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Corresponding author: nedeljko.krajisnik@fpsp.edu.rs

ANNEX OF AN EMPLOYMENT CONTRACT DUE TO CHANGES IN WORKING CONDITIONS

Nedeljko Krajišnik
Faculty of Business Studies and Law, „Union - Nikola Tesla“ University, Belgrade, Republic of Serbia, e-mail: nedeljko.krajisnik@fpsp.edu.rs

Abstract: *This paper tries to point out the specifics of one institute from the labor relations segment, namely the changed working conditions and the changes that these new conditions entail in the formal sense, that is, the change in the employment contract between the employee and the employer. It is a relatively new institute in the field of labor relations in our area, which has certain specificities, and this can lead to the termination of the employment relationship, although the termination of the employment relationship is not the intention of the employer when he raises this issue (at least in most cases it is not, but abuse of contract, of course, is). However, due to the sensitivity of workers to any violation of their rights regarding employment relationships, disagreements often arise that lead to the termination of the employment relationship. The opinion of the author of this paper is that both parties should realistically look at all the circumstances that arise in such a situation, and here we are primarily thinking of the worker. Iin a way, workers should with "cool-heads" look at what is offered to them as an option in the new employment relationship, and after that make a decision whether to accept the offer or not. In any case, the worker is left with the possibility to try to prove the illegality of the changed conditions at the competent court.*

Keywords: *Work contract, employment relationship, modified conditions, worker's rights, judicial protection*

INTRODUCTION

The conceptual approach of the Labor Law[1] is a contractual employment relationship, so the employment relationship derives its basis from the rules of obligation relations, with the application of the provisions of the Labor Law, as a *lex specialis* regulation. In this sense, any change during the duration of the employment relationship, that is, the employment contract, is made by amending the contract in the form of an annex to the employment contract, which is a characteristic of all contracts in the corpus of contractual relations, including in labor legislation. Annex, of course, is not our word, but an anglicization and the same means addition or upgrade. Therefore, the annexes of the employment contract represent an addition or upgrade to the basic contract, which changes or upgrades that contract.

Given that the Labor Law defined the employment relationship as a type of contractual relationship, then for its amendment or upgrade (annex) there must be agreement of the will of the contracting parties. If there is no agreement of the will, there is no contract, or more precisely, there is no change to the already concluded contract, because there is no way for the employer to force the employee to conclude a contract that he does not want. In such a situation, the question arises as to what the consequences are if one contracting party (employer) wants to conclude a different contract, i.e., change an already established contractual relationship, and the other party (employee) does not want it. When we consider the provisions of the Law on Obligations[2], as the basic regulation that regulates contractual relations, in such a situation, contract modification would not be possible, so the other party would have the option of unilateral termination of the contract, but only if the conditions prescribed by the general law for unilateral termination are met. contract. Given that the employer usually has no basis for invoking any of the conditions for termination of the contract, because there are usually no such circumstances that would lead to a justified termination of the contract (the employee regularly fulfills his contractual work obligations), then the provisions of the special law (*lex specialis*) are applied, in in this case the Labor Law, which in its provisions gave the possibility of unilateral termination of an already concluded contract (on work) if the other party does not accept the offer to conclude the annex to the contract, i.e. an offer to establish a modified obligation relationship.

In this paper, we will talk about those situations, that is, about the reasons that can lead to the termination of the employment contract, which by its nature is a contract for an indefinite period, and in the implementation of which, that is, the fulfillment of the

1 Labor Law ("Official Gazette of the Republic of Serbia", No. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 - decision of the Constitutional Court, 113/17 and 95/18 - authentic interpretation)

2 Law on Obligations ("Official Gazette of the SFRY", No. 29/78, 39/85, 45/89 - decision of the Constitutional Court of SFRY and 57/89, "Official Gazette of the SFRY", No. 31/93, "Official Gazette of the Serbia and Montenegro", No. 01/03 - Constitutional Charter and "Official Gazette of the Republic of Serbia", No. 18/20)

contractual provisions, there were no violations of any of the contractual parties. , that is the formal-legal contract is mutually fulfilled in the manner defined by the same.

