MOLDOVA STATE UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF PRIVATE LAW

As a manuscript

C.Z.U.: 349.2:37.091(043.2)=111

JOSANU DORIN

LEGAL REGULATION OF THE EMPLOYMENT RELATIONSHIP OF TEACHING STAFF

553.05 – LABOUR AND SOCIAL PROTECTION LAW

Abstract of the PhD Thesis

Chisinau, 2024

This PhD Thesis was developed within the Department of Private Law of the Faculty of Law of the Moldova State University.

PhD Supervisor:

SADOVEI Nicolae, Doctor Habilitatus in Law, Associate Professor

External Referees:

DONOS Evlampie, Phd in Law, Associate Professor, State University B.P. Hașdeu from Cahul
BOISTEANU Eduard, Doctor Habilitatus in Law, Associate Professor, State University Alecu Russo from Balti

Members of the Specialised Scientific Council:

COJOCARU Violeta, Chairwoman, Doctor Habilitatus in Law, University Professor
CHISARI-RURAK Aliona, Scientific Secretary, Phd in Law, Associate Professor
BAIEȘU Aurel, Doctor Habilitatus in Law, University Professor
PASCALUTA Felicia, Phd in Law, Associate Professor
MACOVEI Tatiana, Phd in Law, Associate Professor

The public doctoral thesis defence shall take place on 19.11.2024, at 14:00,
within the meeting of the Specialised Scientific Council D 553.05-24-91 of the Moldova State University (office 119, building no. 2, 67, M. Kogalniceanu Str., Chisinau municipality, MD - 2009, Republic of Moldova).

The PhD Thesis and the PhD Thesis Abstract can be consulted at the library of the Moldova State University and on the ANACEC website.

The PhD Thesis Abstract was sent on 17.10 2024.

Scientific Secretary of the Specialised Scientific Council
CHISARI-RURAK Aliona, Phd in Law, Associate Professor

PhD Supervisor
SADOVEI Nicolae, Doctor Habilitatus in Law, Associate Professor

Author
JOSANU Dorin

© JOSANU Dorin, 2024

TABLE OF CONTENTS

Conceptual Research Milestones.....4

Thesis Content.....8

General Conclusions and Recommendations.....25

Bibliography.....29

List of the Author's Publications on the Thesis Topic.....33

Annotation *(in Romanian, Russian and English languages)*.....35

CONCEPTUAL RESEARCH MILESTONES

***The Topic Timeliness and Importance*.** The work of teaching staff has always been recognized as one of the noble activities in society, the professorial schools of antiquity causing the emergence of different philosophical currents, without having certain detailed regulations of their activity, but also with a low degree of accessibility for ordinary members of society.

Realizing the right to education is a desire of modern society and a right of all members of society, and, up to a certain educational level – even an obligation.

The State's focus on education is also proclaimed its task, being stated the domain related state-of-the-art and set-up projections for its improvement.

At the same time, the realization of the right to education, from early education to lifelong learning, is unattainable without the enormous work and dedication of teachers. The work performed by the teaching staff, in most cases, takes the form of an employment relationship, with all essential characteristics that accompany an employment relationship – work performance, subordination and work discipline, organization and provision of working conditions and payment for the work performed.

On another note, nowadays, the diversity of legal labour relationships in the society and their dynamics, the come out of new professions and disappearance of others, requires the law makers to enact the best possible combined regulation of each relationship, by identifying common features for each relationship, setting-up common regulations for the conduct of all employers and employees, highlighting the peculiarities of each social relationship separately, and, to regulate them, adopt some special rules, which would take into account the specifics of the conditions in which each work is carried out. The legislator must have special skills to appreciate each social relationship and determine both the additional rules needed for a specific domain, as well as to exclude the application of general rules for some of a varied range of social labour relations.

The legal relationship of teachers is an employment relationship, widespread in society, classic by its subject elements, and also atypical by some elements of the content, intended to ensure the realization of the right to education in society, but also, having the main purpose to ensure the realization of the right to work for certain categories of employees, the provision of real legal protection for teaching staff in order to realize their legitimate rights and interests, as well as an effective mechanism against the risk of their violation or the recovery of the damage caused.

