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THE LEGAL REGIME REGARDING THE MANNER OF INITIATING AND SETTLING COLLECTIVE LABOUR CONFLICTS

ABSTRACT

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CONCEPTUAL MILESTONES OF THE RESEARCH

Topicality and importance of the topic. It is universally recognised that the market economy requires the existence of two distinct entities, two social partners: the employer (employers' organisations), on the one hand, representing capital, and the employees, whether or not they are members of trade unions, on the other, representing labour. They are two inseparable entities without which no labour process or organised production activity is conceivable. The relationship between these two social partners is, of course, one of collaboration, cooperation and understanding, with a common goal: to make work as profitable and efficient as possible, with increasing benefits. Each of the social partners benefits from such activity: the employer grows and prospers, and the employees benefit from job stability and at the same time earn an income that ensures their livelihood.

There are also exceptional situations where there are certain disagreements, differences, disputes or conflicts between the two social partners. In principle, the cause of a collective labour dispute is that, while the employer demands more and more work at minimum labour costs, the employees want as much income as possible for the same physical or intellectual effort and as good working conditions as possible. But not every disagreement between the social partners is a labour dispute in the strictly legal sense of the term. A collective labour dispute only arises when one of the parties (the employer or the trade union) uses a means of pressure, warns the other party of the existence of the prerequisites for a dispute or announces the existence of a labour dispute.

The subject of collective labour disputes is a productive area of legal analysis, of permanent theoretical and practical interest, an inexhaustible source of innovative and useful solutions for the development of labour law in line with the aspirations of improving employees' working conditions and the effective use of company management. By systematically addressing the issue of collective labour disputes, I have tried to respond to these imperatives, namely to include - in a conceptual formulation and a personalised vision - the main procedures (modalities) for settling collective labour disputes, but also the way in which legislation and interpretation of the law are subsumed under the principle of fair labour relations.

We argue that a comprehensive analysis of the institution of collective labour disputes can only be carried out through the concept of collective bargaining - as an inherent element of social partnership, and that such a statement also has a normative basis, since, according to the provisions of Art. 19 letter b) of the *Labour Code of the Republic of Moldova (hereafter - CM RM),* participation in the settlement of collective labour disputes is one of the forms of negotiation within the social partnership, a partnership that expresses the tangible way of achieving economic and social democracy, assumable within the sphere of political democracy. Collective bargaining is therefore an instrument for resolving crisis situations in the social sphere, given the lack of mechanisms for conciliation and consensus-building between the parties involved in the dialogue. There is now an increasing need to study social partnership relations, the factors that determine social dialogue, and the scope for developing and exploiting the potential of social partnership in the context of the current socio-economic reforms.

In a market economy, collective bargaining becomes the most appropriate way of cooperation between labour and capital, in this sense, the local doctrinaires Tudor Negru and Cătălina Scorțescu are of the opinion that social partnership relations between employees and employers are based on economic, social and

political factors, collective bargaining in the labour sphere going beyond the conventional framework of the conclusion of collective labour contracts/collective agreements and stepping inside social life, in the field of legislation, administration, in order to harmonize labour and capital. Indeed, collective bargaining goes beyond the field of legal labour relations and can be found in the field of both legislation and administration. The negative impact of collective labour disputes on the development of society has required certain political changes in relation to state intervention in the regulation of relations between labour and capital, with the public authorities enshrining the right of employees to join trade unions and stimulating contractual interactions between employers and employee representatives.

The present study highlights the legal significance of collective labour disputes, analysing their nature, their characteristic features, highlighting the shortcomings and legislative gaps in this field, in order to finally produce a practical working tool, easy to use by social law specialists-beneficiaries and social partners.

We also carried out a comprehensive analysis of the main aspects of strikes, from the types of strikes to their organisation and conduct, the legal nature of the right to strike and the liability of strikers, the procedure for initiating and ending strikes, etc. In this context, we revealed doctrinal opinions, sometimes divergent, accompanied by international legislative practice and discussed controversial issues such as the possibility of restricting the right to strike, the legal status of non-striking employees and the forms of legal liability. In the process of this study, the most recent and valuable doctrinal expressions in the field of labour law theory and practice in the Republic of Moldova, Romania, France, etc. were thoroughly examined.

Following the analysis of the scientific research on collective labour disputes, we found that the subject has not been the subject of separate investigations in the local doctrine, being treated in a general way in the works of specialists in the field of labour law. Among the local authors who have dealt with the subject researched in this paper, their opinions representing starting points for the present study, the following can be mentioned: Nicolai Romandaș, Nicolae Sadovei, Teodor Negru, Boris Sosna, Cătălina Scorțescu, Tudor Capșa, Eduard Boișteanu, Evlampie Donos and others.

In Romanian doctrine, the issue of collective labour conflicts was elucidated in the works of the following scholars: Al. Țiclea, S. Ghimpu, V. Dorneanu, N. Voiculescu, Al. Athanasiu, I.T. Ștefănescu, Ș. Beligrădeanu, C-tin Tufan, M. Volonciu, R. Dimitriu, Al. Cornescu, C-tin Elisei and others.

As regards the degree of investigation of the problem of the settlement of collective labour disputes in French doctrine, this legal institution has been treated fundamentally in the works of the following scholars: M. Planiol, F. Moissenet, R. Jay, Y. Guyot, J. Mazeaud, Ph. Malaurie and others.

In our investigations, we used as a legal point of reference the Labour Code of the Republic of Moldova, the Labour Code of Romania, the old Romanian Law no. 62/2011 on Social Dialogue (VLRDS), the new Romanian Law no. 367/2022 on Social Dialogue (NLRDS) - amended by GEO no. 42/24 May 2023, OIM Conventions and Recommendations, as well as EU legislation. At the same time, we analysed laws regulating the legal institution of collective labour conflicts in other countries, as well as other normative acts that were relevant to the theme of the thesis.

The aim of the thesis is to carry out a multidisciplinary study of the legal regime concerning the initiation and settlement of collective labour disputes, in order to detect legal imperfections that may possibly hinder the fair and operative settlement of these disputes, and to formulate solutions to remove them.

The research objectives - lie in: (I) - analysis of the opinions of local and foreign authors on the issues under research; (II) - analysis of the principles relevant to the triggering and resolution of collective labour disputes; (III) - a synthesis of case law, including constitutional case law, on this subject; (IV) - critical and multi-aspectual analysis of the legal procedure for initiating and settling collective labour disputes; (V) - highlighting the criteria for classifying collective labour disputes and strikes and highlighting their importance; (VI) - identifying the legal inadequacies that occur in the various types of collective labour disputes and strikes.

Research hypothesis - The research has attempted to answer the following question: *"what is the legal regime regarding the initiation and settlement of collective labour disputes"*, which allowed the formulation of the basic hypothesis of the research: This legal regime regarding the initiation and settlement of collective labour disputes in the Republic of Moldova is not a detailed legal regulation - on the one hand, and has many regulatory shortcomings and contradictions - on the other hand, which we have managed to turn into research opportunities in this thesis. In order to verify this hypothesis, we have resorted to bibliographical sources in this sphere, we have researched the legal framework on collective labour conflicts, with priority to the Labour Codes of the RM and Romania, as well as the Romanian Laws on Social Dialogue no. 62/2011 (VLRDS) and no. 367/2022 (NLRDS) - amended by OUG (Government Emergency Ordinance) no. 42/24 May 2023. As a result of this study, the pluses and minuses of the legal regime regarding the way collective labour disputes are triggered and settled were highlighted, legislative gaps were highlighted and recommendations and proposals for improving the existing legislative framework were formulated.

The scientific novelty of the results obtained - consists in the formulation of certain conclusions of a theoretical and practical nature and the submission of proposals *for lege ferenda*. At the same time, the work constitutes a multidisciplinary investigation, in which for the first time a broad investigation of the institution of collective labour disputes has been carried out. The legal regime for the initiation and conduct of strikes has also been analysed. The novelties are reflected in the following fundamental aspects: (I) - a systematization of doctrinal views on the genesis and evolution of the concept of the legal institution of collective labour disputes in different legal systems and at different historical stages of development; (II) - on the basis of the legal regulations on the subject, the concept of Moldovan labour law on the nature and legal significance of collective labour disputes was deduced and argued; (III) - comparative law aspects of the legal regulation of the procedure for the settlement of collective labour disputes have been invoked; (IV) - as a result of the investigations carried out, the existing shortcomings in the legal framework for the regulation of collective labour disputes and the legal ways of settling them have been highlighted and, at the same time, proposals and recommendations have been formulated with a view to bringing the legislation into line with the theoretical and practical solutions developed by doctrine and case law.

