

GENERAL CONSIDERATIONS REGARDING THE EMPLOYMENT RELATIONS OF THE PUBLIC ADMINISTRATION IN ROMANIA

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Abstract:

In carrying out our approach, we will address aspects regarding the forms of legal labour relations within the Romanian public administration system. At the same time, we will analyse the legal employment relationship of the contract staff from the public authorities and institutions and the service report of the civil servant. Doctrinal opinions are controversial regarding the employment relationship of the civil servant. In this sense, we consider that it is necessary to approach some fundamental notions regarding the civil service because some authors are of the opinion that the civil service is the main factor that determines the legal nature of the employment relationship of the civil servant. Starting from the idea that the attributions that constitute the content of the civil service, cannot be established by a contract but only by a legal norm, we are of the opinion that the legal nature of the civil service's service relationship belongs to the administrative law.

Key words: Legal employment relationship, contract staff in public administration, civil servant, public administrator, civil service.

JEL classification: K31, J58

INTRODUCTION

Based on the theoretical and practical legal analysis, we specify that the expression *employment relationship* represents the legal relations that are formed in the work process. According to the legal doctrine and regulations in force, we can identify certain types of employment relationships, namely: employment relationships that occur as a result of the conclusion of an individual employment contract and the legal employment relationship that arises as a result of the conclusion of a contract (management, provision of services).

We also appreciate that the notion of individual employment contract is not identical to that of the legal employment relationship. The individual employment contract has in its composition contractual clauses, which establish the rights and obligations of the parties and the legal employment relationship represents the totality of the rights and obligations of the parties of the legal employment relationship.

Next, we will try to identify some aspects regarding the employment relationship of the contract staff within the public authorities and that of the civil servants.

THE EMPLOYMENT RELATIONSHIP OF THE CONTRACT STAFF FROM THE PUBLIC INSTITUTIONS AND AUTHORITIES

By contract staff we mean that category of employees who perform activities that do not involve the exercise of prerogatives of public power and who hold certain positions provided by law. According to art. 541 para. 1, of the Administrative Code, these functions are: “management positions, executive functions and positions held within the cabinets of dignitaries and local elected officials, as well as within the chancellery of the prefect”. These employees are employed on the basis of an individual employment contract governed by the provisions of labour law.

The attributions corresponding to each position occupied by the contractual staff are established by the job description, for positions exercised based on an employment contract, and if we are in the situation of exercising a management contract, by the clauses of this contract.

Therefore, it can be observed that there are two ways, provided by law, to employ contract staff in public institutions, namely the conclusion of an *individual employment contract and the conclusion of a management contract*.

The *individual employment contract* is concluded under the conditions established by Law no. 53/2003 but also with the observance of specific conditions established by the Administrative Code. Art.542 para.1 of Administrative Code provides the following conditions: “the candidate must meet the study conditions necessary for the position; conditions of seniority, respectively experience; the person has not been definitively convicted for corruption offenses, against national security, forgery offenses”.

Summarizing the provisions of these legal regulations (Labour Code and Administrative Code), we can see that there are some differences in terms of concluding an employment contract by contract staff in public institutions. In this sense, we can highlight the fact that it is forbidden to include in the employment contract the confidentiality or non-compete clause. According to Art. 542 of the Administrative Code, these clauses cannot be considered as contractual clauses. Thus, the conclusion of this contract will be made in compliance with the provisions of both the Labour Code and the Administrative Code, these two norms complementing each other.

The *management contract* is concluded between the person holding a position, for which the law provides such a contract, and the public institution, respecting the following conditions: express specification of the object of the contract, activities and performance indicators, establishing the rights and obligations of the parties, terms and methods to verify the assumed obligations, as well as the manner of resolving possible disputes.

Regarding this type of contract, we can exemplify the *management contract* of the public administrator, considered a novelty concept in the Romanian public administration. The legal framework offers the possibility to transfer some attributions from the president of the county council, respectively from the mayor to the public administrator. Therefore, the public administrator concludes a management contract with the public institution for a period that cannot exceed the term of office of the mayor or the president of the county council.

As we showed above, in addition to the leading and executive functions, we also find those in the offices of dignitaries, local elected officials and in the chancellery of the prefect. According to the law, certain categories of persons (prime minister, ministers, state councillors, county council president, mayors, deputy mayors, etc.) have the right to organize within the institutions they lead, a cabinet in which functions are provided for these structures.

In addition to the rights and obligations provided by the legal provisions in the field of labour, contract staff, both those employed under an employment contract and those who carry out their activity under a management contract, have other rights and duties in regarding professional training. This category of employees has the right, but at the same time the obligation, to improve continuously. The provisions of Art. 458 of the Administrative Code refer directly to the training of civil servants, but Art. 551 para. 3 establishes the fact that these provisions also apply to the contractual staff of the public authorities and institutions.