In the national specialized literature, there are few and fragmented analyses of the legal regulation of the employment relationship of teaching staff, authors focused only on certain aspects of this topic, those being scattered through reproducing by some authors in specialized textbooks, under different institutions of the special part of the labour law branch.

For instance, the below authors addressed the subject of the legal regulation of the employment relationship of teaching staff, both in the national and from abroad specialized literature: Romandas, N., Boisteanu, Ed., Sadovei, N., Negru, T., Scortescu, C., Donos, Ev., Capsa, T., Sosna, B., Chisari-Rurak, A., Ghimpu, S., Ticlea, A., Dmitrieva., I., Zavgorodnii, A., Scatulla, V., Butcova, A., Gorojanchina, M., Aseeva, A., Ivascovscaia, A., Mihailova, N., Gogolev, A., Sennicov, N., Vasilenco, O.

At the moment, we have codification acts – the Labor Code of the Republic of Moldova and the Education Code of the Republic of Moldova – which regulate the work of teaching staff, determining the conceptual framework of the domain, but as these normative acts were elaborated more than ten years apart and being insufficiently coordinated between them, cause confusion and eventual divergences that may appear between the subjects, with their subsequent evolving to various litigations, making it necessary to carry out an in-depth study on the theoretical and practical issues of the employment relationship of teaching staff.

The Goal of the Thesis is to perform a complex study of the legal framework which regulates the employment relationship of teaching staff and the theoretical-practical substantiation of the legal status of teaching staff. The Goal of the Thesis outlined the following ***research objectives***: (1) analyse the scientific reasoning in determining the branch affiliation within the legal system of the employment relationship of teaching staff; (2) analyse the efficiency of the regulation of the employment relationship of teaching staff through combining general and special norms; (3) determine the legal nature of the employment relationship of teaching staff and the specifics of these relationships within the system of legal relationships in the branch of labour law; (4) perform a complex study of all the stages of the employment relationship of teaching staff, from its set-up to its termination; (5) identify the gaps and deficiencies in the current regulation of the employment relationship of teaching staff; (6) elaborate proposals and recommendations to amend and complement the legal norms in order to improve and make more efficient the regulation of the employment relationship of teaching staff.

The Research Hypotheses covers some aspects that cannot be observed and shaped from the simple reading of the provisions that regulate the legal regulation of the employment relationship of teaching staff but can be outlined based on comparative analyses and under the critical aspect of the existent legal framework as well as within the context of law development and extension, with forming of new law branches based on the development of social relationships and peculiarities acquired by the regulations of these relationships, including in the context of the set-up of an eventual new law branch – the branch of educational law. As certain categories of employment relationships are also examined through the lens of other branches of law, such as for example employment relationships of civil servants, also called service relationships, which are also assigned

to the category of administrative law, the question arises whether the legal relationship of teaching staff could be attributed to eventual educational law, or should it remain belonging to labour law – the opinion from which I start in this research. On as separate vein, in the conditions when we come to the conclusion that the legal employment relationship of the teaching staff is a labour relationship, through the prism of the multitude and diversity of the legal employment relationships, but also of the varieties of the legal employment relationship of the teaching staff, which, by its content and the possibilities of establishing this content, differs from the type of ownership of the educational institution, up to the educational level, the question arises of assigning this relationship to the category of a typical legal employment relationship, or is it an atypical legal employment relationship, personally advancing the assumption that this is a typical relationship, but also one that contains elements characteristic to an atypical legal employment relationship, without, however, that these elements prevail over it or to be decisive for its transfer to the atypical category. The interpretations of the legal framework and the proposed solutions are based on confirmatory arguments and suppose the construction of a hypothesis based on the existing doctrine, with the application of the methodology of investigation and scientific research, which allows, as result of the research carried out, the confirmation of the hypothesis. The research hypothesis is anticipatory and pro-active targeted to real-life problems encountered in practice, which allowed us to direct the research carried out in this scientific paper towards solving important scientific and practical problems and clearly establishing the research objective and anticipating the correct answers and concrete solutions based on possessed knowledge.

Synthesis of the Research Methodology and the Justification of Chosen Research Methods. The methodology of this scientific research is based on the dialectical-materialist method, from which other derive particular methods, applied in this PhD thesis: historical, logical-legal, logical-formal, comparative, grammatical, as well as observation, description, deduction, etc.

