

REPARATION OF THE MORAL PREJUDICES IN ROMANIAN LABOR LAW

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Abstract

Recent decisions issued by national labor Courts contain interesting references to the problem of the moral prejudices' reparation (especially suffered by the employee). During the application of Romanian Labor Code - Law no. 53/2003¹, the Courts offered a poor practice regarding the above mentioned problem. Usually, the employees' claims having as object the material reparation of a moral prejudice caused by the employers were rejected. The Courts considered that the claims were not founded, because the employees did not prove the irregularity and / or the existence of a moral prejudice. The present paper is trying to identify the situations (as categories) which confer the employees the right to ask for the moral prejudices' (material) reparation and the procedural mechanism in order to obtain a favorable solution (especially from the point of view of the necessary evidence).

Keywords: labor law, employee, employer, liability, moral prejudice, material reparation, labor court, court case, evidence.

Introduction

The juridical liability of the labor individual contract's parts is one of the most sensitive issues regarding the labor relation. Romanian Labor Code stipulates four categories of labor contract parts' different liability – disciplinary (art. 247 – 252), patrimony (art. 253 – 259), contraventional (art. 260) and criminal (art. 261 – 265). From these categories, only the disciplinary liability is a Romanian Labor Law specific form of liability².

The possibility to determine the occurrence of a moral prejudice for one or the other contractual party exists in case of each form of liability, but the most cases are linked to the disciplinary and patrimony liabilities.

It is important to observe the framework of discrimination regulation (the principle of the equal treatment for all employees and employers) – art. 5 from Romanian Labor Code, Government Ordinance no. 137/2000 on the prevention and punishment of all forms of discrimination³ and Law no. 202/2002 on equal opportunities and treatment for women and men⁴.

Observing these regulations, it is possible, in principle, to identify situations which imply a moral prejudice for one of the labor contract part, caused by the unfulfillment of one or more specific obligations.

The labor individual contract's party who claims the moral prejudice and its material reparation by the other part has to address to the Labor Court in order to obtain a favorable

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¹ Republished in the "Official Gazette of Romania", 1st part, no. 345 of 18 May 2011.

² See I.T. Ștefănescu, *Theoretical and Practical Paper for Labor Law*, Second edition, Universul Juridic Editor, Bucharest, 2012, p. 725; Al. Țiclea, *Paper for Labor Law*, Sixth Edition, Universul Juridic Editor, Bucharest, 2012, p. 777-778.

³ Published in the "Official Gazette of Romania", 1st part, no. 431 of 2 September 2000.

⁴ Republished in the "Official Gazette of Romania", 1st part, no. 150 of 1 March 2007.

decision. The trial will follow the special rules of Labor Jurisdiction (art. 266 – 275 from Labor Code and art. 208 – 216 from Law no. 62/2011 on Social Dialogue⁵).

Art. 266 from the Romanian Labor Code disposes that the object of the labor jurisdiction is to solve labor conflicts concerning the conclusion, execution, amendment, suspension, and termination of individual or, as applicable, collective labor contracts stipulated in the present code, as well as the requests concerning the legal relationships between social partners, set forth under the Labor Code (and Labor legislation).

The cases having as object the (material) reparation of the moral prejudice are included in the labor jurisdiction, because they are often related to the execution or the termination of the individual labor contract.

For both theoreticians and practitioners in Labor Law, it is important to determine the specificity of this kind of cases, at least the one regarding: the conditions for the occurrence of the party's liability and special limits of liability, the determination of the moral prejudice, the prove of the prejudice, the reparation of the prejudice.

1. A) Art. 253 Paragraph (1) from Romanian Labor Code stipulates that the employer indemnifies the employee, pursuant to the norms and principles of contractual civil liability, if the latter has undergone material or moral damage because of the employer's fault during the performance of his job duties or while performing a job-related activity.

In case of employee's patrimony liability, art. 254 Paragraph (2) from Labor Code stipulates that the employees are patrimony liable, according to the norms and principles of contracting civil liability, for the material damages caused to the employer because of their fault and in relation to their work.

