

**Revista Romaneasca pentru Educatie
Multidimensionala**

Romanian Journal for Multidimensional Education

ISSN: 2066 – 7329 (print), ISSN: 2067 – 9270 (electronic)

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**The Flexibility of the Labor Relationships through the
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Revista Romaneasca pentru Educatie Multidimensionala, Volume 5,
Issue 2, Suplimentary 1, December, Year 2013, pp: 13-22

The online version of this article can be found at:

<http://revistaromaneasca.ro>

Published by:

Lumen Publishing House

On behalf of:

Lumen Research Center in Social and Humanistic Sciences

The Flexibility of the Labor Relationships through the Practice of Fixed-Term Employment Contracts

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Abstract:

The term 'flexibility' means a certain capacity to react and adapt to changes, it refers to both partners of the employment relationship, making it imperative that both European companies and their workers manifest more flexibility and more adaptability to the continuous economic changes. Companies are confronted daily with the challenge of striking a balance between the needs of the organization (work productivity, customer satisfaction, profit), and the needs and interests of the employees (balance between work and personal life, career development, improving working conditions, etc.). This balance can be achieved through fixed-term employment regarded as an indispensable practice to establishments, in order to cover the need for flexibility in labor relationships. This practice has been supported and promoted by the government through its introduction to the various strategies and to the labor law. In this paper we precisely propose an approach both theoretical and practical of fixed-term employment seen as a way of expressing external numerical flexibility.

Keywords:

flexibility, flexicurity, employment contracts, labor relationships

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1. Introductory aspects on flexibility labor relationships. 'Flexibility' versus 'flexicurity'.

To meet the challenges of 'knowledge-based economy' and amid the effects of global economic crisis, the last time businesses have had to become more flexible in order to remain competitive and respond to unexpected changes in demand. As stated by some authors such as Eaton (2000) and Bălăneasa (2013:258), the increased global economic activity could be responsible for emphasizing pressures to convergence over the new 'paradigm' of labor relationships based on deregulated labor markets and employment flexibility. Not just businesses were put into this situation but also employees who need to adapt to new working practices and acquire new skills and abilities to create and use new technologies.

Therefore, among the reasons behind this need for flexibility are: globalization, new technologies, aging population in most European countries, high long-term unemployment and labor market development, 'segmented' in many countries of the European Union where coexist relatively protected workers ('insiders', who have a job and must be assisted to move from one job to another) with those unprotected ('outsiders', who do not have a job and must be helped to enter and remain in the labor market).

One of the major trends in the evolution of labor markets is represented by increased economic insecurity and social inequality, which undermines the ability of every person to live from a decent and satisfying occupation. Globalization induces higher volatility in the labor market, with large flows of inputs and outputs, both of the companies and workers. For this reason, their ability to constantly adjusting becomes crucial and the 'rigid' labor market institutions become thereby an obstacle to an effective adjustment, resulting in decreased productivity and inefficient allocation of employment in the labor market (Auer, 2007).

Older workers but also young people from European countries like Romania are facing difficulties in keeping or finding a job. The same effect expressed the Organisation for European Economic Cooperation, they consider that employees with an employment contract of indefinite duration might feel threatened because, under more rigid legislation, they experience difficulties in moving to a better job.

To meet these challenges, by adapting to the new changes, including the recent concerns of member countries of the European Union, was and is the attempt to find a middle way between the needs of employers and employees, between flexibility and security in labor relations. Thus, during the debates on the labor market in the European flexicurity, arose the concept of 'flexisecurity'. Basically, more the social security system is well developed, providing in an appropriate way the social security coverage while workers can or cannot work, more the regulation of labor relations flexibility can be increased.

Therefore, flexisecurity is actually a compromise between flexibility and security in labor relations, representing a European solution to the dilemma on the way forward to be maintained and enhanced competitiveness of European industry in global competition, without reducing social security and employment of the active population, aiming to secure particularly the disadvantaged or marginalized people.

Flexisecurity is a strategy promoted by the European Union to combine labor flexibility with employment security. If by 'flexibility' it is intended - essentially - to acquire a greater freedom of action for employers, through 'security' it is intended to acquire a lifelong individual security, regardless of his or her professional stance (employee unemployed, self-employed, an independent profession during training etc.). By 'flexicurity' it is intended thereby to provide protection measures throughout the working life of a person.

Wilthagen and F.Tros T. (2004:166-186), defining flexicurity have explained it in a strategy that includes both flexibility and security element, being deliberate by implied actors (state, employer and employee). 'Flexicurity is a policy strategy that aims synchronously and intentionally, to increase the flexibility of labor markets, work organization, employment relations on the one hand, and increase security - employment security and social security - specifically for disadvantaged groups inside and outside the labor market on the other side.'

Therefore, flexicurity policy is of combining the flexibility employers with security of the employees, in order to assist them.