This research is also based on national and international normative acts – Directives of the European Union, Conventions of the International Labor Organization, focusing on the norms of the Constitution of the Republic of Moldova, the Labor Code of the Republic of Moldova, the Education Code of the Republic of Moldova, the doctrine of national and international labour law, and taking into account the Decisions of the Constitutional Court of the Republic of Moldova and those of the Plenum of the Supreme Court of Justice of the Republic of Moldova, and the domain-related case law.

The Thesis Structure: from the point of view of its structure, the thesis includes: Annotations (in three languages), List of Abbreviations, Introduction, 4 chapters, General Conclusions and Recommendations, Bibliography comprising 258 sources, 19 addendums, 170 of main text (ante Bibliography).

Scientific Novelty and Originality of this PhD thesis is justified by scant research of the targeted topic in the national labour law doctrine and the originality of the research is deduced not only from the analysis carried out of the legal employment relationship of the teaching staff, but also from the determination of its place within the legal system as well within the branch of labour law, in particular.

The Important Scientific Problem Which Was Solved Through the Realized Research consists in the conceptualization of the institution of the employment relationship of teaching staff, determining its specifics, which contributes to the efficiency of the approach of the analysed relationship.

The Theoretical Significance of the Doctoral Thesis – for the first time in the national labour law doctrine, was carried out complex research on the regulation of the employment relationship of teaching staff, with deep implications on the essence, content and conditions of appearance, development and termination of this relationship and the importance of its regulation by special rules. The theoretical importance of this PhD thesis is also justified by the fact that the approaches contained in this paper may serve future scientific debates on the institution of the employment relationship of teaching staff, as well to other employment relationships involving regulatory peculiarities.

The Applied Value. The proposals and recommendations developed as result of the complex analysis of the employment relationship of teaching staff can be used to improve the domain related labour legislation as well for further analysis of the legal nature of different types of employment relationships and for the correct application in practice of the normative regulations.

The results of this research can be directed towards improvement of the regulatory framework of teaching work, the judgment of civil cases submitted due to incorrect application or the divergences in the interpretation of the rules that regulate the employment relationship of this category of employees. The doctrinal approaches from this doctoral thesis as well the juridical and practical aspects thereof can be used as didactic material when teaching the Labor Law course.

The Scientific Outputs Obtained Following the Realized Scientific Research consisted in: determine the place and importance of the employment relationship of teaching staff in the legal system, its branch affiliation, and the place of this relationship in the system of labour law branch, determine the essence, content and particularities of the analysed legal relationship, establish the concrete conditions for its appearance, development and termination, outline regulatory gaps and shortages, and identify complex proposals to improve the regulatory framework.

Implementation and Approval of the Research Outputs. The presented PhD thesis was developed within the Department of Private Law of the State University of Moldova. The scientific results were used in the educational process of the Faculty of Law of the State University of Moldova, as well as in the practical activity in the courts.

THESIS CONTENT

Chapter 1 ***Analysis of Scientific Researches on the Legal Regulation of the Employment Relationship of Teaching Staff***, presents a synthesis of the studies that were carried out prior to this thesis paper, envisaging the legal status of the teaching staff and approaches that emphasized the specifics of establishing the rules of conduct of the parties within each separate employment relationship, by combining regulations generally applicable to all employment relationships and special regulations applicable only to some employment relationships, taking into account their specificity, with a strong emphasis on the rules of conduct within the employment relationship of teaching staff. Thus, with reference to the legal status of teaching staff, we specify a particular complexity of it, namely, the relationships in which teaching staff participate assume the realization of rights and the observance of obligations related to the labour law branch, but also of educational law – the first one dictating rights and general work obligations, the second – invoking the professional norms of teaching staff. Additionally, depending on the social domain and the branch of the economy for which the teaching staff teaches future specialists, the teaching staff will also be assigned the norms of the corresponding branch, the deontological provisions of which, indisputably, are to be respected and promoted by the respective teaching staff.