Regarding the promotion of these employees, this is done on the basis of well-established criteria, depending on the individual professional performances appreciated annually by the head of the institution. The promotion can be in steps or in immediately superior degrees and can be done every 3 years (Art. 554 of the Administrative Code).

In case of non-compliance with the duties of the service and the norms of professional conduct, the contractual staff may be held administratively, civil, criminal, contraventional and disciplinary.

SERVICE REPORT OF CIVIL SERVANTS

In the doctrine there are different opinions regarding the legal nature of the civil service's employment relationship. There are approaches to the employment relationship supported by theorists in the field of administrative law and by specialists in the field of labor law.

The doctrine of labour law, especially the author Ș. Beligrădeanu, focuses on the following arguments:

- „Both the legal employment relationship of the employee and that of the civil servant have a conventional nature, even if in the case of the civil service's employment relationship a document called a contract is not drawn up”.

- ”The employment involves the subordination of the natural person to the employer, respectively to the public institution, both within the individual employment contract and based on the employment relationship of the civil servant”.

- ”Both employees and civil servants have the right to join trade unions (Ș. Beligrădeanu).

According to the author N. Sadovei: “the employment relationships of civil servants have nothing in common with the legal employment relationships, based on an individual employment contract, because the employment relationships arise from the administrative act of appointing a natural person in a public office”.

The entry into force of the Government Ordinance no. 57/2019 on the Administrative Code brought essential changes regarding the status of the civil servant. As far as we can, it raises some issues regarding the legal liability of the civil servant. As an element of novelty, provided by this legal norm, we have the administrative record, we have the administrative record, which represents an „act that includes the disciplinary sanctions applied to the civil servant and which were not deleted under the law” (Administrative Code).

Analysing the legal regime applicable to the two types of employment relations, we find certain particularities of the civil servant's employment relationship compared to the employee's employment relationship. Civil servants carry out activities that involve the exercise of the prerogatives of public power, therefore, they hold public positions. At the same time, even if the employees are employed at a public authority or institution, they do not perform attributions in connection with the exercise of public power.

In the opinion of the author E. Popescu: „the appointment of a person, as a civil servant, is made only with his consent through an individual investment act”. Therefore, there is a contractual status, without being an individual employment contract but an administrative contract, in which case the contractual freedom of the parties is supplemented by the legislator (E. Popescu, 2011).

In the literature, the idea has emerged that there is a close connection between the civil service and the civil servant. Thus, the civil service cannot be exercised without the incumbent invested with its accomplishment and who bears the name of civil servant (D. Popescu, 2011).

Public authorities and institutions have the right, according to the law, to establish public positions. According to their classification, these functions can be performed by civil servants in compliance with certain principles, namely: the principle of efficiency and effectiveness, transparency, performance, accountability, competence, hierarchical subordination.

According to Art. 383 of the Administrative Code, public positions are classified as follows:

- „General public functions and specific public functions.
- Public positions in class I, public positions in class II, public positions in class III.
- State public functions, territorial public functions and local public functions”.

The general public functions reflect the general attributions and responsibilities of all public authorities and institutions, while the specific public functions represent the attributions and responsibilities only of certain public authorities and institutions.

Regarding the classification of public positions according to the level of study, we have the following categories: class I in which the mandatory requirement for holding the position refers to the level of bachelor university studies; the second class includes the public positions for whose

employment short-term higher education is required and the third class which requires employment with high school education (Administrative Code).

Regarding the state functions, they are presented in Art. 385 of Administrative Code, and are those within the ministries, central public administration bodies, autonomous and judicial authorities. We find the territorial public functions within the prefect's institution, the deconcentrated public services, the public institutions in the territory subordinated to the Government and the local public functions are included in the apparatus of the local public administration.

There is also a classification of public positions according to the hierarchy of attributions of their holders, such as: the civil service corresponding to senior civil servants, leading civil servants and executive civil servants. The prefect, the sub-prefect, the general secretary within the public authorities and institutions are part of the category of leading civil servants. The leading civil servants are: the general and the deputy director within the ministries, the specialized bodies of the central public administration, the specialized structures, the autonomous public authorities as well as the judicial authorities. Also here, we mention that the executive directors from the public authorities and institutions, the heads of service as well as the secretary of the administrative-territorial unit hold public management positions.

Based on these classifications, provided by the legislation in force, correlated with the data of the National Agency of Civil Servants we can identify the number and degree of occupation of public positions, both at national and local level.