The scientific problem solved - consists in the clarification of the peculiarities of triggering and settling collective labour disputes through the prism of international instruments, the legislation of the Republic of Moldova and Romania, which contributed to highlighting the legislative gaps existing in the Moldovan and Romanian regulatory framework, in order to improve and bring them in line with current international standards in the field.

Presentation of the research methodology - the complex nature of the study determined the great diversity of methods, procedures and techniques used. The methodological support of scientific research comprises a set of theories and concepts specific to different areas of law, which are finally materialised in the

content of this work by means of analysis methods: (a) - *general methods* (historical, logical, systematic, analysis, synthesis, induction, deduction, generalisation, abstraction, modelling, analogy); (b) - *sociological methods* (systemic analysis method, comparative method); (c) - *legal methods* (formal-legal method, comparative legal method); (d) - *statistical methods* (statistical grouping method, correlation method).

The theoretical significance of the present thesis and its applicative value - are generated first of all by the social-legal importance of the institution of collective labour disputes for the establishment of labour relations, the most relevant opinions and doctrinal concepts being synthesized in this study.

The aim of the thesis is to carry out a scientific, pragmatic, comparative research on the main legal issues concerning the way of settling collective labour disputes, as well as those concerning the legal procedure for initiating and carrying out strikes. At the same time, this work will certainly serve as a basis for research for other specialists in the field of labour law and beyond.

Implementation of the scientific results - The results of the research, together with proposals for a law, have been communicated to the Parliament of the Republic of Moldova and to the Ministry of Justice and will be examined and used in the further process of legislation and standardisation of judicial practice. By Letter no. 03/6946 of 21 September 2020, the Ministry of Justice of the Republic of Moldova communicated that it has taken note of the submitted proposals and will further examine them in the procedure of drafting and promoting draft normative acts with similar subject matter. At the same time, the Ministry of Justice appreciates the value of the submitted proposals, especially in the context of modernization of labour relations and alignment of national legislation with the European Union Community normative acts. The results of the research and the theoretical conclusions formulated can be used in the process of improvement of legislation, drafting and amendment of normative acts, because the shortcomings occurred in collective bargaining can be overcome only by theoretical reconceptualization of the legal institution of collective labour disputes. The results of the research may also be useful for the improvement of curricula at the first cycle of undergraduate and second cycle of master's level, for the development of courses and textbooks in labour law.

Approval of the thesis results. The doctoral thesis was presented and examined at the meeting of 19.11.2019 of the Legal Research Centre of the Institute for Legal, Political and Sociological Research of the A.S.M., as well as at the meeting of 05.10.2021 of the Scientific Profile Seminar of the Institute for Legal, Political and Sociological Research, during which the basic scientific theses of the thesis were approved.

Publications on the thesis topic. The results of the research have been presented to the academic environment and the general public in a number of 21 scientific publications/articles, made in scientific journals and in the form of communications/presentations made at national and international conferences.

Volume and structure of the thesis. The research done in the PhD thesis is divided into Annotation, List of Abbreviations, Introduction, 4 Chapters, Conclusions and Recommendations, Bibliography with references to 363 sources, 5 attachments and author CV, having a volume - basic text of 176 pages and a total volume of 216 pages.

Keywords: trade unions, employers' organisations, collective labour conflicts, collective bargaining, conflicts of interest/ of rights, strike, conciliation, mediation, arbitration, Labour Courts.

THESIS CONTENT

Based on the research aim and objectives, the thesis has been structured as follows: introduction; an introductory chapter, basic sections - 3 chapters, general conclusions and recommendations, bibliography and 5 attachments.

The introduction includes the rationale and justification of the chosen topic, the relevance and importance of the problem addressed, the formulation of the purpose and objectives of the thesis, the research hypothesis, the specification of the scientific methods used in the research process, the highlighting of the degree of scientific novelty of the results obtained, the argumentation of the theoretical significance and applicative value of the work, as well as the approval of the research results.

Chapter 1. Analysis of the scientific situation in the field of collective labour dispute resolution - is devoted to the analysis of the situation in the field of collective labour dispute resolution.

Thus, on the one hand, we have tried to include in a conceptual formulation and in a personalized vision, the main procedures (modalities) of settling collective labour disputes, as well as the way in which legislation and interpretation of the law subsume the principle of fair labour relations, and on the other hand, we have supported the idea that the exhaustive analysis of the institution of collective labour disputes can be carried out only through the prism of the concept of collective bargaining - as an inherent element of social partnership.

And such a research constitutes an innovative approach, both for the local and international science and doctrine, as there is a void of works and researches that would directly address the given subject, using the research technique proposed by the author.

In Chapter 1, the opinions of local and foreign scholars who have researched the legal institution of collective labour disputes are subjected to a thorough analysis. The historical development of the concept of collective labour disputes is also investigated, highlighting the views on the institution at each evolutionary stage. Thus, it was concluded that the analysis of the institution of collective labour disputes can also be carried out through the prism of the lack or failure of collective bargaining, participation in the settlement of collective labour disputes expressing a concrete way of achieving economic and social democracy, part of political democracy.

The link between collective bargaining and collective labour disputes is also highlighted by the fact that the legal institution in question is governed by the principle of the priority of conciliation methods and procedures, which justifies the coordination of the interests of employees and employers in matters relating to the contractual regulation of labour relations and the application of labour law.

The analysis of the situation in the field of research is carried out from the perspective of the component elements of the research problem, and is structured into 3 levels of research:

- The first level hovers over the general topic of reflecting the concept of collective labour disputes through the prism of collective bargaining mechanism;

- The second level focuses on the issue of the institution of collective labour disputes through the prism of doctrine, legislation and judicial practice of the Republic of Moldova and Romania;

- The third level is an external concentric one, including the field of collective labour conflicts reflected in the doctrine, legislation and jurisprudence of foreign countries.

Section 1.1, entitled *"Reflecting the concept of collective labour conflicts through the prism of the collective bargaining mechanism"*, introduces the subject of collective bargaining mechanism, making a historical incursion into the emergence and development of this phenomenon as a research object for legal science, going through the experience accumulated worldwide, originating in the 19th century, with its initial epicentre in England.

In this historical context we see how the emergence, evolution and development of the institution of collective bargaining has been influenced by three major factors, namely economic, social and political, which have been and still are the basis of collective bargaining relations between employees and employers.

Section 1.2 is entitled *"Analysis of the institution of collective labour disputes in the light of the doctrine, legislation and judicial practice of the Republic of Moldova and Romania"* and it continues the analysis of the situation in the second structural level of the research topic, focusing on the specific field of parallel examination of the literature, normative acts and case law existing in the Republic of Moldova and Romania. The research subjects are:

- chronologically, several Romanian normative acts, from the years 1902, 1920, 1929, 1940, 1941, 1950, 1972, then focusing on the legislation after 1989, namely: *Law no. 15/1991 on the settlement of collective labour disputes*, Law no. 168/1999 on the settlement of labour disputes, *Law no. 62/2011 on social dialogue, Law no.367/2022, on social dialogue,* amended by OUG (Government Emergency Ordinance) no. 42/ 24.05.2023 (for the amendment and completion of Law no. 367 /2022), as well as on the first Moldovan law in the field of research, Law no. 1298-XII/1993 on the settlement of collective labour disputes, highlighting the pluses and minuses of each, but also the potential complementarity of the two legal systems regarding the institution of collective labour disputes;

- doctrinal works by the authors N. Romandaș, E. Boișteanu, T. Negru, C. Scorțescu, M. Gheorghe, C. Tufan, V. Florescu, M.L. Belu Magdo;

- negotiation styles and methods that can lead to avoiding or ending collective labour conflicts.

Section 1.3, entitled *"The field of collective labour disputes reflected in the doctrine, legislation and case law of foreign countries"*, examines this field in detail through the doctrine, legislation and case law of countries such as Italy, England, Germany and China.

Thus, at present, a complete analysis of the institution of collective labour disputes can only be made through the filter of the concept of collective bargaining, participation in the settlement of collective labour disputes being a form of belated correction of the refusal of collective bargaining. Moreover, the intimate connection between the institution of collective bargaining and the field of collective labour disputes can also be seen from the fact that the legal institution in question is subject *to the principle of priority of conciliation methods and procedures*, which justifies the coordination of the interests of employees and employers in matters relating to the contractual regulation of social labour relations and the application of labour law.

Thus, conciliation procedures are applied in particular for the settlement of collective labour disputes. Therefore, according to Article 358 - CM RM, when conditions for a collective labour dispute arise in an establishment, the employees' representatives have the right to submit their claims to the employer in writing, stating their reasons, including actual reports on the normative provisions in force, which are not respected.