In para. 1.1 *Scientific Approaches in the Domestic and Foreign Doctrine of the Unity and Differentiation of the Legal Regulation of the Employment Relationship of Teaching Staff*, we state that, although the establishment of the rules of conduct of the parties within the framework of social relations regulated by labour law, due to the multitude and diversity of these social relations, based on the merging of the unity and differentiation of the legal regulation, this area deserves special scientific attention, and that at the national level there are no research focused on the study and definition of the concept of unity and differentiating in labour relations. Also, until now, no doctoral theses have been developed on the unity and differentiation in the regulation of legal labour relationships. The respective concept was approached tangentially in some labour law textbooks, some authors analysing it as part of the institution of the labour law method, others – part of the principles of labour law, and a third group - approaching it in the context of the analysis of the sources of labour law. For example, in the paper Labor Law elaborated in 1997 by the author Romandaș, N., the concept of the unity and differentiation of labour relations is addressed as a principle of labour law, namely, with its registration in the category of principles that determine the stability of conditions of work, being analysed through the prism of its correlation with the principle of the prohibition of discrimination in labour relations [17, p. 22-23].

As a specific feature of the method of regulating the branch of labour law, the authors Romandaș, N. and Boișteanu, Ed. [19, p. 18], specify that the unity and differentiation of labour law is reflected in the constitutional principles, in the basic rights and obligations of the employee and

the employer, and in the general provisions of the Labour Code, and the differentiation is made on the basis of several factors, such as: the harmfulness of the working conditions, the physiological peculiarities of the female body, the specificity of some relationships of work, the psycho-physiological particularities of the human body and the character of underage persons, the particularities of work in a certain branch of the national economy.

The unity and differentiation/distinction in the legal regulation of labour is identified as a specific means of labour regulation within the labour law method also by the authors Capșa, T., Sosna, B., and Zaharia, S., who reiterate the doctrinal opinion according to which, the constitutional principles, as well as the basic rights and obligations of employers and employees, reflected in the normative acts regarding work, with applicability throughout the territory of the republic and towards all employees, reflect the unity of labour law, which is found in all labour law institutions [39, p. 12].

The author Donos, Ev. claims that, in principle, labour legislation is uniform for all categories of employees, however, for certain categories of employees, there are normative acts that strictly regulate certain rights, while for other categories of employees, these rights will be negotiable [7, p. 12].

An important role in reaching the unitary nature of labour legislation is played by its codification, a fact also mentioned by the authors Avornic, Gh., Cojocaru, V., and Moraru, Iu, who also state that the transformations in economic and social life that took place after the proclamation of the Republic of Moldova as an independent State, as well as the transition to the market economy, created new problems for the institutions that coordinate, organize and regulate the employment health and safety activity, such as: the rapid growth of the number of companies, the emergence of the private sector, the increase in unemployment, the intensification of the phenomenon of avoiding the laws, the inconsistency between the labour relations regulated by acting work protection legislation and those actually existing in society and lately the increase of the role of social partners (employers, unions) [1, p. 22-23].

At their turn, authors Negru, T. and Scorțescu, C., take the view that the unity and differentiation of labour relations is the basis of a classification of the sources of labour law, according to which the sources of labour law can be divided into: 1) general sources, which cover all employees, and 2) special sources, which cover certain categories of employees (women, underage persons, budget domain employees, public servants, employees holding two positions, temporary and seasonal workers, education workers, transport workers, etc.) [15, p. 28].

As to the above references, we believe that the unity and differentiation in the regulation of labour relations, including the employment relationship of the teaching staff, most of the part, is an element of the regulatory method, however, based on the importance for labour relations, we

believe that it would be the case to promote it to the level of a basic principle governing the branch of labour law and to include it on the list of principles listed at Art. 5 of the Labour Code of the Republic of Moldova. More than that, the legislator raised to the level of principle another component of the method of regulating labour relations, which, in our opinion, is comparable in terms of its role and importance for the branch - the one stated at letter j) of Art. 5 of the Labor Code of the Republic of Moldova – combining State regulation and contractual regulation of labour relations and other relations directly related to them.

In particular, the criterion of the unity and differentiation of the regulation of the work of scientific and scientific-didactic staff is analysed by Dmitrieva., I., who states that the exercise of scientific-didactic and scientific work by the personnel of the higher educational institutions, the particularities and the specifics of scientific-didactic work, which is the basis of the legal characteristics of this work, determine the need to differentiate the labour legislation for the respective categories of employees, and, in this way, in the domain of regulating the work of didactic and scientific-didactic personnel, there are a large number of special legal norms, which establish a special procedure for the appearance of legal labour relations based on the competition and the termination of these relations [35, p. 16].

