

CONSIDERANTIONS ON SUSPENSION OF THE INDIVIDUAL LABOR CONTRACT

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Abstract: The article examines the concept of suspension of the individual labor contract of Law no. 53/2003 (Labor Code) as amended and supplemented by June 2015 and the effects of suspension according to legal provisions in force.

1. Regulation.

The individual labor contract can be suspended in accordance with the provisions of Law No. 53 Articles 49-54 / 2003 (Labor Code), as amended and supplemented. So the labor legislation expressly provides for cases where the labor contract is suspended. The suspension is temporary and it has as main effects: the prohibition of supplying work and of temporary depriving of the payment of wages.

In this context, we mention that the suspension is different from individual labor contract termination, as the latter refers to cease entirely the effects of which were established at the conclusion of the contract.

Suspension being temporary, the enforcement of obligations undertaken by the parties is ceased: the employee performs no work, and the employer no longer pays the remuneration.

The literature [1] has pointed out that for suspension it is necessary that the non-execution to be temporary and have no fault, otherwise the individual labor contract will not be suspended but the employee will be dismissed. [2]

Also, there can be no grounds for suspending the individual labor contract, the periods in which the employee performs no work in rest days, public holidays, holidays, etc.

In accordance with Article 49, paragraph 6, in relation to the provisions of paragraph 5 of Article 49 of the Labor Code "in case of suspension of the individual labor contract all deadlines related to conclusion, modification, performance or termination of the individual labor contract are suspended, unless the labor contract is terminated as of right".

2. Suspension as of right of the individual labor contract.

Under the provisions of Article 50 of the Labor Code, republished, the individual labor contract is suspended as of right in the following situations:

- In case of maternity leave;
- In case of temporary incapacity leave;

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- Exercise of a function in an executive, legislative or judicial authority during the entire mandate, unless the law provides otherwise;
- Exercise of leadership functions in the union;
- Force majeure;
- If the employee is in custody under the Code of Criminal Procedure;
- From the date of expiry of the period for which permits, authorizations and attestations required by the profession were issued. If, within six months the employee has not renewed the permits, authorizations and attestations required to exercise the profession, the labor contract is terminated as by right;
- In other cases provided by law.

a) Maternity leave is considered granted to mothers for pregnancy and confinement and it has the character of sick leave. It is granted for a period of 126 days of which 63 days before birth, as pregnancy period (maternity leave), and 63 days respectively corresponding to confinement (maternity leave). Leaves for pregnancy and confinement are compensating each on clinical advice and depending on the individual's option. [3]

Legal regulation of maternity leave is based on the ILO Convention No. 183 / 2000 on motherhood, ratified by Romania by Law nr.452 / 2002. [4]

In accordance with Article 4, paragraph 1 of ILO Convention No. 183/2000, the minimum duration of maternity leave is 14 weeks, of which 6 weeks are necessarily granted after birth.

During maternity leave the employee cannot be dismissed.

b) Leave for temporary incapacity is granted in accordance with the provisions of GEO no.158 Articles 12-17 / 2008, as follows:

- Duration may not exceed 183 days in a year, and it is granted in two tranches: the first beginning with the first day of illness up to a 183-day, with the approval of the social insurance expert doctor. For particularly serious illness the period of illness leave may be higher, differentially, up to the maximum duration of one year and six months;
- if the patient was not recovered at the expiration of terms of granting the allowance for temporary incapacity, the doctor may propose retirement with I, II or III degree of disability and in duly substantiated cases, he may propose extended leave over the period of the 183 days, but no more than 90 days.

Except for the situations above, the expert doctor can decide, as appropriate, to reduce the working hours or return to work according to the training and professional skills.

Also during temporary incapacity of work, determined by a medical certificate, that person cannot be dismissed (Article 60, paragraph 1 (a) of the Labor Code).

c) Quarantine consists of a measure of prevention of contagious diseases, namely the prohibition of continuing the activity subject to individual labor contract due to

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contagious diseases, during the period set by the certificate issued by the public health inspectorate. [5]

During the quarantine it is not possible to dismiss the employee (Article 60 paragraph 1 (b) of the Labor Code).

The entire duration of the quarantine, whether it is a limited or unlimited labor contract, the payments of insurance benefits are granted.

d) Exercise of functions within an executive, legislative or judicial authority for the entire mandate

The mandate refers to the period in which power is exercised by a person elected or appointed to public official function (senators, deputies, government members, the Superior Council of Magistracy, mayors, deputy mayors, presidents and vice presidents of county councils, prefects and sub-prefects, judges of the Constitutional Court, etc.)