2. Internal aspects of flexibility of labor relationships

2.1. Romanian policy on flexibility of labor relations

In view of the flexibility of labor relations and fully align the national legislation to community regulations, labor laws in Romania between 2005-2012 witnessed a broad process of modernization. Legislative amendments and completions had as priorities:

- flexibility of labor relations and reducing administrative burdens on the employer;
- loosening restrictions on individual employment contracts that are concluded for a fixed period;
- Regulation of new forms of employment through part-time employment contracts, as temporary work agent or work at home;
- Simplify the recording of employees by introducing general register of employees;
- Flexibility of individual and collective redundancy, and guaranteeing the rights of the employees in these layoffs. Among these there are:

Romania's post-accession Strategy (2007) that was the first initiative to promote flexibility of employment relationships by reducing barriers to employment, loosening restrictions on individual employment contract period, and promoting the new forms of employment (through part-time employment contracts, temporary employment, and work at home).

Through **The National Reform Programme for 2007-2010**, Romania has undertaken to focus on the priorities set out in the **Lisbon Agenda (2005)**, attracting and retaining more people in employment, improving adaptability of enterprises and workers, and increasing investment in human capital, in order to improve its quality.

The National Reform Programme elaborated for 2011-2013 has been developed to achieve the priorities laid down in **The Europe Strategy (2020)** at social level, namely: promoting an economy with a high rate of employment, ensuring social cohesion and territorial-75% of the EU population aged 20 to 64 should have a job in 2020.

Among the objectives of The National Reform Program 2011-2013 and the measures necessary to achieve their objective, we mention 'improving the functioning of the labor market and measures for more

flexible labor relationships.’ In the context of national flexicurity approach, in 2011-2013, the measures for flexibility of the employment relationships aim and aimed mainly consolidating the legislation on work relations and social dialogue.

Likewise, according to the view expressed by the Romanian Government on the debate proposed by the EU upon **The Green Paper** of the labor law, modernization of labor law should be manifested among others through flexibility of the classic labor contracts (this flexibility should look on labor contracts, organization and working hours, wage-fixing mechanisms and mobility of workers), to enable people to remain as long as possible in the labor market and evolve constantly in this market, as well as through the emergence of new types or forms of employment contract, in order to respond more efficiently to the needs of employees and employers.

2.2 Reform of Romanian legislation on individual employment relationships in order to achieve flexibility

The adoption in 2011 of **Law no. 40/2011** to amend and supplement the Labour Code, has made significantly more flexible labor relations, that are more adapted to labor market dynamics. Thus, there have been introduced some elements for flexible labor relations, among which are the following:

- flexibility of fixed-term employment by prolongation of the individual employment contract for a fixed period for 24 months to 36 months;
- flexibility of reference periods used for averaging working hours;
- drastic tightening of sanctions for those who use illegal labor;
- use the collective redundancy procedure with priority performance criteria to boost competitiveness and increase productivity.

Law no. 52/2011 on activities carried out occasionally by day laborers leads to simplifying the flexibility of employment for laborers, but also reduces illegal employment currently not taxed, given that, in practice, it turned out that undeclared work is manifested by using illegally day laborers.

Also reforming the public pension system, in order to prolong the active life made by Law no. 263/2010 on the unified public pension

system, is based on the gradual increase of the retirement age and of the complete stages, and the minimum contribution period for women and other groups of people, that came to support flexibility of labor relationships.

3. Fixed-term employment - way of flexibility of labor relationships in Romanian companies

Considering the individual employment contract as usually indefinite, the only exception being the individual work contract of limited duration, the indefinite contract is regarded in the contemporary world as an axiom of international law as well as of our domestic law. Only two of the European social partners (European Centre of Employers and Enterprises Providing Public Services and Economic and Social Council) have ruled that the general form of employment relationship is the contract of indefinite duration, the individual fixed-term employment contracts being a characteristic of labor in some sectors, occupations and activities. This recognition is reflected in the Framework Agreement concluded on March 18, 1999, implemented through the Directive no. 99/70/EC (adopted by the European Council on June 28, 1999).

Within Romanian legislation, by tradition, the general form of employment relationship is the contract of indefinite duration. Romania brought about the harmonization of its legislation in the field for fixed-term employment contracts by adopting the Government Emergency Ordinance no. 65/2005, then by Government Emergency Ordinance 55/2006 and recently by Law. 40/2011, to amend and supplement the Labour Code. Prior to the recent changes of the Romanian legislative framework mentioned above, the regulation for fixed-term employment contract of the previous formulation of the Labour Code was quite rigid. Last regulation specified expressly the cases in which fixed-term contracts might be concluded, and extended the maximum duration of subsequent fixed-term employment contracts to 36 months, maximum three successive contracts of this kind could be ended between the same parties.

Statistical analysis of the number of fixed-term contracts concluded nationally between 2005-2013

As can be seen in Figure no.1, within Romania continues to prevail contracts of employment of indefinite duration, so we observe that 80% of total employment was indefinite in 2008. However, starting with 2009, there have been decreases in the number of concluding employment contracts of indefinite duration and has increased the number of fixed-term contracts, the percentage almost doubled between 2005-2010, rising from 18.12% in 2005-30 84% in 2010.