In para. 1.2. *Synthesis of Doctrinal Research Regarding the Legal Status of the Teaching Staff,* likewise in the previous one, we observe the lack of fundamental research in the domestic doctrine that would directly focus on analyse of the employment relationship of the teaching staff and its status, and either the existing works, with few exceptions, are practically scattered and address some narrow aspects of the problem, or in labour law textbooks there were analysed just some aspects under different specific topics, such as the particularities of the teaching staff's working time viewing its shorter duration; issues concerning the special leaves granted to teaching staff; as well as aspects regarding the special responsibility of the teaching staff via serious breaches which can be grounds for the application of the harshest disciplinary sanction – the dismissal.

Thus, Donos, Ev., when analysing the grounds for dismissal, also mentions the special grounds of a disciplinary nature, which can lead to the dismissal of the teaching staff: serious repeated violation, during a year, of the Statutes of the educational institution by a teaching staff; the commission by the employee who performs educational functions of an immoral act incompatible with the position held; and the application, even once, by a teaching staff, of physical or mental violence towards students [7, p. 164].

Disciplinary grounds for dismissal of the teaching staff were analysed also by the authors Negru, T. and Scorțescu, C., who identify the circle of people who fall under the scope of these grounds, highlighting its exhaustive nature, and also specifying that immoral acts incompatible with

the position held, violate the principles of the general human morals and socially acceptable norms of behaviour [15, p. 156-157].

Romandaș, N., when analysing the breach of commitment of an immoral act incompatible with the continuation of work by the staff who performs training and education functions (this ground is set out in the Labor Code of the Moldovan Soviet Socialist from 1973 – note by Josanu, D.), indicates that the immoral act is the violation of the moral norms of coexistence in society, incompatible with the further exercise of the functions by the employee, such as: appearing in a state of drunkenness in public places, attracting underage persons to get drunk, illegal behaviour in everyday life, etc., and when sanctioning them by dismissal, the period that has passed since the moment of committing immoral acts, the subsequent conduct of the person and other concrete circumstances must be taken into account [17, p. 177].

A more detailed analysis of the special grounds of a disciplinary nature for dismissal of the teaching staff were provided by the authors Boișteanu, Ed. and Romandaș, N. We'd like to mention that we agree with the opinion expressed by them, according to which both the notion of the "immoral act", as well as the "serious violation of the status of the educational institution", used by the legislator, have an estimative character, and needs concretization. In the same way, the authors specify that the application of these grounds is relevant depending on the status of the employee, not just the employer – the educational institution, exemplifying that for committing immoral acts, employees who are part of the technical staff of the institution cannot be dismissed as their positions do not involve the performance of educational work. In this context, the authors also identify the circle of employees who may fall under the mentioned special rules [3, p. 488-489].

The author Sadovei, N., approaches the institution of the oath with reference to the teaching staff, specifying that these employees are not part of the more than 20 categories of people who, in line with acting rules, take an oath, regardless of which subcategory they belong to as well the education level of the institution they work for, and this fact means that the law does not provide that obtaining the status of teacher to be liaised to the need to take the oath [21, p. 47-55].

The authors Ghimpu, S. and Țiclea, A. analysing the institution of working and rest time within the framework of labour relations, emphasize that the work schedule of teaching staff differs from the usual work schedule, it being drawn up on the basis of didactic norms, taking into account the complex obligations regarding the activity of teaching lessons in the classroom, giving lectures or teaching courses, the organization and performance of internships for pupils and students, scientific research activity, etc. [9, p. 291].

One of the authors from abroad who provided detailed analyses of the employment relationship of the scientific-didactic and the scientific staff, is Dmitrieva, I., who elaborates on the multitude of problematic aspects of the legal status of scientific workers and scientific-didactic

staff, as well as of on the legal relationships arising in connection with the exercise of work by the respective categories of employees. We fully support this researcher's position, according to which the conclusion of the individual employment contract completes the formation of the de facto legal content, on the basis of which is set-up the employment relationship of the person elected via contest with the higher education institution [35, p. 19].