Bearing in mind the importance of work and the employment relationship, in terms of ensuring the existence of individuals and their families, it is clear how important and specific this institute is, which gives the employer the opportunity to influence the already established rights of workers, to reduce them, and even to unilaterally terminates the contractual relationship if the employee does not accept the new conditions. Of course, the amendment of the contract does not always have to refer to the offer of worse conditions for the worker than those he already has, because the offered annex may offer the worker better conditions than those he already has, but in such cases it is quite normal for the worker to accept the changes, so for the above reason, but also because these are extremely rare cases, we will not even talk about those situations in this paper.

1. GENERAL PROVISIONS ON EMPLOYMENT RELATIONSHIP AND EMPLOYMENT CONTRACT

1.1. Concept and establishment of employment relationship

The Labor Law is the basic, umbrella law, which regulates the relations between workers and employers, including basic institutes such as the employment relationship.

The Labor Law does not provide a direct definition of the employment relationship, but from its first provision (Article 1) a certain definition can be derived that does not have any special significance in practice, but can be used in the theoretical consideration of this relationship and the rights and obligations arising from it. Therefore, according to the provisions of Article 1 of the Labor Law, the employment relationship can be defined as the relationship between two parties, the employer and the employee, which is created by concluding an employment contract, and which regulates mutual rights, obligations and responsibilities regarding the work organized by the employer and performed worker, and which relations are based on general provisions defined by ratified international conventions in the field of labor, the Labor Law, the Collective Agreement, and the employer's internal acts. At the same time, international conventions and the Labor Law prescribe general conditions for establishing an employment relationship (e.g. the provisions of Articles No. 24-29 define the conditions for establishing an employment relationship), while more detailed provisions regarding rights, obligations and responsibilities are defined by lower acts (Collective contract...) and the employer's internal acts (Work Regulations...), and the concluded work contract (Article 3, paragraph 2 of the Labor Law).

Therefore, the employment relationship is created, that is, is based only when the employment contract is concluded.

It is important to note the kind of hierarchical relationship between the mentioned acts, so international conventions are entered into the domestic legislation by ratification and have primacy in relation to all other provisions from the mentioned area, so all acts

from labor relations must be in accordance with international conventions from this area, therefore the basic law, i.e. Labor law. The Labor Law stipulates that *"The collective agreement and the labor regulations and the labor contract cannot contain provisions that give the employee less rights or establish less favorable working conditions than the rights and conditions established by law."* [3] On the other hand, the legislator allows that a collective agreement and an employment contract can give the worker greater rights and prescribe more favorable conditions than those prescribed by the Labor Law (Article 8, paragraph 2 of the Labor Law). On the other hand, Article 9 of the law stipulates that if the general act (Collective Agreement) or its individual provisions establish less favorable working conditions than those prescribed by law, in that case the provisions of the law shall be applied. If, however, provisions are included in the employment contract that establish less favorable conditions for the worker than those prescribed by law or a general act, such provisions of the contract are null and void. Nullity is established before the court and that right does not expire.

From the above, it is clear that lower acts must be in agreement with higher acts, that is, lower acts cannot determine a smaller scope of rights or less favorable working conditions than those prescribed by higher acts, while the opposite is allowed - that more favorable conditions can be determined by lower acts legal acts than those prescribed by higher.

Such provisions have their justification for two reasons. First, it is clear that lower acts have their basis in higher acts, so the Collective Agreement is adopted on the basis of the Labor Law, on the basis of which the employer then adopts its internal acts (Rules of Procedure), and on the basis of which the employment contract is concluded work and provisions from the Rulebook, the Collective Agreement and the law are introduced into it. The function of lower acts is to elaborate in more detail the rights and obligations prescribed by higher acts and, if necessary, prescribe a wider scope of those rights, because higher acts prescribe the minimum. Another reason for such a solution is the legislator's effort to prevent workers from being put in a disadvantageous position compared to the employer, because employers, as a rule, have the sole goal of obtaining as much profit as possible, so in order to avoid increasing their profit to the detriment of employees, by reducing of their rights, the legislator prescribes a minimum of rights and working conditions, and orders that any lower act, and finally the one passed by the employer himself, cannot prescribe lesser rights than that legal minimum.