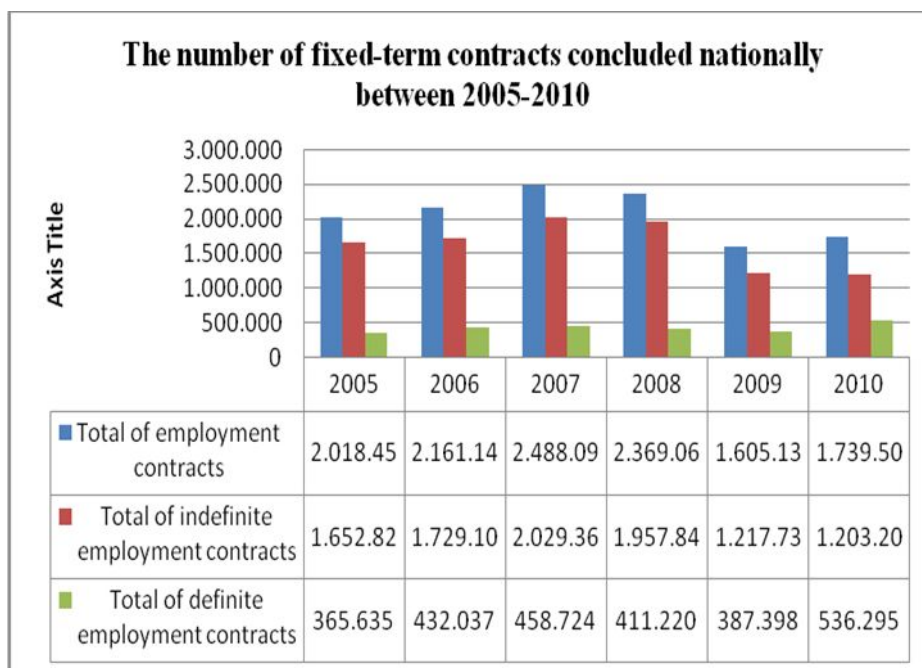


Figure no.1. Evolution of individual employment contracts concluded and registered to labor inspectorates in Romania between 2005-2010
 Source: data development by the author using 'Annual Report of the Labor Inspectorate established under Conventions No. 81 and 129 of the International Labor Organization' for 2006-2010

Of all new contracts concluded and registered to labor inspectorates between May 1st to 26th of 2011, 67.6% were contracted indefinitely while 32.4% were recorded as fixed-term contracts. We observe an increase in the number of fixed-term contracts by 1.56% in 2011 compared with 2010. This is due to the fact that, starting from May of 2011, through amendments to the Labour Code, there has been one through which the duration of an individual contract increased from 24 months to 36 months, regulation valid today.

According to data provided by the Labor Inspectorate, the number of individual employment contracts active at September 30th, 2011 was 6,348,341, of which: 5,982,505 individual contracts of indefinite duration and 365,836 individual fixed-term employment contracts, which means that 5.76% of total contracts were of indefinite duration.

From the centralized database of the Labor Inspection on general register of employees at December 31st, 2012, the number of individual employment active contracts was 5,512,189, of which 5,091,047 were individual indefinite employment contracts and 421,142 were individual employment contracts of limited duration, which means that 7.64% of the total represented definite term contracts.

The recent changes to the Labour Code of 2011, by its exaggerated growth up to 36 months, can be interpreted, the maximum duration for fixed-term employment can lead to abuses by employers, likely to encourage poor work to the detriment of employment of indefinite duration, established internationally. As expressed some Romanian authors (Ignătescu, 2013:107), the exercise of subjective law beyond its legal limits and the following in bad faith of a purpose, other than that for which it is recognized, is the concrete way of expressing the abuse of rights.

4. Conclusions

From the above discussion we can state that our country meets the requirements of the Framework Agreement and Directive no. 1999/70/EC on fixed-term work. As the law stated that the employment relationships apply the principle of good faith, we believe that the employer can be held legally liable if it proves that he hired a person based on a fixed-term contract with contravention of this principle,

precisely into idea of encouraging precarious work, and if the employee does not meet the requirements imposed by this employer, the procedure for termination of the employment relationship be as simple (within the time for which the person was employed). However, if employment is indefinite, it requires compliance of a particular procedures and of the conditions for termination of the employment relationship established by labor law.

We conclude that the states of the European Union supported the flexibility needs of employers and individuals who want to combine personal and professional life. Employers find easier labor force during the growth of temporary activity and benefit from the ease of dismissal while individuals are able to find a job even through definite term contracts, the latter having the advantage of employment security benefit work according to skills / education / experience, not necessarily with the same employer.

When referring to our country, as we have shown in this paper, the practice of fixed-term employment is found in a much lower percentage, the most common practice among employers is hiring indefinitely.

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