And the employer is legally obliged to receive them, register them and respond in writing to the claimants within 5 working days of their registration. On the basis of this principle: (a) - neither the public administration bodies can adopt binding decisions for the parties involved in the conflict; (b) - nor the judicial courts are involved in their resolution, as they are not conflicts of rights, but of interests (*of establishing working conditions*). The need to regulate collective labour disputes has emerged from the simple truth that the increasing duration of collective disputes, especially strikes, means that - in the end - both winners and losers are exhausted and the national economy suffers profoundly.

Looking at *international instruments in the field of collective labour disputes*, we note that *they are general in nature and reflect the different systems for resolving labour disputes in different countries.* At the same time, the right to strike is not expressly guaranteed by the OIM Conventions (International Labour Organisation Conventions), but the practice of their application has shown that it is covered by the provisions of the Convention guaranteeing the right of these organisations to decide on their own activities, as well as by the fact that the right to strike is an integral consequence of both trade union freedom and the right to collective bargaining.

There is an EU legislative vacuum regarding the scope of collective dispute resolution, as no EU legal instrument expressly regulates the means of resolving collective labour disputes, with no reference to the right of workers to strike or the right of employers to *lock-out*. This can be explained by the fact that, since the entry into force of the Lisbon Treaty, the following issues have not been included in the EU's competence: pay, the right of association of employees and employers, the right to strike and the right to *lock-out*. They must therefore be regulated at the level of each Member State by national legislation.

With regard to the regulatory framework in the Republic of Moldova, the scope of collective dispute resolution is regulated by Chapter III of Title XII of the CM of the Republic of Moldova, which: (1) - transposes the requirements of the market economy into the framework of social partnership; (2) - takes into account the impact of the principles of the Revised European Social Charter; (3) - complies with the relevant OIM Conventions on freedom of association and protection of the right to organise, as well as those on the application of the principles of collective organisation and collective bargaining.

As regards the evolution of the notion of collective labour conflict in the Romanian legislation, compared to the old legal framework which made a legal distinction between the notions of conflicts of interests and rights, the NLRDS uses the concepts of collective and individual labour disputes, while the new CMR (republished in 2011) only specifies that *"labour disputes are understood as disputes between employees and employers concerning interests of an economic, professional or social nature or rights resulting from the conduct of employment relations"*. From 25 December 2022, the NLRDS *defines collective labour disputes as those between employees/workers, represented by trade unions or elected representatives, and employers/ employers' organisations, which have as their object:* (a) - the commencement, conduct or conclusion of negotiations on collective labour contracts or agreements; (b) - the collective non-granting of individual rights provided for in the applicable collective labour contracts, where a dispute to this effect has been commenced in court and has not been concluded within a maximum of 45 days, calculated from the date of the first court term, for: *(i)*- minimum 10 employees/workers, if the employer employs minimum 21 employees and maximum 99 employees; *(ii)*- minimum 10% of employees/workers, if the employer employs minimum 100 employees and maximum 299 employees; *(iii)*- minimum 30 employees/workers, if the employer employs minimum 300

employees. Although the current legislation no longer makes an express delimitation, we can still note the difference between disputes of interest and disputes of rights, for disputes of interest the provisions of the NLRDS are applicable, according to which collective labour disputes can be triggered to defend collective economic, professional or social interests.

We thus conclude that the notion of disputes of interest in the old regulation (Law no. 168/1999 - repealed) by the NLRDS has now been *changed to the notion of collective labour disputes*, and *disputes of rights remain those individual labour disputes* referred to by the VLRDS (Law no. 62/2011, repealed).

Chapter 2. Analytical approach to the legal institution of collective labour disputes - is a basic section of the research carried out and is entirely devoted to the *analytical approach to the legal institution of collective labour disputes*, being a preparatory chapter, intended to introduce the reader to the subject of *collective labour disputes*, as well as to familiarise him/her with the issues and doctrinal discussions.

Chapter 2 investigates and analyses the opinions of the doctrinal scholars on the concept, legal nature and meaning of collective labour disputes, and a three-tier analysis is used in this chapter as well, namely:

- Section 2.1 is devoted to *"Analysis of the concept and specific features of collective labour disputes"*,

- Section 2.2 *"outlines and elucidates the cases in which collective labour disputes may arise"*,

- and Section 2.3 is devoted to *'Researching the legal status of the parties to collective labour disputes'*.

Thus, it was revealed that the Moldovan legal doctrine has fully adopted the legal definition of the concept of collective labour disputes (included in art. 357, paragraph 1 of the CM of the Republic of Moldova), considering it to be complete, which is why it has not made any clarification, addition or supplement to this legal text, and from this legal definition, we draw the following conclusions:

(1) - The Moldovan legislator has reconsidered the concept that, as a legal institution, collective labour disputes were and - further on - remain "genetically" connected to the CCM (Collective Bargaining Agreement) and collective agreements;

(2) - The legislator is of the opinion that collective labour disputes may be triggered with regard to:

(a) - determination and change of working conditions (including pay);

(b) - the conduct of collective bargaining, the conclusion, amendment and enforcement of collective agreements;

(c) - refusal of the employer to take into account the position of the employees' representatives in the process of adoption, within the establishment, of legal acts containing labour law rules;

(d) - the emergence of differences between the social partners at different levels concerning the economic, social, professional and cultural interests of employees;

(3) - We are of the opinion that: collective labour disputes arising in connection with the implementation of the CCM (Collective Bargaining Agreement) and collective agreements have the characteristics of disputes of rights and will therefore be settled directly by the courts.

We therefore reject the opinion of the Moldovan legislator regarding the proposed ways of resolving them, namely: submitting claims, initiating collective labour disputes, following conciliation procedures, and declaring a strike.

However, the legislator should also include in the scope of collective labour disputes arising between the management of the establishment and the employees of a sub-unit/department of the establishment, as well as between the management of the establishment and the employees exercising the same trade/profession in that establishment.

We also support the position of the authors Nicolai Romandaș and Eduard Boișteanu, who have illustrated the following features of collective labour disputes:

(i) - the labour dispute is related to one of the issues clearly highlighted in Article 357 of the CM RM or to the economic, social, professional and cultural interests of the employees, and these derive from the fundamental rights of the employees, namely the right to: work, wages, rest, union membership, appropriate working conditions, etc.

And the legal provisions, taken as such by the doctrine, show that general demands, such as reducing inflation and unemployment, cannot be the subject of a collective labour dispute;

(ii) - the labour dispute arises from the labour relations between the establishment and its employees, or the majority of its employees.

(iii) In our view, collective labour disputes are characterised by the following features:

a) - *it concerns the economic and social professional interests of the employees*, these interests being the effect of the constitutional rights of the employees, this first feature also showing that a collective labour dispute can never have political interests.

b) - *is considered to arise from the legal employment relationship between the establishment/employer (on the one hand) and its employees or the majority of employees (on the other)*. Their collective nature is therefore generated by the fact that one of its parties is the collective body of employees. In addition, the parties to the dispute are the social partners between whom collective bargaining takes place and the collective agreement is concluded, i.e. the employer or the employers' association (for levels above the unit level) on the one hand, and the employees, represented by the representative trade union or the employees' representatives elected by secret vote, on the other;

c) - *it cannot be triggered in connection with the individual employment contract*, and if the employer violates the employees' rights included in the individual employment contracts, a labour dispute may be triggered by several employees against their employer, but it cannot be qualified as collective, even if several employees are involved;

d) - *it can be triggered at the levels at which it is possible to negotiate and conclude acts of social partnership*, i.e. at unit, territorial, branch or national level - in the case of the Republic of Moldova, and respectively at unit, group of units, collective bargaining sectors or national level - in the case of Romania;

e) - *is directly subject to the principle of legality*, i.e. the settlement of a collective labour dispute is possible, but only under the conditions of the law and according to the legal procedure.

Romanian law uses the terminology of labour disputes (CMR and NLRDS), respectively collective and individual (NLRDS).

Based also on the provisions of the (repealed) VLRDS, according to which individual labour disputes are settled by the courts, we conclude that they are in fact labour disputes.

It should also be noted that some legal acts operated with the concept of "*labour litigation*", such as the Romanian Law no. 188/1999 *on the Status of Civil Servants* (repealed), which used the concept to make known disputes between civil servants and employing public authorities/institutions.

We therefore support the opinion of the author Al. Țiclea, according to whom the notions of "*labour disputes*" and "*labour litigation*" are synonymous, both being disagreements arising between the providers of work (workers) and the beneficiaries of work (employers) and to be settled by the competent courts.