1.2. Work contract

From the previous presentation on establishing an employment relationship, we saw that it can be established, i.e., that it can only be created by concluding an employment contract. An employment contract, like any other contract, has its basis in contractual relations, so the general provisions of the employment contract are based on the law that defines these provisions, namely the Law on Obligations.

3 Article 8, paragraph 1 of the Labor Law

The Law on Obligations defines that a contract can be concluded when there is agreement between the will of the contracting parties on the elements of the contract: "*The contract is concluded when the contracting parties have agreed on the essential components of the contract.*" [4] This same rule also applies in relation to the employment contract, that is, when the employer, who needs to hire a worker, agrees with the worker on the basic elements of his work engagement, the formal conclusion of the employment contract can be approached.

The employment contract must contain the basic elements required by the Law on Obligations for the legal validity of the contract, namely: the written form of the contract, specifying the contracting parties, determining the subject of the contract, the basis for establishing the contract, the terms for which the contract is concluded and, finally, the signatures of the contracting parties by which they confirm their agreement to everything they entered into the contract. In relation to these mentioned basic elements of the contract, when concluding an employment contract, the employer (the person who organizes the work process) and the worker (the person who performs the work) always appear in the contract as contractual parties, then the basis for concluding the contract is the Labor Law, and the term to which it is concluded can be fixed (a fixed-term work contract) or determinable (an indefinite-term work contract). In the second case, the contract does not specify a deadline, that is, it states that the contract is concluded for an indefinite period of time, but this does not literally mean "forever", but that the contract is concluded until a certain deadline, that is, the occurrence of the conditions on the basis of which the employee retires.

In contrast to the general conditions of the contract, which are defined by the Law on Obligations, the subject of the contract in the employment contract is the special provisions of the contract that concern the employment relationship itself. They define the rights, obligations and responsibilities of the contracting parties, first of all what type of work the worker will perform, at which workplace and under what conditions, and especially important for what monetary compensation (salary). In addition, special contractual provisions define in more detail the duration of working hours, the length and type of rest, safety measures at work, as well as all other rights and obligations that are specific to each individual employer and each individual workplace. Mandatory elements of the employment contract are prescribed in detail in the provisions of Article 33 of the Labor Law.

Therefore, when these two contracting parties reach an agreement on all the aforementioned conditions and elements, those conditions and elements are entered into the contract signed by both contracting parties, and it is considered that they have entered into a type of specific obligation relationship, i.e. employment.

When we take a closer look at all of the aforementioned general and special conditions for concluding an employment contract on the basis of which the employment relationship is based, we can see that such a contract very clearly, unambiguously and in

4 Article 26 of the Law on Obligations

detail regulates the mutual rights and obligations of the contracting parties, which would mean that it does not can be changed without the consent of both contracting parties, as the basic contract was concluded. However, this is precisely where the specificity of the institute of contract annexes is reflected due to the changed conditions.

2. REASONS FOR CHANGING THE EMPLOYMENT CONTRACT

2.1. General considerations

The Labor Law allowed an exception to the general provision of the obligation relationship on the immutability of contractual provisions without the prior consent of the contracting parties, and allows the amendment of the contract in certain areas, i.e. the subsequent consent of the other contracting party, assuming the termination of the basic contract due to non-acceptance of the proposed amendment.

Changes to the agreed working conditions are possible only if certain conditions are met:

- that these changes are the result of objective needs due to changes in the work process (so it is not about the employer's arbitrariness);
- that the changes in the contractual working conditions do not jeopardize the minimum rights provided for in the general acts that regulate the relations between the employee and the employer (law, collective agreement and general acts of the employer).

The Labor Law stipulates that changes to the contractual working conditions can be made for several reasons, all of which are listed in Article 171 of the Labor Law, and these are the following reasons:

1. "*Transfer to another suitable job, due to the needs of the process and organization of work.*" With regard to this reason for changing the employment contract, it is necessary to point out the conditions for the employer to be able to legally assign the worker during the duration of the employment relationship, which are two cumulative conditions are met: first, the assignment is made in accordance with the needs of the process or work organization, and second, that the assignment corresponds to the professional training, that is, the level of education and occupation of the worker. Therefore, in order for the offer to change the contractual working conditions to be legally valid in this case, it must not be the result of the employer's arbitrariness, but exclusively the result of the need for the process and work organization, which must be objectively determined as such. In addition, another condition that must be fulfilled cumulatively is that the offer can only refer to other suitable job. The term "*other suitable job*" means being assigned exclusively to a job that requires the same type and level of professional education as determined by the employment contract[5];