Among the most recent studies, which address the complexity of the employment relationship of teaching staff, is the paper elaborated by Zavgorodnîi, A., who focuses on all aspects of the regulation of the employment relationship of the teaching staff: the appearance of the employment relationship, including the role of the competition for this stage; modification of the employment relationship; and its termination. We note this author's detailed analysis of the particularity and content of the individual work contract with pedagogical staff – an aspect named by the author as the effective contract [36, p. 114].

In **Chapter 2** ***Concept and Appearance of the Employment Relationship of Teaching Staff***, we provided a detailed analysis of the legal fact that gives birth to the employment relationship concluded between the educational institution and the teaching staff as well the legal nature of this relationship.

In para. 2.1. *Conceptual Framework and Legal Nature of the Employment Relationship of Teaching Staff*, we identified the basic regulatory acts that form the domain related normative system. Obviously we conclude that the general principles governing the legal regulation of labour relations, including the work of teachers, are included in the Constitution of the Republic of Moldova – the right to work and the prohibition of forced labour, the right to employment health and safety, the right to association in trade unions, the right to strike, the right to a salary that would guarantee a decent standard of living, etc. Next, we reproduced the legal framework containing the provisions of the Education Code of the Republic of Moldova and the Labor Code of the Republic of Moldova, noting that the rules that establish the categories of personnel hired in education, including rules that establish requirements for occupying the positions, but also some rights and obligations that they have or the ones they are required to observe, are part of the Education Code, whilst the appearance, development and termination of the relations of teaching staff with the educational institution are part of the Labour Code, where we delineate general provisions for all legal relations, applicable also to the work of teaching staff, and special provisions which are intended specifically to regulate the work of teaching staff. In the context of a comparative analysis of both codified acts, we emphasize on the lack of their synchronization, and even contradictory norms. Thus, with reference to the occupation of teaching and scientific positions in higher education, the Labour Code of the Republic of Moldova directly stipulates that they are to be filled by competition, based on regulations approved by the Government, while the Education Code of the

Republic of Moldova says that such framework regulations are to be approved by the Ministry of Education and Research. In this context, we point up that even if the Labor Code of the Republic of Moldova stipulates the need to adopt a model paper of higher legal power, the subsequent legislator, when approving the Education Code of the Republic of Moldova, revised his position, denying the need for a framework document of governmental power, and decided that one of the normative acts of the specialized central public administration authorities will ensure the completion of the regulatory framework. When analysing the above legal framework, we found that neither the Education Code of the Republic of Moldova, nor the Labour Code of the Republic of Moldova, provide a legal definition of what we call a teaching staff, nor what we call a didactic activity, just listing categories of personnel with reference to each education level.

In the context of determining the legal nature of the employment relationship of teaching staff, including via the legal regulatory framework provisions, we noted the existence of a close correlation between labour law and educational law, inclusive through the merging of the norms that regulate the analysed employment relationships, however, we finally concluded that the relationships between the educational institution and the teaching staff pertain to the labour law branch. On a separate note, we specify that the Labour Code, being a broader and detailed one, especially regarding the regulation of certain categories of employment relationships and also including a section entitled Peculiarities of Regulation of Work of Certain Categories of Employees, lead ourselves to raise the question regarding the identification of the employment relationship as a typical relationship and its delimitation of the atypical employment relationships, and, in particular – to which specific category shall we assign the employment relationship of the teaching staff – to the typical or to the atypical one? In this context, we mention the study carried out by the International Labor Organization on non-standard forms of employment, where are listed fixed-term employment relationships, part-time employment relationships, temporary agency work, disguised employment and self-employment. Also in the European Union Council Directive 1999/70/CE of 28.06.1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, the fixed-term work is listed as being different from the standard one, with indefinite duration – the general form of employment relationships. In the domestic doctrine, practically all authors spot on the delimitation of the employment relationships in typical and atypical relations, but unfortunately, with few exceptions, the research did not go beyond the framework of labour law textbooks. The most extensive study on the legal nature of the employment relationship in the local doctrine was carried out by Sadovei, N., and his stating on the identification features of the typical employment relationship provides for the possibility to point out the relationships that do not fully correspond to these features and, respectively, their assignment to the category of atypical labour relations. [20, p. 71].