On the other hand, we show that, in accordance with the provisions of Article 5 paragraph 2 of Ordinance no.32 / 1998, the staff at the official office (deputy or senator) operates under a fixed-term labor contract concluded under the law during the official's mandate.

Therefore, the mandate holder being the official elected and not the employees within his official office, he is the only one submitted to this type of suspension.

According to an opinion [6] on the application of Article 5, paragraph 3 of Ordinance no.32 / 1998, which provides that "in the case of a the public servant if his employment in the official office is in agreement with the institution where it came from, when the labor contract with this institution is suspended until his returning to previously held position", it is laid down on an obvious error: the public servant is not party to a labor contract, but to one of administrative law. In such a situation, the individual administrative law contract is suspended, according to the public function from that institution.

e) Exercise of leadership functions in the union.

In accordance with Article 11 paragraph 1 of Unions Law No.54 / 23 January 2003 the situation of salaried persons from the governing bodies of unions is regulated as a distinct case of suspension of the individual labor contract.

During this mandate, the individual keeps his previous work, seniority, profession or public function held under the law.

Also, according to Article 60 paragraph 1 (g) of the Labor Code, during exercise of an elected position in a trade union body, except that dismissal is ordered for committing a serious disciplinary violation or repeated misbehavior by that employee, he cannot be dismissed.

f) Force majeure

Force majeure is governed by Article 50, paragraph 1 (f) of the Labor Code, as a case of suspension of the individual labor contract. Force majeure must be

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understood as those unpredictable events that cause insurmountable impossibility of execution of individual labor contract.

In accordance with Article 48 of the Labor Code, the employer may still temporarily change the place and type of work even without the employee's consent in case of force majeure.

g) If the employee is in custody, under the Criminal Procedure Code.

According to the letter g of the Article 50 of the Labor Code, if the employee is in custody under the Code of Criminal Procedure, its labor contract is suspended until the termination of the arrest, dismissal of the case or removing the criminal investigation.

h) Expiry period for which permits, authorizations and attestations required by the profession were issued

If, within six months the employee has not renewed the permits, authorizations and attestations required to exercise the profession, the labor contract is terminated as by right, to the extent that this is a prerequisite for signing the contract.

i) Other cases stipulated by law.

Sometimes the labor contract is suspended by law, expressly, for example:

- The period in which professional caregiver has no children in foster care or custody (Article 8 paragraph 4 of GD nr.679 / 2003 on conditions for obtaining the certificate, certification procedures and foster family status); [7]
- The period in which patrons workers do not work, consisting in personnel reserve (GO no.22 / 1999); [8]
- During construction business interruption due to weather conditions (Law nr.2015 / 2015 on Builders social class). [9]

3. Suspension of the individual labor contract by the employee

The individual labor contract can be suspended from the employee's initiative, in the following situations:

- For raising child up to the age of 2, in case of disabled child up to the age of 3; [10]
- Leave for raising sick child aged up to 7 years and medical leave to care for a disabled child requiring hospital, outpatient or home recovery for intercurrent diseases, up to the age of 18;
- Leave for professional training; [11]
- Participation in the strike, in terms of strikers' employees; [12]
- Exercise of elective positions in professional bodies established at central or local level throughout the duration of the mandate. [13]

4. Suspension of individual labor contract by the employer.

In accordance with Article 52 paragraph 1 of the Labor Code, individual labor contracts can be suspended in the following situations:

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- During the preliminary disciplinary investigation as required by the provisions of Article 251 and Article 252 of the Labor Code (the latest within 30 days from the date of the acknowledgment of committing disciplinary offense); [14]
- If the employer has submitted a criminal complaint against the employee or he was indicted for criminal acts incompatible with his position, until a final court decision (in case of innocence of the person in question, the employee resumes work and he will receive a compensation equal to the salary and other rights he missed during the suspension period);
- In case of temporary interruption or reduction of the activity, without the termination of labor relationship, for economic, technological, structural or similar reasons (During the temporary interruption, employees will be at the employer's disposal, having right at any time to resume the activity); [15]
- Where against the employee has been taken, in terms of the Criminal Procedure Code, the measure of judicial control on bail, if in his name have been set obligations that prevent execution of the individual labor contract, and if the employee is under house arrest, and the measure contents prevent the execution of the contract (judicial control provided by Articles 211-218 Criminal Procedure Code and judicial control on bail provided for by Articles 216-217 of Criminal Procedure Code, are preventive measures, the suspension of the individual labor contract by the employer may intervene if the judicial body has imposed the defendant not to pursue the occupation or profession, not to carry out the same kind of activities as the offender);
- During the detachment (in which case the labor contract concluded between employer and employee is suspended);
- During the suspension by the competent authorities of permits, authorizations and attestations required by the profession.