5 Article 171, paragraph 2 of the Labor Law

2. *"Transfer to another place of work with the same employer, in accordance with Article 173 of the law."* The aforementioned Article 173 of the law stipulates the following conditions for this type of transfer: 1) that the employer's activity is of such a nature that the work is performed in several places, i.e. organizational parts - where the term *"place"* usually means the territory of another municipality, 2) that the distance from the place where the employee works to the place where he is assigned to work is less than 50 km, 3) that regular transportation is organized that enables timely coming to work and returning from work - under this condition, it is understood that there is organized regular public transport (in bus or railway traffic), which does not exclude the possibility that the employer himself organizes transport to another place of work (in this case, employees would not have the right on reimbursement of transportation costs) and 4) that the employer has provided reimbursement of transportation costs in the amount of the price of the transportation ticket;
3. *"Referral to work for a suitable job with another employer, in accordance with Article 174 of the law."* The provisions of this article prescribe the conditions for this type of referral, namely: 1) an employee may be temporarily reassigned to work with another employer for a suitable job - this refers to the conditions we described in point 1. (a job that requires the same type and level of professional education as determined by the employment contract), 2) if the need for his work has temporarily ceased, leased office space or concluded a contract on business cooperation and 3) the referral of an employee can be for a period as long as the reasons for his referral last, but no longer than one year - the employee can be referred to another employer in the aforementioned cases for a period longer than one year, but with consent employee, as long as the reasons for the referral last. Referral of workers to work for another employer, with the fulfillment of prescribed conditions, can also be to another place of work. In the event of a transfer to another employer, the employee concludes a fixed-term employment contract with the new employer, and at the end of the term, he has the right to return to the former employer.

For the previous three legally prescribed reasons for changing the contract, we can conclude that the offer to change the contracted working conditions can only be legally valid if all the above conditions are met. However, assignment to another place of work can be foreseen in other cases, and that is when there is the consent of the employee, which must be given in writing.

There is another exception to the rule that the assignment of workers to another workplace is carried out through an annex to the employment contract, which is provided for in emergency cases, if it is necessary to perform a certain job without delay (e.g. an employee assigned to that workplace is absent due to illness or has died or in case of force majeure, assignment to a position that has not been filled), when the assignment is made only on the basis of a written order of the employer. This deployment can last a maximum of 45 working days in a period of 12 months.

4. *"If the employer has provided the redundant employee with the exercise of rights from Article 155, paragraph 1, point 5) of the law."* These conditions include measures for employment: transfer to other jobs, work for another employer, retraining or additional training, part-time work but not shorter than half of full-time work and other measures. Therefore, it is a case of determining the excess of employees, when the employer offers the employee changed working conditions before possible dismissal, but only in accordance with the conditions specified by law, which in most cases is more acceptable for employees than the termination of the employment contract;
5. *"In order to change the elements for determining the basic salary, work performance, salary compensation, increased salary and other benefits of the employee contained in the employment contract in accordance with Article 33, paragraph 1, point 11) of the law."* If we consider the mandatory elements of the contract about work related to earnings (elements for determining the basic salary, work performance, salary compensation, increased salary and other income of the employee), we can conclude that the annex to the employment contract can change: the amount of the coefficient, the amount of the basic salary, as well as the basis for salary increase (if it is desired to foresee some other basis or to increase the percentage of salary increase on one of the foreseen bases). At the same time, it is important to note that changes to the agreed working conditions, and therefore the offer, can only be made within the limits set by law. In this sense, the offer of an annex to the employment contract must not violate one of the basic principles of labor law, namely the principle of equal pay for work of equal value. The terms for the payment of wages can be changed with the annex of the employment contract, because the employment contract also contains the time of wage payment, but in this case the provision of Article 110 of the Labor Law must be complied with, which stipulates that wages are paid at least once a month.
6. *"In other cases determined by law, general act and employment contract."* In this case, the legislator left the freedom to foresee some other cases for amending the employment contract, but on the condition that those reasons are defined by general or special acts, or even by the employment contract itself, therefore, a certain freedom of contracting is left, both in the basic contract and in the annex, but on the condition that the reasons for this are foreseen in advance, which cannot be contrary to compulsory regulations. When referring to this basis for the offer of an annex to the employment contract, special care should be taken when evaluating the legality or nullity of those provisions, because it is this general basis that is the easiest for the employer to attribute possible illegal or dishonorable intentions in relation to the employee.