In the NLRDS, *a collective labour dispute* is defined as a dispute between employees/workers, represented by trade unions or elected representatives, and employers/employers' organisations, which has as its object:

(a) - the commencement, conduct or conclusion of negotiations concerning the CCM or collective labour agreements;

(b) - the failure to grant, on a collective basis, individual rights provided for in the applicable CCM, where a dispute to this effect has been commenced in court and has not been concluded within a maximum of 45 days, calculated from the date of the first court date, for: *(i)* - a minimum of 10 employees/workers, if the employer employs a minimum of 21 employees and a maximum of 99 employees; *(ii)* - a minimum of 10% of employees/workers, if the employer employs a minimum of 100 employees and a maximum of 299 employees; *(iii)* a minimum of 30 employees/workers, if the employer employs a minimum of 300 employees. Such disputes may only be initiated in order to defend collective interests of an economic, professional or social nature.

We conclude that the definition of industrial disputes has been transformed in the sense that the notions of disputes of rights and disputes of interest have been repealed by the VLRDS and those of collective labour disputes and individual labour disputes have been introduced by the NLRDS.

And, in principle, the Romanian Labour Code only regulates individual labour disputes, while the NLRDS only regulates collective labour disputes.

We also agree with the position of the researchers Eufemia Vieriu and Dumitru Vieriu, who pointed out that, on the whole, collective labour disputes coincide with disputes of interest and individual labour disputes coincide with disputes of rights, because the same dispute situations are included in both newly introduced concepts, dispute situations which were also included in the previous concepts of disputes of interest and disputes of rights.

Although the main interest seems to have been to change the order of words in the sentence, the meaning of the words has been retained.

Chapter 3. The regulation of collective labour disputes and their settlement through the legislation of the Republic of Moldova and Romania - the problems of the procedures (modalities) of settling collective labour disputes are analysed, the research being also three-dimensional, as follows:

- in Section 3.1 a *"Theoretical-practical analysis on the modalities of triggering collective labour disputes"* is carried out,

- in Section 3.2, *"The conciliation procedure as a method of settling collective labour disputes amicably"* is explained,

- and, in terms of content, Section 3.3 is devoted to research into *"Other ways of settling collective labour disputes"*.

Thus, we have concluded that when the conditions for a collective labour dispute are met in an establishment, then the representative trade unions or elected employee representatives (if there is no such union in the establishment) have the right to submit in writing to the employer their demands concerning:

(i) - the establishment of working conditions or the improvement of existing working conditions;

(ii) - collective bargaining;

(iii) - the conclusion, amendment and enforcement of the CCM. On the basis of the provisions of Art. 3 and 5 of the CM RM, the employer is obliged to receive claims, register them, respond in writing to the employee representatives within 5 working days from the date of registration.

At the stage of submission of claims, there is not yet a collective labour dispute initiated, as it results from the rules of Art. 357, para. 2 and art. 358 of the CM RM. The collective labour dispute is only considered to be triggered when the management of the establishment (the employer) refuses to respond to all the demands made or - although it has responded - consensus has not been reached.

Whenever the conditions for triggering a collective labour dispute are met, Romanian law provides for the rule that the parties entitled to participate in the negotiation or, as the case may be, the parties who participated in the collective bargaining and who represented the employees/workers in the collective bargaining, according to the mandate, shall notify the employer/employers' organisation in writing of this circumstance, mentioning the demands of the employees/workers, their justification, as well as suggestions for a solution. The complaint must be received and registered by the employer, who is obliged to reply in writing to the complainants within three working days of receipt of the complaint, stating the reasons for each of the claims made. Where the employer/employer organisation or public institution/authority, as the case may be, has not replied to all the claims made or has replied but the reply is not to the satisfaction of the claimants, a collective labour dispute may be initiated.

A collective labour dispute is not triggered directly, but only after prior registration, as follows:

(a) - *at the unit level*, the employer will be notified of the start of the collective labour dispute and the territorial labour inspectorate of the county in which the employees/workers of the unit who have started the dispute will be notified in writing for conciliation;

(b) - *at the level of a group of establishments*, each establishment which is a member of the group of establishments, as well as the employers' organisation set up at the level of the group, shall be notified of the outbreak of the collective labour dispute and the Ministry responsible for social dialogue shall be notified in writing with a view to conciliation;

(c) - *at the level of the collective bargaining sector and at national level*, each unit, the trade union federations and/or confederations in which they have members and in which the dispute is being triggered, as well as the corresponding employers' federations and/or confederations, shall be notified of the outbreak of the collective labour dispute, and the Ministry responsible for social dialogue shall be notified in writing with a view to conciliation.

The literature contains multiple definitions of the concept of conciliation of interest disputes, but we believe that the author Constantin Elisei has developed a unified and complete definition of the concept of conciliation of labour disputes, which is the main way of settling disputes between employees and employers

and between civil servants and public authorities (institutions), which concern either interests (of a professional, social or economic nature) or rights (contained in the legal employment relationship), whereby the parties to the dispute - on an equal legal footing and exercising social dialogue - attempt to conclude a bilateral legal act to settle the labour dispute and achieve social peace.

Moreover, we also agree with the opinion of local authors Nicolai Romandaș and Eduard Boișteanu, who noted that Articles 357 - 361 of the CM of the RM only legislate the effort to conciliate collective labour disputes, but not their compulsory settlement. It was also pointed out that the provisions of the CM of the Republic of Moldova also establish a compulsory sequence of collective labour dispute resolution and, as a result, if the collective and voluntary cessation of work (strike) is directly reached in violation of the obligation to follow all prior conciliation procedures, the strike will be considered unlawful.

During conciliation, the parties to the dispute are assisted by a conciliation committee, which directs and facilitates the parties' attempts to reconcile, so that the legal relationship of conciliation is complex because of the plurality of subjects. The commission is impartial and acts even-handedly, and does not rule on the legality or the merits of the parties' claims.

On the basis of Article 359 paragraphes 2, 3 and 4 of the CM RM, we point out that this commission is formed at the initiative of either party, with an equal number of representatives of the disputing parties. The status of the conciliation commission is ad hoc, and it is always set up when a collective labour dispute arises, provided that there is an order (provision, decision, ruling) of the employer (his representatives) and a similar decision (ruling) of the employees' representatives.

The conciliation procedure is also compulsory in Romania. After researching the legal norms that have succeeded each other in the field of collective labour dispute resolution (namely: Law no. 168/1999, VLRDS and NLRDS), we can conclude that the conciliation procedure is similar in all three normative acts, being similar: (a) - the referral for conciliation of the collective labour dispute; (b) - the deadlines; (c) - the procedure for conducting the conciliation.

The only changes are that both the VLRDS and the NLRDS no longer stipulate that: *(i)* - the minimum age required for appointment as a representative trade union delegate is 21 years (the person must have full capacity to act); *(ii)* - the delegate must not have been convicted of any criminal offence (as stipulated in the repealed Law 168/1999).

Compared to Romanian legislation in the field of collective labour dispute resolution, Moldovan labour legislation is rigid and not very flexible. Unlike Romanian legislation, which includes multiple ways (procedures) of resolving collective labour disputes (such as conciliation, mediation and arbitration - only conciliation being mandatory), Moldovan labour legislation regulates only the conciliation procedure as a way of resolving collective labour disputes.

And the CM of the Republic of Moldova also enshrines (as a fallback mechanism) the settlement of collective labour disputes directly in court. Accordingly, under the provisions of Article 360(1) of the CM of the Republic of Moldova, when the parties to the dispute have not reached an agreement or reject the decision of the conciliation commission, each party will have the right to submit a request for settlement of the dispute in court within 10 working days from the date of expiry of the deadline for conciliation of the collective labour dispute by the conciliation commission or from the date of adoption of the decision or receipt of the information from the chairman of the commission.

When explaining the judicial aspects of settling collective labour disputes, one cannot avoid the issue of reconceptualising the labour jurisdiction in the direction of setting up specialised labour courts. At present, there is no real and effective specialisation of the labour jurisdiction in the Republic of Moldova, as individual/collective labour disputes are also dealt with in the ordinary courts, although the social partners - as representatives of civil society - are aware of the need to set up specialised labour courts.

That is why, de lege ferenda, we propose the phased establishment of specialised labour courts in the Republic of Moldova, namely: (a) - in the first stage, to establish specialised labour dispute courts; (b) - then, to transform them into specialised labour dispute courts; (c) - finally, in well-argued situations and where reality requires it, some of the specialised courts to be transformed into specialised labour dispute courts. At the same time, we believe that it would be very useful to draw up a procedure for selecting candidates for the post of judge in the specialised labour courts, taking into account the following aspects: (a) - listening to civil society (represented by the social partners) with the aim of broadly confirming the candidate's social trust, in terms of good reputation and concrete knowledge of the realities of legal labour relations; (b) - the candidate's passing an examination before a specialist board of the National Commission for Consultation and Collective Bargaining (co-chaired by a university professor of labour law), in order to verify professional training and mastery of methods of conciliation and promotion of social partnership.