The first conclusion is regarding the different solution regarding the status of the two individual labor contract's parties: while the employers are possibly liable for both material and moral prejudice, the employees are liable *only for the material prejudice* caused to their employer⁶.

The multilateral protection of the employees had determined such solution, which represents a limitation of their liability in relation with the employers. It is a positive discrimination, which does imply the following observation: the moral prejudice is possible to be suffered by the employer as a consequence of an employee's action, but *the employer doesn't have the right to claim its reparation*. If the parties of the contract agree to generalize the liability conditions (in order to determine even for the employee to respond for the moral damages caused to the employer), such contractual clause is null, based on the provisions from the art. 38 Labor Code: employees may not waive the rights acknowledged to them by the law; any transaction the aim of which is to waive the rights recognized by the law to employees, or to limit such rights shall be null.

In conclusion, only the employees are able to ask the reparation of the moral prejudice caused by the employer.

B) The regulation of the patrimony liability (art. 253 – 259 from Romanian Labor Code) establishes a particular form of civil contractual liability. The provisions of the Romanian Civil Code – Act no. 287/2009⁷ – are the common law for the patrimony liability. Art. 278 Paragraph 1 from Romanian Labor Code stipulates that the provisions of Code are completed by the other provisions in the labor legislation and, unless inconsistent with the typical labor relationships stipulated in the Code, *the provisions of the civil legislation*.

⁵ Republished in the "Official Gazette of Romania", 1st part, no. 625 of 31 August 2012.

⁶ See I.T. Ștefănescu, *op. cit.*, p. 773.

⁷ Republished in "Official Gazette of Romania", 1st part, no. 505 of 15 July 2011.

So, in the Romanian Civil Code will be founded the specific provisions regarding the employer's liability in case of a moral damage caused to their employees.

Art. 1350 paragraph 1 from Romanian Civil Code stipulates that any person has to fulfill its contractual obligation. When the person, without any excuse, doesn't fulfill his/her obligation, he/she will be responsible for the prejudice caused to the other part of the contract and is obliged to repair that prejudice (paragraph 2).

Art. 1531 paragraph 3 from Romanian Civil Code stipulates that the creditor has the right to ask the reparation of the moral damage, but this damage has to be certain (art. 1532 paragraph 1 Civil Code).

As a general rule, the creditor has to prove that he had suffered a moral prejudice and this prejudice is certain.

2. A. The dynamic of labor relations shows that the most of the cases when the employees are entitled to ask from their employer the (material) reparation of the moral damages are linked to:

- Discrimination, the equal treatment for all employees and employers, the equal opportunities and treatment for women and men regarding the execution of the individual labor contract;

- Termination of the individual labor contract, especially in case of dismissal;

- Labor health and safety;

- Disciplinary liability, when the employer applies a disciplinary sanction to the employee.

B. As a specific rule in the labor court procedure, art. 272 from the Romanian Labor Code stipulates that the employer shall be responsible for providing evidence in labor conflicts, being obliged to submit evidence in his defense by the first day of trial.

By exception, when the employee is claiming for the reparation of the moral prejudice, the above mentioned rule doesn't apply. The employee has the procedural obligation to prove the existence of the entire employer's liability conditions:

- Existence and the nature of the prejudice; regarding the moral prejudice, this kind of damage

- Fact that the prejudice is certain;

- Fact that the prejudice is the direct consequence of an unjustified or culpable action of the employer;

- Estimate value of the material reparation and its determination.

C. There is no legal framework to quantify the material value of moral prejudice's reparation. The judge has the freedom to appreciate the amount that expresses the reparation value, independent of the amount asked by the employee. It is possible to have a huge difference between the amount claimed by the employee (by example, 100,000 Euros) and the amount accepted by the Court (1,000 Euros). This fact doesn't transform the employee's claim in an abusive one, because:

- the employee has the freedom to estimate the value of the moral prejudice (and is important to notice that the court cases having as object aspects of the labor relations are free of stamp tax);

- the courts are free to appreciate the value of the moral damage's material reparation, when the conditions of the contractual liability are fulfilled.