2.2. Procedure for amending the employment contract - acceptance and rejection of the proposed annex

The employer submits an annex to the employment contract to the employee for signature, and along with the annex to the employment contract, the employer is obliged to provide the employee with a written notification that contains: reasons for the proposed annex to the contract, the deadline in which the employee must make a statement, which cannot be shorter than eight working days and the legal consequences that may arise from refusing to sign the annex to the contract within the deadline.[6]

If the employee accepts the offered annex, he continues working under the new conditions from the contract. These conditions do not necessarily have to be worse than those under which the worker worked under the basic employment contract, because it often happens that employers improve the working conditions or increase the rights of workers, and on that basis, in terms of the objective of this work, it is not even worth mentioning this institute, because the signing of such an annex to the employment contract is in the interest of the worker, and since the change is offered by the employer, it is certain that such a change is not to his detriment. This case is more common in the public service, where the employer is the state, and less often with employers from the private sector, but it is not impossible, and it happens. Also, the situation when the employee himself offers an annex to the contract (most often verbally, with an invitation for the employer to turn it into a written annex to the employment contract) is not the subject of this paper, because even in that case, if the employer accepts the offer, there is no dispute or damage on either side, since the employer does not have to accept such an offer from the worker if he considers it not in his interest.

At this point, we will make a digression, and point out certain specificities of this institute in the environment. Namely, in the Federation of Bosnia and Herzegovina, as an entity and part of Bosnia and Herzegovina, the legislator does not recognize the institution of the annex to the employment contract. In those cases, changes to the employment contract are made by applying the institute of Termination with the offer of an amended employment contract, in such a way that the employer cancels the concluded employment contract and at the same time offers the employee the conclusion of a (new) work contract under changed circumstances. In that case, we have a de facto termination of the employment relationship by unilateral cancellation of the employment contract by the employer, because there is no waiting for the employee's possible refusal to sign the contract for the employer to have a basis for unilateral cancellation of the employment contract. The only thing left for the worker is to sign a new contract and then contest the legality of the termination of the previous employment contract before the court. However, in the Republic of Srpska, as other part of Bosnia and Herzegovina, there is an institute of the annex to the employment contract, which is almost identically regulated as in our legislation.

6 Article 172, paragraph 1 of the Labor Law

If the employee refuses the offer to conclude the annex to the employment contract for some reason, the employer may (but does not have to) cancel the employment contract. Therefore, the refusal to sign the annex to the employment contract is prescribed as a basis for the termination of the employment contract by the employer, which means that the termination of the employment relationship does not occur automatically by refusing to sign the proposed annex to the employment contract, but it is left to the discretion of the employer.

There are situations when not signing the offered annex to the employment contract does not lead to the termination of the employment relationship, and these are the following cases:

- conversion of a fixed-term employment contract into an indefinite-term employment contract: this refers to the situation when the conditions stipulated by law for such conversion are met;[7]
- extension of the employment contract with the employee for a fixed period of time up to 24 months: in this case, there is no obligation to conclude a new employment contract, but the employment relationship can be extended by an annex to the contract up to a maximum period of 24 months specified by law;
- extension of the employment contract for an employee who uses the right to maternity, parental, adoptive and foster care leave, in accordance with the law: this decision is in accordance with Art. 94, paragraph 6 and 100, paragraph 2 of the Labor Law, which foresees the absence of employees from work and the suspension of rights from the employment relationship during that period;
- for the purpose of assigning an employee to a workplace with a higher level of educational qualification compared to the existing one, based on education, professional training and development: this enables the employee to complete an internship without terminating the existing employment contract.