Of the three procedures regulated in Romanian law, conciliation, mediation and arbitration, only conciliation is compulsory. Mediation and arbitration are optional methods of resolving collective labour disputes, and the parties are free to use them by mutual agreement. In reality, mediation or arbitration of collective labour disputes only becomes compulsory if the parties - by mutual agreement - have decided to do so before the strike starts or during the strike. Mediators and arbitrators play a decisive role in the organisation and operation of mediation and arbitration arrangements. For this reason, the Office for Mediation and Arbitration of Collective Labour Disputes has been set up within the Ministry responsible for social dialogue, with two professional bodies: one of mediators and the other of arbitrators.

Mediation is an optional additional procedure aimed at settling collective labour disputes on the basis of the agreement of the parties through neutral persons - mediators. The mediator is obliged to draw up a report on the state of the dispute, indicating his opinion on any outstanding claims. The report may be submitted to the employees for their consideration so that they can decide whether or not to end the dispute of interest. With regard to the outcome of the procedure, the concrete (and not legally specified) role of the drafting of this document is considered to be as follows: (1) - when, through the convocation and dialogue with the parties, the claims have been fully resolved, the parties are obliged to acknowledge the end of the dispute of interest; (2) - and when there are still unresolved claims, the persons representing the employees may inform them in order to decide whether to continue or stop the collective labour dispute. *In concluding on mediation, the essential distinction with the conciliation procedure is the optional nature of the mediation procedure established by the legislator.*

Throughout the duration of a collective labour dispute, the disputing parties may also decide by mutual agreement that the claims made should be submitted - for arbitration - to the Office for Mediation and Arbitration of Collective Labour Disputes of the Ministry responsible for social dialogue.

Arbitration: (1) - has been recognised doctrinally to be an optional procedure for the settlement of conflicts of interest, which may intervene (by agreement of the parties) at any time during the dispute of

interest and which (invariably) will lead to its extinction; *(2) - is essentially distinguished from other methods of settling collective labour disputes by the binding nature of the result obtained after its completion, mentioned as such in the arbitral award; (3) - arbitration may be resorted to by the parties to the collective labour dispute in the following situations:* (a) - after the conclusion of the conciliation stage, if this has not resulted in the conclusion of the collective labour agreement; (b) - during or after the exhaustion of the mediation, if the parties have decided to follow this stage as well, but their approach has not been successful; (c) - finally, at any time during the course of the strike.

Chapter 4. Analysis of the main issues related to the declaration and conduct of the strike - comprises 6 sections, each analysing one component of the strike institution, namely:

- Section 6.1 is devoted to the analysis of the *"Concept and main features of strike";*
- Section 6.2 examines *"The right to strike under international instruments and the legislation of the Republic of Moldova and Romania"*;
- Section 6.3 is devoted to *"The legal procedure for declaring and carrying out a strike"*;
- Section 6.4 focuses on *"Analysis of the legal grounds for ending a strike"*;
- Section 6.5 analyses *"Legal liability in the event of violation of the legal rules relating to strikes"*;
- and Section 6.6 elucidates "*Lock-out as a legal instrument available to employers*".

On the basis of the research set out in Chapter 4, it can be concluded that the right to strike is not explicitly guaranteed by the text of the OIM Conventions, but it follows - interpretatively - from the provisions of OIM Convention No. 154/1981 "*Concerning the Promotion of Collective Bargaining*" and OIM Convention No. 87/1948 "*Concerning Freedom of Association and Protection of the Right to Organise*". The practice of applying OIM Convention no. 154/1981 has also shown that this right is covered both by the provisions of the Convention guaranteeing these organisations the right to decide on their own activities and by the fact that the right to strike is an implicit corollary of trade union freedom and the right to collective bargaining.

The international instruments in this field stress that: *(i)* - the right to strike is not an absolute right, it may be subject to national legislation or may be prohibited for certain categories of workers active in strategic national economic sectors; *(ii)* - purely political strikes may be prohibited by law, just as - in situations of serious economic crisis - strikes may be suspended.

Moldovan legislation establishes strikes as a legal means of pressure which can be used by employees when they consider that their professional, economic and social interests are at risk, and the right to strike is provided for in Article 45 of the Constitution in order to protect these interests, but it is specified that the law determines the conditions for exercising the right to strike, as well as the liability for unlawful strikes. And the provisions of Article 362 para. 1 of the CM of the Republic of Moldova defines a strike as the voluntary refusal of employees to perform their work obligations, in whole or in part, for the purpose of settling a legally initiated collective labour dispute.

Romanian doctrine includes numerous definitions of the concept of strike. We consider the definition formulated by the researcher Alexandru Țiclea, according to which *a strike is the collective and voluntary cessation of work during the labour dispute, used as a means of pressure on employers, so that they agree with the professional, economic and social demands of employees, supported during the negotiation of collective labour contracts (agreements), to be unified and complete.*

The concept of strike has a definition enshrined in Romanian law. Thus, according to the CMR, a strike is defined as the voluntary and collective cessation of work by employees, and under the VLRDS, it was defined as any form of collective and voluntary cessation of work in an establishment. However, this latter legal definition was the target of doctrinal criticism, with the author Alexandru Țiclea pointing out that it was inappropriate to use the phrase "*in a unit*", because the strike has identical features at the levels above the unit - groups of units, branches of activity, as well as at national level (general strike). For these reasons, the NLRDS removed the phrase *"in a unit", and the strike is now defined as a voluntary and collective cessation of work by employees/workers.*

The above definitions allow us to distinguish the following features of the strike:

(a) - *the strike is a voluntary cessation of work organised and decided upon by the employees, for coercive purposes* - thus paying special attention to the causal relationship between the will of the employees and the cessation of work. And when there are other concomitant causes for stopping work (e.g. lack of raw materials or energy, etc.), the will of the employees is overridden, which is why their protests cannot be legally qualified as fulfilling the elements of a strike. At the same time, a strike is a voluntary stoppage of work and is the result of the individual and collective will of striking employees;

(b) - *strikes may be called during collective labour disputes*, but they may be called - at unit, group, branch of activity, collective bargaining sector or national level - only after all other legal means of settling disputes have been exhausted. It is impossible to start a strike - apart from a collective labour dispute (dispute of interest) - and it is also necessary to exhaust all other means of settling the collective labour dispute (dispute of interest) through legal procedures. Noting a certain restriction of the right to strike, the doctrine has proposed extending the possibility of strike action to the duration of the unit's collective agreement, and introducing express legal provisions to make it possible and subject to conditions for national, branch or group strikes. Moreover, although strikes are a means of settling collective labour disputes, they should not be confused with other forms of protest permitted in democratic society.

(c) - *the purpose of the strike is to persuade the employer to accept the demands put forward by the employees during the negotiation of collective agreements*. Strike action is a legal instrument available to employees to persuade the employer to agree to their proposals, particularly in relation to improving working conditions, pay, etc., when negotiating collective agreements, and when they are accepted, the proposals will become (binding) clauses of these agreements.

According to the provisions of the NLRDS, a strike cannot be called for political purposes and such a strike is illegal because: (a) - it is contrary to the intentions of the legislator, since the strike is strictly regulated as a collective action of protest on professional, economic and social grounds; (b) - the person is not acting as an employee, but as a citizen; (c) - it is contrary to the obligations of political neutralism characteristic of trade unions; (d) - it is unfairly prejudicial to the employer, since it is not generated by his activity towards his employees; (e) - it may harm legal state institutions.

During a strike, criticism of the executive authorities will not give the strike a political character, but the demand for change of the executive authorities or of a local authority will have an obvious political character, because it refers to a public authority appointed according to constitutional (legal) provisions. However, the legal doctrine is of the opinion that professional strikes are also political, or - in other words - political strikes are often based on professional reasons, with the striker assuming the risk of loss of pay during

the strike not only because he is taking part in a political strike, but also for reasons arising from his economic and life difficulties. At the same time, trade unionism - which has become professional-political - inevitably leads to professional-political strikes. Starting from the issue of the legality of political strikes in the Republic of Moldova, we note that - on the basis of Article 362, para. 2 of the CM of the Republic of Moldova - strikes may be launched in accordance with the labour legislation, only for the defence of the professional interests of economic and social nature of the employees, and cannot have political purposes.