3. In the situations mentioned above, at the 2nd point of this paper, regarding the cases when the employees are entitled to ask from their employer the (material) reparation of the moral damages, the moral prejudice is determined by the injury caused to the person (to the employee).

This negative consequence which is the object of the moral prejudice is regarding the harm of the personal rights of the person. The object of these rights is regarding the life of the

person, its health, corporal integrity, honor, dignity, social and/or professional status of the employee.

The moral prejudice could represent the death of the employee (as a result of an accident related to his work or activity), the injury or the harm suffered by the employee, the decrease of the professional or social reputation of the employee, the injury of another personal employee's attribute which define the human condition⁸.

In case of death of the employee, its successors could claim the material reparation of the moral damage they had suffered. Because of the death of the employee, its successors lose an important material and moral support. They are obliged to modify their life conditions. The successors have the right to obtain the full cover of their prejudice. This right is obtained directly by them (as assurance, by example), or by the effect of the inheritance. In case of inheritance, the rights of the victim are transferred to the successors. These rights were born between the moment of the accident and the one the death occurred. The right of moral prejudice's reparation is born directly in the successors' patrimonies when they prove that this kind of prejudice was determined by the loss of the person who had provided them material and moral support.

In case of the employee physical integrity's or health's harm, the prejudice could be material and moral also. In moral form, the prejudice consists in losing or decreasing the work capacity, or losing or decreasing the work benefits (wage and other form of remuneration).

4. Once the moral prejudice is born, the way it should be repaired is, as a rule, also moral. But, the prejudice's victim has also the right to estimate the value of the moral prejudice. So, there is no any incompatibility between the forms of the reparation. The moral prejudice's victim has the possibility to choose between the two forms of reparation. Of course, the interest of the victim – the employee – is to determine a higher material value of his moral damage, accepted by the Court.

Anyway, the author of the moral prejudice (the employer) and the victim of the prejudice (the employee) could agree an amiable solution having as object the amount's determination which they evaluated the prejudice. In this case, the agreement is legal and the provisions of art. 38 from the Romanian Labor Code are observed.

When the prejudice is covered by an assurance, the victim has the right to claim any difference between the amounts he considers the prejudice is valued and the one he received through assurance.

5. One recent decision of a Court case offers new interesting elements regarding the way of perception by the national Courts of the matter we are analyzing.

In February 2008, the parties had signed the individual labor contract. The employee had occupied the position of TV presenter at a local specialized TV network.

The employer had the initiative of terminating the individual labor contract. The employer had issued the individual dismissal decision (its first decision) in April 2009. The employee asked the Court (Bucharest Tribunal, Section no VIII, Labor and Social Insurance Conflicts) to dispose the cancellation of the decision and to oblige the employer of reinstatement of the employee in his former workplace.

We mention that the Labor Code – in Section no. 7 (“Control of and sanctions for unlawful dismissals”) from the 5th Chapter (“Termination of the individual labor contract”) – stipulates the consequences of the dismissal decision's cancellation.

Art. 78: “The dismissal ordered in non-compliance with the procedure stipulated by the law is struck by absolute nullity”.

⁸ See M.N. Costin, C.M. Costin, *Civil Law Dictionary from A to Z*, 2nd Edition, Hamangiu Editor, Bucharest, 2007, p. 771.

Art. 79: “In the event of a labor conflict, an employer may not resort, before a court of law, to other de facto or de jure reasons than the ones stated in the dismissal decision”.

Art. 80:

- Paragraph (1): “If the dismissal has not been based on good grounds or has been unlawful, the court shall order its cancellation and force the employer to pay a compensation equal to the indexed, increased and updated wages and the other rights the employee would have otherwise benefited from”.

- Paragraph (2): “At the employee's request, the court having ordered the cancellation of the dismissal shall restore the parties to the status existing before the issuance of the dismissal document”;

- Paragraph (3): “In case the employee does not request the reinstatement in the situation previous to the issuance of the dismissal document, the individual labor contract shall be rightfully terminated at the date when the judgment remains final and irrevocable”.

