HOW DOES THE LAW OF SOCIAL DIALOGUE RESTRICT TRADE UNION ACTIVITY

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- The Law of Social Dialogue 62/2011 had a fulminating path, announced on 7th of April 2011, discussed as a matter of urgency, as union leaders did not participate in talks as a protest, passed through parliament by assuming responsibility, skipping constitutional control, the Social Dialogue Law was promulgated without delayed and published on 10th of May 2011.

- The Law on Social Dialogue replaces the Law on Trade Unions, the Law of Employers, the legislation on collective labor agreements, labor disputes and the laws on the establishment and organization of the Economic and Social Council.

- This Law puts a series of obstacles to the trade union activity

- 1) Trade unions will find it harder to find headquarters - the new law states that trade unions "may" have a headquarters in the enterprise, the old law (art. 22 (3) of Law 54/2003) states: "Units in which trade unions are established who have acquired the representativeness, under the law, are obliged to make available, free of charge, to the trade unions the spaces corresponding to their functioning and to provide the necessary equipment for carrying out the activity provided by the law. "

- 2) After his mandate ceases, the union leader is no longer particularly protected from firing for two years. If Article 10 (1) of Law 54 states: "During the term of office and within two years of termination of office, representatives elected to the governing bodies of trade unions may not change or terminate their individual labor contract for reasons they are not imputable to them ... ", in the new law, the two years provision has dissapeared.

- 3) The employer is no longer required to invite trade union representatives to the board of directors: Law 54 provides for art. 30 (1) "Employers have the obligation to invite elected delegates of representative trade union organizations to participate in boards of directors to discuss issues of professional interest , economic, social, cultural or sporting. "- the new law replaced the obligation with “may”

- 4) Employer - Union communication is limited - in law 54 the employer also had the obligation to communicate to the trade unions "information on the creation and use of funds meant to improve the conditions at the workplace, labor protection and social utilities, insurance and social protection“, information on issues of cultural and sportive interest - these obligations of the employer no longer appear in the new law.

- 5) Non-payment of labor for union activity for leaders who are out of production - Law 54 provided that "Members elected to the governing bodies of trade unions who work directly in the unit as employees are entitled to reduce the monthly program with 3- 5 days for trade union activities without affecting wage rights." The new law no longer provides for a number of days, and it can be negotiated. Furthermore, the employer is no longer required to pay those days (expressly stated, "without the employer's obligation to pay salary rights for these days")

- 6) When a trade union is dissolved, the Court no longer has the obligation to attribute the patrimony to "an organization to which the trade union belongs, or, if it is not part of any organization, to another trade union organization of a similar nature." (Law 54, Art 37 (2))

- 7) Trade unions have so far been able to form (Law 54, Art. 41 (1)), according to the branch of activity, the profession, or the territorial criterion. The new law introduces the concept of "sectors of activity", according to the CAEN code, sectors which, in the new law, are established by Government decision, after consultation with the social partners. The trade union activity is restricted by the renunciation of the professional or territorial criterion.
- 8) Criteria of representativeness appeared before the founding of a trade union. Trade union confederations must have territorial structures in half plus one of the counties of Romania and have 5% of the staff of the national economy. At the unit level, conditions have become very restrictive. Until now, Law 54 provided for a minimum of 15 employees to form a trade union, not even from the same employer necessarily. Law 130/1996 provided for similar representation criteria for trade unions, but only for the negotiation of collective labor agreements, not for their being. At the unit level, one-third of the union's employees were required to negotiate the collective labor agreement, now it takes half plus one.

- 9) The collective labor contract disappeared at the national level and at the branch level and the one at the sector level emerged (as the government sector will define). In fact, the government will no longer have a strong negotiating partner for the minimum wage in the economy, but will set the minimum wage and further sectoral negotiations will take place.

- 10) Employees can not trigger collective labor conflict (Article 164) for the duration of a collective agreement. The old law (Law 168/1999) provided in Article 12 (d): "Conflicts of interest may be triggered in the following situations: d) the unit does not fulfill its obligations under the law to commence compulsory annual wage negotiations, working hours and working conditions ". Although the old law provided that employees could not trigger labor disputes during the duration of a collective labor agreement (Article 13), an exception was made to point 12 (d), which disappeared from the new law.

- 11) Article 182 establishes the requirement of a warning strike: "the strike may be declared only if the possibilities for solving the collective labor conflict have been exhausted beforehand by the mandatory procedures provided by this law, only after the warning strike ...". The old law provided for the warning strike to precede the strike by five days, but it did not follow from the old law that a strike could only be triggered if a warning strike had been made beforehand.
- 12) Loss of rights in the individual labor contract during the strike. If in the old law, in Article 54, it was stated: "During the strike, the employees retain all their rights under the individual employment contract, except for the salary rights." In the new law, Article 195 provides that "throughout the duration of the strike, the individual employment contract or the service report, as the case may be, of the employee shall be suspended by law. During the suspension, only the health insurance rights are maintained".

What happens today more than six years after applying the new legislative framework?

- 1. We have zero collective labour agreements at national level.
- 2. At sector level, agreements are hard to settle because of the legislative framework
- 3. We have 14,343 collective labour agreements at the unit level, of which 12,327 were concluded by workers' representatives, and only 2,016 were concluded by representatives of trade union organizations.
- 4. There are currently 482,834 employers with up to 20 workers who are not required under the law to start negotiating the collective labour agreement at the unit level.
- 5. For more than 21 workers, only negotiation is mandatory, not the actual conclusion of collective labor agreements.
- 6. The result is that only 28% of Romanian workers are covered by a collective bargaining agreement today

- All of these have brought significant economic changes.

- One month ago (on 20th of November 2017), government set a derogation for all employers to start collective bargaining in the context of the need to raise gross salaries to cover the transfer of contributions from the employer to the employee.

- If employers are of bad faith and do not increase all gross wages, employees will wake up in 2018 with lower net salaries.

- All employers, irrespective of the number of employees they have, are obliged to start collective bargaining in order to increase their gross salaries, stated in a law (number 82) from 2017. The liability is temporarily valid for a period on one month, from 20th of November to 20th of December 2017.

- This, as stated before, comes in the context of the transfer of social security and health contributions, starting in January 2018, entirely to the employees.

- Practically, in order to avoid net wage lowering, employers should increase gross wages by additional papers so as to cover these transfers.
- Nowadays, there are several parts trying to sit down at the discussion table and change the current legislation, bringing it to a normal road.
- However, the instability on the political level, the low faith in government and it's promises, refusal of sitting at the discussion table, as well as conflicting statements seem to go on.
- As a conclusion, the legislative framework in permanent change and the lack of vision on a long term is the biggest problem we tackle in Romania