3. PROTECTION OF THE WORKER'S RIGHTS IN THE COURT

If the employee accepts and signs the offered annex to the employment contract within the deadline, he reserves the right to contests the legality of that annex in the competent court. According to this legal provision, even if the employee signs the annex to the employment contract, he does not lose the right to seek protection in court and contests the legality of the contractual clauses. Also, an employee who rejects the contract annex offer within the deadline and the employer cancels his employment contract for that reason, reserves the right to contest the legality of the contract annex in court proceedings regarding the termination of the employment contract.[8] It is considered that the employee has rejected the contract annex offer if he does not sign the offered contract annex within the specified period.

7 Article 37, paragraph 2 of the Labor Law

8 Article 172, para. 2 and 3 of the Labor Law

Jurisprudence had a different position on the issue of the right to challenge the legality of the termination of the employment contract in case of refusal to sign the employment contract, because there was a point of view that the worker must accept the offered annex to the employment contract and then challenge the legality of the provisions from the concluded annex to the employment contract before the court, and that, if he refuses to sign the annex, he loses the right to challenge the legality of the provisions and clauses from the proposed annex in court proceedings, because he did not even accept them, which is why they never entered into legal force.

However, this understanding has been abandoned and the position taken is that the acceptance or non-acceptance of the offer and the signing of the annex to the employment contract, is not a condition for judicial protection in a dispute to annul the decision on dismissal.

"Even in the case when the employee does not accept the annex (is silent), after passing the decision on dismissal, he can successfully point out the existence of conditions for the illegality of the offered annex to the employment contract, both in material and formal terms. Such a conclusion stems from the cited Article 171 of the Labor Law, in which the law used the phrase *"in accordance ... with the law"* in several places. This further means that an illegal annex, whether in the material sense or in the formal sense (violation of the procedure in submitting the offer), does not absolve the employer from responsibility for the illegality.

The Labor Law did not condition or limit the employee in the legal process (time and procedure) of presenting reasons for the illegality of the annex, regardless of the content of Article 172, paragraph 4 of the law. The purpose of this rule is to strengthen the protection of the employee, as a weaker contracting party, and not to limit rights. Therefore, the employee can claim annulment after accepting the annex, but the illegality can be highlighted both in the lawsuit and during the entire litigation process for the annulment of the decision on the termination of the employment contract. If the first point of view were to be accepted, the employee would lose any labor dispute related to the termination of the employment relationship on this basis and the effect of the rejection judgment would be equivalent to the rejection of the lawsuit (ineffective protection).

An objective and logical interpretation requires that the problem be considered in accordance with the general rules, and especially with the rules that apply to all contracts in the general regime. Namely, an employment contract is, in a broader sense, a type of civil-law contract and all the rules of contract law on the existence of general and special conditions that make a contract valid (contractual capacity, agreement of will, object, basis and form) are subsidiarily applied to it. As is known, in the contractual right to absolute nullity, in the sense of Article 109 of the Law on Obligations, the court takes care ex officio, it can be referred to by any interested person. The right to assert nullity is unlimited and does not expire (Article 110 of the Law on Obligations). The subject and content of the contract must be possible, permissible and determined, that is, determinable (Article 47 of the Law on Obligations). Therefore, it is not necessary to explicitly challenge every illegal

contract with a lawsuit. Each contracting party can emphasize the fact of absolute nullity at any time, in any litigation, as a preliminary issue. In this problem, this means that the employee can successfully point out the illegality of the annex, especially in conditions of increased social aspiration to protect employees (prohibition of discrimination from the Labor Law, Law on Prohibition of Discrimination, Law on Prohibition of Harassment at Work - Mobbing).

The omission of the word *"justified"*, in relation to the earlier Labor Law, does not mean a reduction of the employee's right to judicial protection. The meaning of that provision was to emphasize the employer's need and reasons for deploying employees (better capacity utilization, new work organization, new jobs, etc.). From the point of view of the legality of the deployment in relation to the employee, this provision is not decisive. Both before and now, an employee cannot be assigned to work whose content is against the law (either the law, the principles of public order) or good customs (morality).

If the court in the labor dispute regarding the annulment of the decision on dismissal, would not examine the legality of the annex to the contract as a previous issue, they would be in a situation where the employer's illegal and unlawful actions would not be sanctioned, which simply goes against not only the mentioned laws but also the elementary principles of the legal order." [9]

From the aforementioned position taken by the highest court instance, it is indisputable that the worker is provided with legal means to protect his rights in case of changes to contractual provisions, regardless of whether he accepted and signed a new annex to the employment contract and continued to work for the same employer due to changed circumstances, or he did not accept the change in the agreed conditions and refused to sign the annex to the employment contract, and because of this, his employer unilaterally canceled the previously signed employment contract.