By the decision issued by the Court in April 2010, the employee's claim was partially accepted. The Court decided that the employee has to be reinstatement in the former workplace and the employer to pay the compensation, but it was rejected the claim having object the moral prejudice (the employee had asked for an amount of 10,000 euros as material reparation of the moral prejudice caused by the unilateral act of dismissal).

After the appeal issued by the employer was rejected by the Bucharest Court of Appeal (in February 2011), the employer had sent an address (issued in July 2011) to the employee inviting him to come at work starting with the date of 19th of July 2011.

But, the employer did not modify the organizational structure of its position in order to reestablish the position occupied by the former employee. The reinstatement was only formal, because at the beginning of August 2011, the employer had issued the second individual dismissal decision (at 3rd of August 2011).

This second time, the employee asked the Court to dispose the cancellation of the second individual dismissal decision and to oblige the employer to pay 15,000 - euros (in lei equivalent, at the National Bank of Romania's official exchange rate in the day of the effective payment of the amount).

The Court – Bucharest Tribunal, Section no VIII, Labor and Social Insurances Conflicts – had accepted the claim of the employee and had obliged the employer to pay a “record” amount of 3,000 - euros as material reparation of the moral prejudice caused by the employer through its second individual dismissal decision⁹.

Regarding the moral prejudice, the Court had mentioned that based on art. 253 Paragraph (1) from Labor Code, the employer is obliged to repair the material and/or moral prejudice caused to its employee because its fault.

The Court had retained that an individual dismissal ordered by the employer in non-compliance with the conditions and procedure stipulated by the law is able to determine by itself to the employee a moral prejudice. This moral prejudice consists in:

- Losing the work place occupied by the person based on an individual labor contract with unlimited period of execution is able to affect the employee's stability provisions; it is well-known that the labor is done by the employee in order to cover the living necessities;

- Lock of an occupation, of a workplace based on an individual labor contract, in a society which promotes the active living and obtaining of the living means by work is able to induce to the dismissed person a social inferiority feeling and an image prejudice in relation with the other members of society.

⁹ Bucharest Tribunal, Section no VIII – Labor and Social Insurances Conflicts, Decision no 9250 of 2nd November 2012.

Such moral damage is emphasized by the particular fact that the employee, as a consequence of a previous court case in relation with the same employer, had obtained a favorable decision which was not respected by the employer.

The moral prejudice is the direct consequence of the employer's unlawful and guilty actions, consisting in the unfulfillment of the contractual obligations. The employer's guilt in the matter of contractual liability is a relative presumption and the employer did not invoke any cause in order to exclude or to reduce the guilt. Furthermore, such manner of action proves that the employer had acted with direct intention, which represents the most serious form of guilt. The employer had wondered and accepted the consequences of its action, its will being to not allow the employee to work.

Conclusion

The legal framework of the reparation of the moral prejudice in the Romanian Labor Law is determined by two categories of legal provisions: the one stipulated in the Labor Code (art. 263 Paragraph 1) and the second stipulated in the Civil Code (art. 1350, art. 1531 Paragraph 3).

Most of the cases when the employees are entitled to ask from their employer the (material) reparation of the moral damages are linked to discrimination, the equal treatment for all employees and employers, the equal opportunities and treatment for women and men regarding the execution of the individual labor contract; termination of the individual labor contract, especially in case of dismissal; labor health and safety; disciplinary liability, when the employer applies a disciplinary sanction to the employee.

Once the moral prejudice is born, the way it should be repair is, as a rule, also moral. But, the prejudice's victim has also the right to estimate the value of the moral prejudice. There is no any incompatibility between the forms of the reparation. The moral prejudice's victim has the possibility to choose between the two forms of reparation.

If the creditor and the debtor did not agree about the way or the amount of the reparation, the Court is able to verify the fulfillment of liability conditions and the amount of reparation.

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