We believe that the Moldovan legislator has committed a serious inconsistency by not expressly regulating the ways (grounds) for ending the strike. Thus, even in the absence of express provisions in the CM RM, we can implicitly deduce the following grounds for ending the strike: (a) - *By resignation*. In other words, if the employees indicated in the act of declaring a strike renounce the strike, then it will necessarily cease; (b) - *By agreement of the parties*. During the strike, the organisers are obliged to continue negotiating with the employer to meet the demands which led to the strike, and these negotiations may result in an agreement; (c) - *By court decision*. This case of termination of the strike occurs when the employer has registered with the court a request for a declaration of illegality of the strike and the court has established that the demands formulated in this request are justified (Articles 360 and 361 of the CM RM).

We also criticise the provisions of Article 370(2) of the CM RM, according to which the court that found the strike illegal shall oblige the organisers to compensate the material and moral damage caused, in accordance with the CM RM and other normative acts in force. Because we do not agree with the Moldovan legislator, who conceived the liability of the persons guilty of initiating and carrying out the illegal strike as being of a material nature - i.e. labour law. We maintain that it cannot be a material liability, because the damage caused to the establishment is not related to the work of those persons, but to their inactivity. Moreover, the trade union - which is also the organiser of the strike - is often not in a legal employment relationship with the employer, and the employees' representatives do not organise and lead the action on the basis of their individual employment contract. We believe that the organizers of the illegal strike will be subject to civil liability in tort, and in the event of a collective stoppage of work, the employer's right to compensation would be based on the provisions of Article 1998 of the CC of the Republic of Moldova. There is an exception to this proposed rule: in the case of a spontaneous strike - launched without the intervention of the trade union or even in opposition to its opinion - the material liability of the participating employees, governed by labour law, will be incurred.

In this Chapter 4, we have conceptually addressed the legal institution of *lock-out* (employer's strike) and concluded that the employer's ability to temporarily stop work must be imperatively delimited in both Moldovan and Romanian legal frameworks, with respect to the following requirements: (a) - identification of all special situations that would justify *lock-out* (e.g. cases where the strike would endanger the life or health of people); (b) - express definition of the defensive role of *lock-out* (only as a reaction to the strike or the threat of strike); (c) - notification of non-striking employees who are affected by the employer's measure; (d) - enshrinement of the employer's obligation to pay non-striking employees - who stop work because of the *lock-out* - compensation in line with the level of the minimum wage guaranteed by law in the country.

General conclusions and recommendations - the final section sets out, in logical order, the conclusions drawn from the research and the proposals for solving the problems identified. Mainly, proposals

are formulated to amend the Labour Code of the Republic of Moldova, or to adopt the Law of the Republic of Moldova on the procedure for initiating and conducting strikes.

The bibliography contains the documentary and doctrinal support of the thesis, consisting of 363 scientific, normative and other sources, including 21 own publications.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

In the final section "*General conclusions and recommendations*" I have generalised on the study carried out in the PhD thesis and concluded that I have fully achieved the aim and objectives outlined and formulated final conclusions and recommendations/proposals.

Conclusions

Thus, starting from the main purpose of this investigation, we formulate the following conclusions:

1. The institution of collective labour disputes can only be fully analysed in the light of the concept of collective bargaining and *the principle of the priority of conciliation methods and procedures*, with conciliation being mandatory and applied between the parties to the disputes in order to resolve them. However, the labour legislation of the R.M only regulates the attempt to conciliate collective labour disputes and provides for a mandatory sequence of settlement of collective labour disputes.

2. Chapter III of Title XII of the CM of the RM regulates the settlement of collective labour disputes in the RM, and the Moldovan doctrine has taken the legal definition of the notion of collective labour disputes in the CM of the RM as complete, without any further clarifications, additions or completions to it. For this reason, we conclude that: *(a)* - *legally*, collective labour disputes remain permanently connected "genetically" to the CCM and collective agreements; *(b)* - *collective labour disputes can be generated with regard to*: (1) - the fixing and changing of working conditions, including wages; (2) - the conduct of collective bargaining, the conclusion, amendment and enforcement of collective agreements; (3) - the employer's refusal to respect the position of employee representatives when adopting - within the establishment - legal acts with labour law rules; (4) - the emergence between the social partners at different levels of disputes concerning the economic, social, professional and cultural interests of employees; *(c)* - *we consider that*: collective labour disputes concerning the negotiation of CCM/agreements have the characteristics of disputes of rights and their settlement is directly the responsibility of the courts, we disagree with the Moldovan legislator regarding the recommended ways of settling them, namely: submission of claims, initiation of collective labour disputes, following conciliation procedures, declaration of strike.

3. When the conditions for a collective labour dispute arise, the representative trade unions or elected employee representatives (in the absence of trade unions in the establishment) have the right to submit to the employer their demands concerning the establishment or improvement of working conditions, the conduct of collective bargaining, the conclusion, amendment and enforcement of the collective agreement. The employer is legally obliged to register the demands and then respond to them in writing within 5 working days of the date of registration. *However, at the stage of submitting the claims, the collective labour dispute has not yet been triggered, and is only deemed to have been triggered when the employer has not responded to all the claims made or - even if it has - no consensus has been reached.*

4. The provisions of Articles 357 to 361 of the CM RM regulate the effort to conciliate collective labour disputes, but not their compulsory settlement, as the provisions of the CM RM lay down a compulsory

sequence of collective labour dispute settlement. And if it goes straight to strike, without going through all the conciliation procedures, then the strike will be declared illegal.

5. Compared with Romanian legislation on the settlement of collective labour disputes, Moldovan legislation is rigid. Thus, Romanian legislation regulates multiple procedures for settling collective labour disputes (conciliation, mediation and arbitration - of which only conciliation is mandatory), while Moldovan legislation only establishes the conciliation procedure as a means of settling such disputes. However, the CM of the Republic of Moldova enshrines - as a fallback procedure - the settlement of these disputes directly in court.

6. Of the three procedures regulated in Romanian law, only conciliation is compulsory, mediation and arbitration being optional means of settling collective labour disputes, the parties being able to agree to use them. Mediation or arbitration becomes compulsory only if the parties have agreed to it before the strike starts or even during the strike.

7. In the Republic of Moldova, strikes are a legal means of pressure, always used by employees when their professional, economic and social interests are violated, Article 45 of the Constitution of the Republic of Moldova expressly provides for the right to strike in order to protect them, but specifies that the law will regulate the conditions of use of the right to strike, as well as the liability for illegal strikes. In the CM of the Republic of Moldova, *a strike is the voluntary refusal of employees to perform all or part of their work obligations in order to settle a legally initiated collective labour dispute.*

Recommendations

Based on the results of this study, we make the following 5 proposals/recommendations of a legal nature:

1. Proposals for a common law in labour law

1.1. *I propose* - by a separate law or by a special title inserted in the CM of the Republic of Moldova - a step-by-step legislative *consolidation* of the specialized labour courts in the Republic of Moldova, namely: *(a) - first of all*, the establishment of specialized labour dispute courts; *(b) - in the second stage*, their transformation into specialized labour dispute courts; *(c) - finally, in well-argued situations*, where reality requires it, the transformation of some of the specialized courts into specialized labour dispute courts. I advocate a method of selecting future labour judges based on: *(i)* - consultation with the social partners to confirm the candidate's trustworthiness in the social sphere, in terms of good reputation and effective mastery of legal labour relations; *(ii)* - passing an examination organised by a specialist board of the National Commission for Consultation and Collective Bargaining, co-chaired by a university professor of labour law, to verify the candidate's professional training and mastery of methods for reconciling and promoting social partnership.

1.2. *I propose additions to Article 20 of the CM of the Republic of Moldova, in order to introduce a new paragraph, no. 4,* for the express prohibition of unionization of the heads of units and institutions, in order to avoid incompatibilities in the activity of social partnership and collective bargaining.

