/2002.

²⁷ See art. 93² alin (2) from Law no. 76/2002.

The activities of informing and promoting the interests of young people with risk of social exclusion among employers, in order to integrate these persons on the labor market, refers to:

- a) raising awareness and promoting the law among regional actors, local and social partners;
- b) disseminate information on the benefits of employment for these individuals;
- c) direct interaction with employers who have vacancies;
- d) the identification of insertion employers²⁸.

The grant is accorded in the next situations:

- a) the employment is carried out under the terms of Law no. 53/2003, republished, as amended and supplemented, under an individual employment contract for a definite period, until the expiry of the solidarity agreement or an individual employment contract of indefinite duration;
- b) the job in which is hired the young man is a vacancy post, which has been communicated to the Territorial Agency of Employment;
- c) are respected also other legal conditions established by provisions of article 95, for granting this amount²⁹.

For every worker cope with loss of employment in a period of recession and unemployment represent a difficult situation which must confront.

For most young people being unemployed at the beginning of working life seems to have a temporary effect on subsequent career prospects and also on the social position. But for disadvantaged young people, who have a low education level, a failure which occurred with the first experience of the labor market is difficult to overcome and can expose them to a long period of stigmatization³⁰.

Conclusion

Human Nature³¹ was, is and will be conditioned by the work process. If at the beginning, work was composed by actions of survival, procurement of food and the need for shelter, human evolution has transformed these actions in a conscious process.

²⁸ See art. 93³ from Law no. 76/2002.

²⁹ See art. 93⁴ alin (2) from Law no. 76/2002.

³⁰ P. Gabriel, I. Gabriela, P. Florin, O. Adrian (coordonator), *Comunicarea pe piața muncii. Studii sociologice și analize statistice*, Sitech Publishing House, Craiova, 2012, p. 27

³¹ C. Silviu, R.V. Valentina, *Șomajul. De la pasivitate spre activitate*, Premier Publishing House, Ploiesti, 2005, p.7.