We summarize by arguing that the structure and the origin of the concrete employment relationship will determine whether it belongs to the category of typical or atypical, and we believe that typical relationship will be the employment relationship that originates in an individual employment contract, has as its subjects the employer and the employee, its object covers social relations that enshrine and define it – the performance of work, work discipline, remuneration for work, as well as employment health and safety, and as content – the totality of rights and obligations of the employer and the employee established by Art. 9 and Art. 10 of the Labour Code of the Republic of Moldova; and in order to state on an atypical employment relationship, we shall witness essential deviations from the above described structure, such as the name assigned by the legislator to the subjects/the relationship itself, essential deviations from work discipline or from the classic way of assigning to the employer all the obligations to create working conditions, or other significant deviations from the stated content, otherwise, as is the case of the employment relationship of the teaching staff, we consider that we are in the presence of an employment relationship of a contractual nature, typical with or without certain atypical elements.

In para. 2.2. *The Place of the Contest and the Stages of Appearance of the Employment Relationship of Teaching Staff***,** we highlight that the doctrine unanimously states the role of the contest for the employment of teaching staff in higher education institutions, noting that the contest represents one of the specific features of the employment relationship of the teaching staff. Thus, the author Dmitrieva, I., emphasizes that the purpose of the contest is to select the most qualified people, authors of scientific works, with creative scientific potential, high moral and intellectual qualities and able to train specialists according to modern requirements [35, p. 54]. At his turn, Zavgorodnii, A., notes that the basic purpose of the contest is to attract as many people as possible to participate in the contest, and thus to select the most suitable ones for the scientific-didactic positions, to conclude individual employment contract [36, p. 48].

Normally, the contest, being by its purpose, a selection, is targeted towards choosing the best candidate, from the pool of people who agreed with the working conditions of the respective position, such as: the job duties; workload; working and rest time; remuneration for work, etc., and from the point of view of the legal nature, the contest is a procedure prior to the conclusion of the individual employment contract, a stage of the phase of the appearance of the contractual employment relationship, carried out according priorly set certain rules, in accordance with acting laws the requirements.

As to the need to organize the contest in accordance with the legislation, we specify that although the educational institution has the right to approve an internal regulations establishing the contest rules, this internal act must comply with the framework regulations established by the public authorities, in our case – Order of the Ministry of Education, Culture and Research no. 126 of

10.02.2021 on the approval of the Framework Regulations for the Organization, Development of the Contest and the Hiring to the Teaching and Scientific-Didactic Positions in Higher Education (hereinafter – Framework Contest Regulations). The performed analysis of the legal provisions led us to the conclusion that for the majority of teachers, namely for those in the vocational training education and higher education, the conclusion of the individual employment contract will be preceded by the organization of a contest and, respectively, the need to participate and win it. The legality of the organization of the contest procedure is first of all ensured by the framework provisions set up Art. 56 of the Labor Code of the Republic of Moldova which says that the conclusion of the individual employment contract can be preceded by specific circumstances, such as win a contest, be elected to position, etc. The above-stated provision has a general-permissive character and allows for organizing contest for hiring to any position, however without making it mandatory, but in some cases, such as the one we analysed above, the additional normative framework directly provides for the need to organize a hiring contest.

When referring to higher education, we noted the existence of the legal norm which states on mandatory contest – para. (1) of Art. 297 of the Labour Code of the Republic of Moldova and para. (1) of Art. 118 of the Education Code of the Republic of Moldova, as well as the existence of the necessary regulations – the Framework Regulations for the Organization, Development of the Contest and the Hiring to the Teaching and Scientific-Didactic Positions in Higher Education, approved by the Order of the Ministry of Education, Culture and Research no. 126 of 10.02.2021, so that the employment of teaching and scientific-didactic staff in higher education takes place in accordance with the rules above. The provisions of item 5 of the Framework Regulations for the Organization, Development of the Contest and the Hiring to the Teaching and Scientific-Didactic Positions in Higher Education sets up the rule according to which the hiring contest for didactic or scientific-didactic positions shall be organized only for vacant positions, indicating that the competence to declare the position vacant stays with the University Senate, at the request of the head of the respective chair/department provided positive notice of the dean, and with the condition that the position has become vacant under the law. As to the declaration of the vacancy of the didactic and scientific-didactic position, we refer e.g. to a provision set up by an internal act – the Regulations on the Organization, Development of the Contest and the Hiring to the Teaching and Scientific-Didactic Positions in the Moldova State University (hereinafter – Moldova State University Contest Regulations), which provides for detailed conditions under which the creation of a new position shall be considered. Thus, at item 8 of the Moldova State University Contest Regulations, it is stated that new positions are to be established based on predetermined criteria, called to ensure the evolution of the University and its didactic and scientific-didactic potential, the perspective of the development of specialized departments and university departments, and at item