1.3. *I propose - in addition to adding Article 182[1], para. 1 of the Code of Civil Procedure of the Republic of Moldova with a new letter, index d[1])*, which would also include collective labour disputes in the list of legal cases subject to judicial mediation - *that the CM of the Republic of Moldova should also include the following additions to the institution of collective labour disputes*:

1.3.1. - inclusion in the category of collective labour disputes also of disputes arising between the management of the establishment and the employees of a sub-unit/department of the establishment or between the management of the establishment and employees with the same trade/profession in the establishment;

1.3.2. - introduction in the CM RM, at the level of articles 357 - 358, of the possibility that, whenever the conditions for the outbreak of a collective labour dispute are met, the representative trade unions/representatives of the employees, should notify the employer/employer organisation in writing about the situation, indicating the demands of the employees, the reasons and their proposals for settlement;

1.3.3. - introduction in the CM of multiple procedures for settling collective labour disputes, such as conciliation, mediation and arbitration, with only conciliation being compulsory;

1.3.4. - *as a subsidiary to 1.3.3*, the direct introduction into the CM of the legal provisions on mediation of collective (and individual) labour disputes taken from the Law on Mediation of the Republic of Moldova (no. 137/03.07.2015), in parallel with the repeal of the regulatory provisions on mediation of collective (and individual) labour disputes from the Law on Mediation of the Republic of Moldova;

1.3.5. - amendment of Art. 360 para. 1 of the CM of the Republic of Moldova, to ensure that compulsory arbitration is used only at the request of both parties to the dispute, since Article 360 para. 1 of the CM RM actually refers to a judicial arbitration, carried out by the court, currently it is criticized that recourse to compulsory arbitration is possible at the request of each party to the collective labour dispute, not at the request of both parties to it;

1.4. *I propose that the Moldovan Parliament either adopt a Moldovan law on the procedure for initiating and conducting strikes, or I propose that Chapter IV, "Strikes", of Title XII - CM of the Republic of Moldova* (which currently has only 9 articles that do not objectively cover all the hypotheses concerning strikes) be expanded, with several additions concerning the institution of strikes, as follows:

1.4.1. - certain changes and additions concerning Art. 370 para. 2 CM RM, with the aim of modifying the sentence according to which the court that has established the illegality of the strike will order the organisers of the strike to be obliged to cover the material and moral damage caused, since the damage caused to the establishment is not related to the work of those persons, but to their inactivity; and, moreover, the trade union (often the organiser of the strike) is not in an employment relationship with the employer, and the employees' representatives do not organise or lead the strike on the basis of their individual employment contracts. Thus, the organizers of the strike declared illegal have to bear the tort liability, the employer's right to compensation (in case of collective stoppage of work) - based on the provisions of Article 1998 of the CC of the Republic of Moldova, which should be expressly enshrined in the form of a new paragraph of Article 327 of the CM of the Republic of Moldova;

1.4.2. - also in relation to Article 370 of the CM RM - to add a new paragraph to its content, concerning the hypothesis of a spontaneous strike, triggered without the intervention of the trade union or even in opposition to its opinion, a paragraph which would expressly provide that only in this hypothesis will the liability of the participating employees be incurred as a material labour law liability;

1.4.3. - supplementing the CM RM, in order to establish the legal grounds for ending the strike, by: (a) - waiver; (b) - agreement of the parties; (c) - court ruling;

1.4.4. - introduction of a new article in the CM of the Republic of Moldova on the institution of *lock-outs* (employers' strikes), which must be provided for and defined in an imperative manner, in compliance with

the following requirements: (a) - identification of all the exceptional situations that would legitimise a *lock-out* (e.g: (a) - identification of all the exceptional circumstances which would make *lock-outs* impossible (e.g. situations in which the strike would endanger people's lives or health); (b) - express confirmation of the defensive role of *lock-outs* (only in response to a strike/threat of a strike); (c) - notification of employees (who do not take part in the strike) who are affected by the employer's measure; (d) - the employer's obligation to pay employees who do not take part in the strike - and who stop work because of the lock-out - an allowance based on the minimum guaranteed wage in the country;

1.4.5. - amendment of Article 363 paragraph 3 of the CM of the Republic of Moldova or add an additional paragraph to indicate the minimum level of services provided by strike organisers and participants in the strike. Because the current provisions of Art. 363 para. 3 of the CM of the RM do not establish the minimum level of services provided in case of strike;

1.4.6. - amendment of Art. 369 para. 2, letters c) and h) of the CM of the Republic of Moldova, in order to specify the categories of employees who may not participate in strikes in the telecommunications system and in production units for state defence needs. Because the current provisions of Art. 369 para. 2, letters c) and h) of the CM of the Republic of Moldova do not indicate which categories of employees may not participate in strikes in the two areas mentioned, and the list of units, sectors and services whose employees may not participate in strikes is too restrictive and does not correspond to international practice;

1.4.7. - supplementing Articles 86 and 87 of the CM with provisions on the individual disciplinary dismissal of organisers and participants in strikes found to be illegal by the court, and supplementing Article 211^1 of the CM with provisions on the inclusion of the actions of organisers or participants in an illegal strike in the category of those which cause a serious breach of labour obligations;

1.4.8. - introduction of a new article in the CM of the Republic of Moldova, regulating a new type of strike, the strike against the social and economic policy of the Government, following the model introduced in the Romanian legislation on 25.12.2022, by NLRDS;

1.5. *I also propose that the term "employees" be amended or doubled by the term "workers" or "employees/workers"* in Article 45(1) of the Constitution of the Republic of Moldova, as the term "*workers*" is broader and includes both employees and civil servants.

In conclusion, given the fact that the "*legal regime on how to initiate and resolve collective labour disputes*" is such a new subject in the legal and jurisdictional landscape of the Republic of Moldova, as well as in the scientific area, we believe that extensive scientific research is needed (in this regard, the present one being only a first one) to contribute to the development of a fundamental theory on the legal regime on how to initiate and resolve collective labour disputes, which would be the basis for social partnership and social peace in the Republic of Moldova as a state governed by the rule of law and democracy.

Approaching the end, we can say that ***what validates our proposed recommendations***, regardless of their nature, is the very fact that they are the consequence of the logical architecture of the doctrinal, jurisprudential and legislative considerations of chapters 1, 2, 3 and 4 of the work. Moreover, we believe that they are legitimate because they are based on universal values and principles (*such as: the use of collective bargaining to develop human individuality, guaranteeing its constitutional rights and guarantees; the synchronisation of the interests of the partners in resolving problems relating to: employment; remuneration*

for work; protection and security at work; vocational training and retraining, etc.; the successive enumeration of the functions, rights and obligations of the social partners, the design of principles and procedures, the improvement of the level of bargaining culture; the defusing of collective labour disputes on the basis of the principles of partnership relations, the reduction of social tensions), have a legal and determined purpose (more precisely, they converge towards the idea of well-being, security, progress and social peace) and are feasible, i.e. they are capable of achieving their purpose, more precisely, they contribute to achieving the objectives of the thesis.

Proposals for future research.

Starting from the fact that the PhD research carried out has allowed us to identify a number of aspects of the subject that have not enjoyed a doctrinal development to the extent, but which are of scientific interest at the moment, we believe that in the future, a distinct theoretical attention deserves such important moments as:

- employer strike ("look-down");
- collective disputes in telework and the "invisible" strike of teleworkers.

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ADNOTARE

Popa-Roman Gioni. *„Regimul juridic privind modul de declanșare și soluționare a conflictelor colective de muncă”*. Teză pentru obținerea gradului științific de doctor în drept. Specialitatea 553.05 - Dreptul Muncii si Protecției Sociale. Chișinău, 2024.

Structura tezei: introducere, 4 capitole, concluzii generale și recomandări, bibliografia din 363 surse, 5 anexe, CV autor, text de bază – 176 pagini.

Rezultatele obținute: sunt reflectate în 21 articole științifice și 2 proiecte de lege.

Cuvinte cheie: sindicate, patronate, conflicte colective de muncă, negociere colectivă, conflicte de interese și de drepturi, greva, conciliere, mediere, arbitraj, Tribunale de muncă.

Domeniul de studiu: Dreptul muncii si protecției sociale.

Scopul lucrării - realizarea unui studiu multidisciplinar al regimului legal privind modul de declanșare și soluționare a conflictelor colective de muncă, pentru identificarea imperfecțiunilor legale, ce pot, eventual, să producă impedimente în activitatea de soluționare justă și operativă a conflictelor colective de muncă, precum și în formularea unor soluții privind înlăturarea acestora.

Obiectivele cercetării rezidă în: analiza opiniilor autorilor autohtoni și ale celor străini vizavi de problematica supusă cercetării; analiza principiilor relevante declanșării și soluționării conflictelor colective de muncă; realizarea unei sinteze a jurisprudenței, inclusiv constituționale; evidențierea criteriilor de clasificare a conflictelor colective de muncă și a grevelor și scoaterea în relief a importanței acestora; identificarea inadvertențelor legale ce se întâlnesc în cadrul diferitelor tipuri de conflicte colective de muncă și greve.

Noutatea și originalitatea științifică se afirmă prin tematică și subiectele supuse cercetării, pentru că până la etapa actuală în doctrina națională nu există nici un studiu complex și multidisciplinar asupra problemelor referitoare la regimul juridic privind modul de declanșare și soluționare a conflictelor colective de muncă. Originalitatea științifică a lucrării se manifestă prin analiza amplă a modului de declanșare și soluționare a conflictelor colective de muncă, identificarea neclarităților legale și jurisprudențiale, precum și prin autenticitatea opiniilor expuse de autor în scopul eliminării acestor neclarități legale.