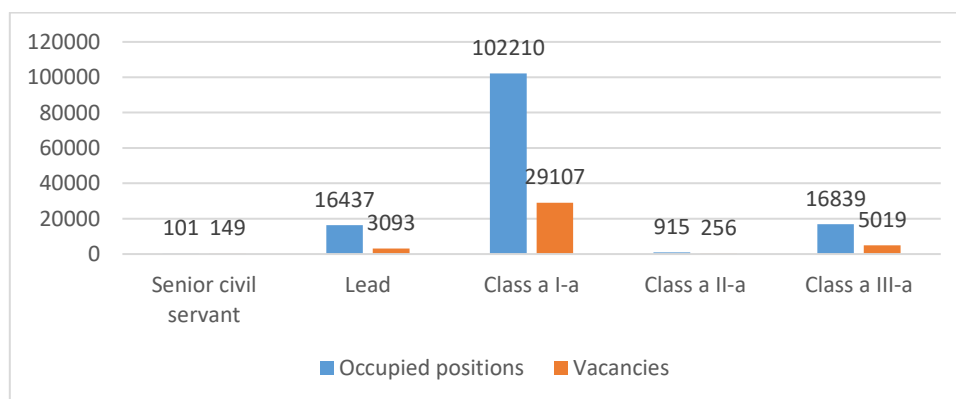


Figure no.1. The situation of public positions at national level

Source: <http://www.anfp.gov.ro/opendata.aspx>

Also, in addition to those presented above, we considered to have revealed the presentation of data regarding the Macro-Region two - NORTH-EAST Region, which has in its structure the following counties: Bacau, Botosani, Iasi, Suceava, Neamt and Vaslui.

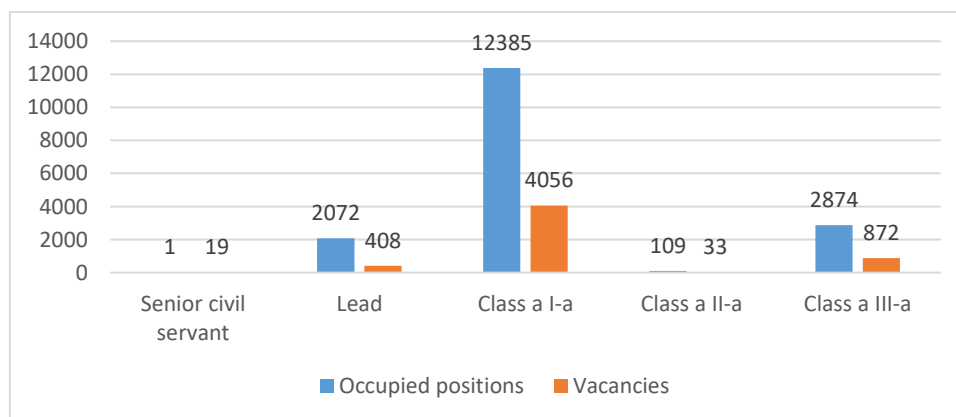


Figure no.2. The situation of public positions at the level of Macro-Region two - NORTH-EAST Region

Source: <http://www.anfp.gov.ro/opendata.aspx>

Regarding the number of positions held within the Romanian authorities and public institutions, in February 2021 we have the following situation:

Table no.1. Number of positions held in public institutions and authorities in February 2021

| Central public administration | | Local public administration | |
|---|---------|--|---------|
| Number of positions occupied | | Number of positions occupied | |
| Institutions financed entirely from the state budget | 596,649 | Institutions fully funded from local budgets | 276,050 |
| Institutions financed entirely from the social insurance budget | 8,106 | | |
| Institutions subsidized from the state budget and the unemployment insurance budget | 42,223 | Institutions fully or partially financed from own revenues | 173,381 |
| Institutions financed entirely from own revenues | 157,045 | | |
| Total positions 804,023 | | Total positions 449,431 | |
| Total 1,253,454 | | | |

Source: Ministry of Finance

Out of the total of 804,023 employees in the central public administration, the highest number of positions are registered at the Ministry of Education and Research, respectively 288,709, the Ministry of Internal Affairs (124,882), the Ministry of National Defense (77,087), the Ministry of Public Finance (24,573) and the Ministry of Health (18,322). At the same time, 449,431 people worked in the local public administration in February. Thus, in February 2021, 1,253,454 million people were employed in the Romanian public administration. Compared to January, we have an increase of 751 in the number of positions at the Ministry of Health, the Ministry of Defense by 1,511 positions and a decrease in the number of positions in the Ministry of Education and Research, respectively 663. Also, out of a total of 5,571,917 employees in Romania (February 28, 2021) 1,253,454 people are employees in the public system.

CONCLUSIONS

From the analysis of those presented above, we consider that the legal relationships under which the work is performed are not limited only to those based on the individual employment contract, because not all relationships involve employment.

It is certain that the civil servant carries out his professional activity on the basis of a service report and not of an employment contract. The difference lies both in the way the legal employment relationship is born and in the fact that the civil servant is a bearer of public power.

The legal nature of the civil servant's employment relationship is complex, with interdisciplinary legal implications. According to the author Verginia Verdinaş, „the civil servant has a generating legal status of a complex institution, located on the border between labour law and administrative law”. For these reasons, the civil service legal relationship of the civil servant can be approached both by the administrative law and by the branch of labour law.

Regarding the number of positions occupied in the Romanian public system, we do not consider that this number is a worrying figure, but the salary difference between the public and the private environment should be taken into account.

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