This is very important for the protection of workers' rights, because the employer is in a more favorable position compared to the worker, he is the one who dictates the conditions under which the work process is carried out, i.e., concludes the employment contract, and he is the one to whom the legislator has given the possibility to change the contracted conditions, but for expressly prescribed reasons. However, too often in practice we have a situation when employers (of course this does not apply to all employers, we are talking about the majority) abuse the rights that the law allows them and try to achieve their own benefit at the expense of workers. In order to avoid this, the law, as well as the courts, through the previously cited position, have allowed workers to review the conditions under which their employer changed or tried to change the conditions of the already concluded employment contract.

9 Conclusion adopted at the session of the Civil Department of the Supreme Court of Cassation on October 4, 2010

CONCLUSION

Finally, having at our disposal all the statements presented in this paper, we can draw certain conclusions in relation to the institute of changing the working conditions in the already established employment relationship between the employer and the employee.

The specificity of the employment relationship is reflected in the fact that it represents a type of contractual relationship concluded in accordance with the provisions of the Law on Obligations, with specifics prescribed by a separate law, i.e. the Labor Law as well by-laws and other subordinate acts adopted on the basis of the law. All of these put together must have their basic provisions in accordance with international conventions that have been incorporated into our legal system by ratification.

Given that the employment relationship is based on the conclusion of an employment contract, the contract itself contains general elements prescribed by general legislation, namely the Law on Obligations, and special elements arising from a separate law, namely the Labor Law.

The general law prescribes the agreed declaration of will of the contracting parties as the basis for the provision for the conclusion of the contract and prescribes the conditions under which the contracting parties can unilaterally terminate the already concluded contract. However, the special law in this case also prescribed certain deviations from this principle, due to the specificity of the employment relationship itself, and gave the possibility to one contracting party to offer the other contracting party, under certain conditions, an amendment to the already concluded employment contract. The law has put one contractual party (employer) in a more favorable position, because he has the possibility to unilaterally cancel the already concluded employment contract in case of refusal of the other contractual party (employee) to accept the change of the already agreed conditions. On the other hand, if the employee offers the employer to change the conditions in the concluded employment contract and if the employer refuses, there are no legal consequences in relation to the already concluded employment contract, because it remains in force.

It is precisely because of this type of inequality of the contracting parties, which nevertheless has its foothold in the specificity of the working relations that essentially enables the contractual agreement giving the employer more rights, the law is limited and it decisively prescribed the conditions under which one of the contracting parties can use this benefit. Therefore, only in cases prescribed by law is it possible for the employer to offer the conclusion of an annex to the employment contract, which changes the already agreed rights, obligations, and responsibilities of the contracting parties, which offer the worker can accept or reject, on which decision the further employment of the worker with the same depends employer. In the case of refusal to accept changes to the employment contract and sign the annex, the employer has the option (he does not have to use it) to unilaterally cancel the employment contract and thereby terminate the employment relationship, and if the employee accepts the offer and signs the annex to the employment contract, he continues to work for the same employer under modified conditions.

The most important thing for the protection of employees from possible arbitrariness and abuse by the employer when using this institute, is that the legislator provides judicial protection for employees in those cases, regardless of whether the employee accepted the proposed amendment and signed the annex to the employment contract, or he refused to sign it and his employment ended because of it. In the beginning, the practice of the courts was different, so in some cases they refused to provide protection and control the legality of the conditions from the offered annex to the employment contract if the worker refused to sign it, but they accepted to examine the legality of the annex only in case the worker accepted and signed it, and then filed a lawsuit to examine the legality of the conditions from the signed annex to the employment contract. However, in this way the workers were put in an unequal position, so the Supreme Court of Cassation reached a conclusion and took the position that regular courts are obliged to examine the legality of the conditions in the offered annex to the employment contract, regardless of whether the worker accepted the change and continued to work for the same employer under modified conditions, or he refused to sign the offered annex, so the employer canceled his employment contract for that reason.

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