Rezultatele obținute, care contribuie la soluționarea unei probleme științifice importante, constau în deslușirea particularităților de declanșare și soluționare a conflictelor colective de muncă prin prisma instrumentelor internaționale, a legislațiilor Republicii Moldova și a României, ceea ce a contribuit la evidențierea lacunelor legislative existente în cadrul normativ moldovenesc și în cel român, în vederea cizelării și racordării acestora la standardele internaționale actuale în domeniu.

Semnificația teoretică a lucrării derivă din aprecierile și opiniile autorului asupra diferitor opinii doctrinare și prevederi legale în materia conflictelor colective de muncă, din soluțiile legale și doctrinare expuse de autor în privința înlăturării controverselor doctrinare din domeniul analizat.

Valoarea aplicativă a lucrării se regăsește în constatările autorului și în varietatea propunerilor *de lege ferenda* expuse la fiecare subiect, care prin esență pot servi drept suport metodologic pentru dezvoltarea legislației muncii, înlăturarea dificultăților cu care se confruntă experții și practicienii în dreptul muncii, salariații și angajatorii, sindicatele și patronatele, precum și instanțele de judecată, la realizarea diferitelor incidente procedurale, constituind totodată și un veritabil suport analitic pentru îmbunătățirea legislației ce reglementează declanșarea și soluționarea conflictelor colective de muncă.

Implementarea rezultatelor științifice ale lucrării se realizează în funcție de caracterul novațiunilor propuse de autor în conținutul tezei, care vin să contribuie la îmbunătățirea cadrului legal național în domeniu. Aspectele metodologice privind aplicarea corespunzătoare a legislației muncii, elaborate de autor, sunt adresate practicienilor, urmărindu-se implementarea acestora. În plus, rezultatele științifice și-au găsit reflectare în 21 articole publicate în reviste de specialitate sau la conferințe științifice de profil, și în 2 proiecte de lege apreciate pozitiv si de Ministerul Justiției al RM, prin Scrisoarea nr. 03/6946 din 21 septembrie 2020.

ANNOTATION

Popa-Roman Gioni.*"The Legal Regime Regarding the Manner of Initiating and Settling Collective Labour Conflicts"*. Doctoral Thesis for Obtaining the Degree of Doctor of Law.

Speciality 553.05 - Labour and Social Security Law. Kishinev, 2024.

Thesis structure: introduction, 4 chapters, overall conclusions and recommendations, bibliography of 363 sources, 5 attachments, author CV, basic text - 176 pages.

Results obtained: they are reflected in 21 scientific articles and 2 draft laws.

Keywords: trade unions, employers' organisations, collective labour conflicts, collective bargaining, conflicts of interests/of rights, strike, conciliation, mediation, arbitration. Labour Courts.

Field of study: Labour and social security law.

The paper is aimed at providing a multi-aspect study of the legal regime regarding the manner of initiating and settling collective labour conflicts, with a view to identifying the legal imperfections that may possibly cause impediments in the activity of justly and operatively settling collective labour conflicts, as well as in formulating solutions to remove them.

The research objectives consist in: analysing the opinions of domestic and foreign authors on the research topic; analysing the principles relevant to the initiation and settlement of labour conflicts; drawing up a synthesis of jurisprudence, including the constitutional one; highlighting the classification criteria of collective labour conflicts and of strikes and emphasising their importance; identifying the legal inadvertencies found across the different types of collective labour conflicts and strikes.

The scientific novelty and originality of the thesis is evidenced by the research theme and topics, because at the current level of the national doctrine there is not any complex and multidisciplinary study of the issues pertaining to the legal regime regarding the manner of initiating and settling collective labour conflicts. The scientific originality of the paper is revealed by the extensive analysis of the manner of initiating and settling collective labour conflicts, the identification of legal and jurisprudential obscurities, as well as by the authenticity of the opinions put forward by the author with a view to eliminating such legal obscurities.

The results obtained and aiding to solve an important scientific issue consist in making out clearly the specificities of initiating and settling collective labour conflicts in the light of the international instruments, of the legislations of the RM and of Romania, which contributed to highlighting the current legislative loopholes in the Moldavian and Romanian normative framework, with a view to refining and link them to the present international standards in the field.

The theoretical meaning of the paper derives from the author's assessment and opinions on the various doctrine opinions and legal provisions in the field of collective labour conflicts, from the legal and doctrine solutions that the author exposes with respect to removing the doctrine controversies in the field subject to analysis.

The applicative value of the paper is captured in the author's findings and in the variety of draft *lex ferenda* set forth with each topic, which may essentially serve as methodological support for developing the labour legislation, for removing the difficulties faced by experts and practitioners in the law field, by employees and employers, by trade unions and employers' organisations, as well as by the courts of law, for carrying out various procedural incidents, while being at the same time a true analytic support to improve the legislation regulating the initiation and settlement of collective labour conflicts.

The scientific results of the paper are implemented depending on the nature of the novations proposed by the author throughout the thesis, which contribute to improving the national legal framework in the field. The methodological aspects regarding the appropriate enforcement of the labour legislation, devised by the author, are aimed at practitioners, their implementation being pursued. In addition, the scientific results were reflected in 21 articles published in specialized magazines or at specialized scientific conferences, and in 2 draft laws being positively appreciated by the Ministry of Justice of the Republic of Moldova, through letter no. 03/6946 of Sept. 21, 2020.

АННОТАЦИЯ

Попа-Роман Гиони. «*Правовой режим возникновения и разрешения коллективных трудовых споров*». Диссертация на соискание ученой степени доктора юридических наук. Специальность 553.05 - Трудовое право и социальная защита. Кишинев, 2024.

Структура диссертации: введение, 4 главы, выводы и рекомендации, библиография из 363 источников, 5 приложений, Резюме автора, основной текст - 176 страниц.

Полученные результаты отражены в 21 научных статьях и 2 проекты законов.

Ключевые слова: профсоюзы, работодатели, коллективные трудовые споры, коллективные переговоры, конфликты интересов и прав, забастовка, примирительная процедура, посредничество, арбитраж, трудовые суды.

Область исследования: Трудовое право и социальная защита

Цель работы: проведение междисциплинарного исследования правового режима в отношении того, каким образом коллективные трудовые конфликты инициируются и разрешаются, для выявления правовых пробелов, которые могут стать препятствием справедливого и оперативного урегулирования коллективных трудовых конфликтов, а также выработке предложений по их устранению.

Задачи исследования: анализ мнений местных и зарубежных авторов относительно предмета исследования; анализ принципов, касающихся возникновения и урегулирования коллективных трудовых споров; достижение синтеза юриспруденции, в том числе и конституционной; выделение критериев классификации коллективных трудовых конфликтов и забастовок и определение их важности; выявление правовых несоответствий, возникающих в рамках различных видов коллективного труда и забастовочных конфликтов.

Новизна и научная оригинальность работы определяются тематикой и субъектами исследования, поскольку до настоящего времени в национальной науке нет комплексного и междисциплинарного исследования проблем, касающихся правового режима в отношении возникновения и способов разрешения коллективных трудовых конфликтов. Научная оригинальность работы проявляется в комплексном анализе того, как коллективные трудовые конфликты инициируются и разрешаются, в определении правовых и судебных несоответствий, а также в выражении собственного мнения автора о способах их устранения.

Теоретическая значимость работы состоит в определении особенностей возникновения и разрешения коллективных трудовых конфликтов через призму международных документов, законов Республики Молдова и Румынии, что способствовало выявлению существующих пробелов в молдавском и румынском законодательствах и возможности приведения их в соответствие с действующими международными стандартами в этой области. Теоретическая значимость работы проистекает также из оценки автора различных научных и правовых положений, касающихся коллективных трудовых споров, и юридических и теоретических решений, которые автор предлагает для устранения противоречий в анализируемой области.

Практическая значимость работы представлена в выводах автора и в разнообразных правовых предложениях для *lege ferenda*, которые могут, по существу, служить методологическим сопровождением развития трудового права, устраняя трудности, с которыми сталкиваются специалисты и практики трудового права, работники и работодатели, союзы и ассоциации работодателей, а также суды при рассмотрении различных процедурных инцидентов, и представляют собой аналитическую поддержку для совершенствование законодательства, регулирующего инициирование и урегу лирование коллективных трудовых споров. Кроме того, научные результаты были отражены в 21 статье, опубликованной в специализированных журналах или на специализированных научных конференциях, и в 2 законопроектах, получивших положительную оценку Министерства юстиции Республики Молдова, письмом №. 03/6946 от 21.09.2020.

POPA-ROMAN GIONI

THE LEGAL REGIME REGARDING THE MANNER OF INITIATING AND SETTLING COLLECTIVE LABOUR CONFLICTS

Specialty: 553.05 - Labour and Social Security Law

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