Finally, according to Article 52 paragraph 3 of the Labor Code, if temporary reduction activities for economic, technological, structural or similar reasons, for periods exceeding 30 days, the employer will be able to reduce working hours from 5 days to 4 days by week, the appropriate reducing of wage, until the remedy of the situation that caused the reduction of working hours, but only after consultation with the union or employee representatives, as appropriate.

5. The effects of individual labor contract suspension.

Suspension of the individual labor contract, according to legal provisions in force, has the following main effects:

- The employee is deprived of revenues, but receives compensation (for example, in case of temporary incapacity for work or when they are on maternity leave);
- The employee benefits from damages, according to Article 52 paragraph 2 of the Labor Code (if the employee is found innocent, when the labor contract has been

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suspended by decision of the employer during the disciplinary investigation or in the case of a criminal complaint against him);

- On seniority we emphasize that employee benefits in the event of detachment, parental leave for child up to 2 of age, in case of participation in training courses or internships.

However, the employee does not receive seniority in case of suspension as a disciplinary sanction, absences without leave, leave without pay, etc. [16]

Finally, if during the suspension it is found that there is no fault of the employee, the law prohibits the dismissal of the employee. [17]

Upon cessation of the suspension the employee is obliged to report to work to resume his activity and the employer is obliged to readmit him. Failure to comply with these obligations may attract legal liability of the contracting parties at fault:

- The employee may be disciplined, including by disciplinary termination of individual labor contract;

- The employer may be required by the competent court to reintegrate the employee, in the previously owned activity, paying compensation for the entire period until the effective reintegration.

Notes:

[1] See Vlad Barbu, *Dreptul Muncii*, Ed. Ceramprint, Bucharest, 2008, p.167

[2] According to Article 61 par. 1 (b) of Labor Code

[3] According to Article 23 and Article 24 paragraph 1 and 2 of GEO no.158 / 2008 on leave and allowances of social health assurances, published in the Official Gazette no.1074 / November 29, 2005

[4] Law published in the Official Gazette no. 535/July 23, 2002

[5] According to Article 18 (b) of GEO no.158 / 2008 on leave and allowances of social health assurances

[6] See I.T.Stefanescu, *Tratat teoretic si practic de drept al muncii*, Ed. Universul Juridic Bucharest, 2014, p.402-403

[7] Published in the Official Gazette no. 443/June 23, 2003

[8] Published in the Official Gazette no. 511/July 22, 2010

[9] Published in the Official Gazette no. 372/December 22, 1997

[10] According to GEO no.148 / 2005 on family support for child raising; GEO no.111 / 2010 on leave and monthly allowance for children.

[11] According to Article 51 (d), Article 197 and Article 198 of the Labor Code; GD no.250 / 1992 for budgetary units

[12] According to Article 51 (f) of the Labor Code

[13] According to Article 51 (e) of the Labor Code

[14] The Labor Code does not regulate the duration of the suspension of the individual labor contract or a maximum duration for which the measure is ordered. It is sufficient to mention that the suspension operates during the preliminary investigation. In this regard, see also I. T. Stefanescu, *op. cit.* p. 407

[15] See Al. Ticlea, *Codul muncii comentat*, Ed. Universul Juridic, Bucharest, 2011, p.83

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[16] Labor Code by Article 49, paragraph 4, states that "In case of suspension of the individual labor contract due to a fault attributable to the employee, during the period of suspension, he will not receive any right arising from his status as an employee."

[17] According to Article 60 paragraph 1 of the Labor Code

Bibliography:

1. Al. Ticlea, Codul muncii comentat si adnotat, Ed. Universul Juridic, Bucharest, 2011.
2. Al.Ticlea, Tratat de dreptul muncii, Ed. Universul Juridic, Bucharest, 2014.
3. I.T.Stefanescu, Tratat teoretic si practic de drept al muncii, Ed. Universul Juridic, Bucharest, 2014.
4. V.Dorneanu, Dreptul muncii, Editura Ed. Juridic, Bucharest, 2012.
5. Vlad Barbu, Dreptul muncii, Ed. Ceraprint, Bucharest, 2008.
6. Romulus Ghidro, Dreptul muncii, Ed. Universul Juridic, Bucharest, 2013.