9 of the Moldova State University Contest Regulations are listed the respective criteria: the achievement of priority strategic objectives of the Moldova State University regarding the development of human resources and the stimulation of academic staff performance; dynamics of professional training programs; the structure of the specialized department, resulting from the trend of set up of teams focused on didactic and research dimension and ensuring the development perspective of the subdivision; fitting into the available financial resources; as well as other criteria, which shall be established by the decision of the Moldova State University Senate.

Faithfully, we cannot deny the role played by the contest in the appearance of the employment relationships of teaching staff – a role that ensures the employer's and also the community interest to select the most competent people to perform this activity of a paramount importance for the society. At the same time, the existence of the contest as a stage in the appearance of the employment relationship – which is mandatory for certain categories of teaching staff – confers certain particularity to this relationship and highlights its specificity.

We also specify that, in order to ensure temporary needs, usually due to the needs of a specific academic year, or even semester, the educational institution can hire teaching staff for this period without organizing a hiring contest, but this is exception, even if it does not reflect unique cases, anyway, in the conditions of arguing the need for personnel only for such a period, just confirms the general rule of hiring the respective personnel via a contest.

In para. 2.3. *Importance of the Individual Employment Contract for the Appearance of the Employment Relationship of Teaching Staff*, we analysed the role of concluding individual employment contract in the appearance of this relationship, as well as its correlation with the hiring contest of teaching staff in higher education institutions.

We concluded that the individual employment contract represents the final step in the appearance of the employment relationship of the teaching staff, but, by virtue of the obligation of the prior contest procedure, is to be subject to complex analyses, and, respectively, the hiring contest and the conclusion of the individual employment contract, jointly, form a complex legal factor that leads to the appearance of the employment relationship of the teaching staff. In this vein, we point out that according to item 29 of the Framework Contest Regulations, the person who passed the contest for a certain didactic or scientific-didactic position is employed in that position as a full-time employee, through an individual employment contract, concluded with the rector of the higher education institution, as a representative of the employing institution, for a period of 5 years, and in the case of persons retired, according to acting laws, due to age limit or length of service, or who were granted the right to pension due to age limit age or length of service, the contract is concluded for a period of up to 2 years, which, upon expiry, can be extended by the parties.

Given that, in general, we recognize that the basis for the appearance of the employment relationship is the legal fact expressed in the bilateral and voluntary action of the parties – the conclusion of the individual employment contract, we shall mention that, depending on the lack or existence of certain procedures prior to the conclusion of the contract, we will be in the presence of a simple or a complex legal component, which will appear as a legal fact that gave rise to the employment relationship. When for the teaching staff hired via a contest, the complex legal fact consists of the hiring contest and the individual employment contract, for example, for some of the young teaching staff, such as the pedagogical workers who completed their studies financed from the State budget based on State order, we also identify a complex legal fact which is composed of the act of assignment to work and the individual employment contract. As to the legal nature of the assignment act, we consider that it has a mixed nature, and belongs to labour law, by its purpose of generating an employment relationship, but also, partially – to the administrative law, by its content, issuing authority and issuing procedure, and such issuing procedure of the assignment act being subject to appeal, likewise the tender procedure is also subject to appeal.

Chapter 3 ***Development of the Employment Relationship of Teaching Staff***, provides a thorough analysis of the rights and obligations of the subjects of the employment relationship of teaching staff, the conditions in which this relationship is carried out, via defining the elements and the particularities of its content. Following the normative provisions, we state that the obligations to be fulfilled by a teaching staff, depending on the respective educational level, which form the inherent content of the position, establish, from the practical point of view, the job tasks to be performed by the person vested into the respective profession.

In para. 3.1. *Peculiarities of the Content of the Employment Relationship of Teaching Staff* we provide an analyses of the rights and obligations that are part of the content of the employment relationship of teaching staff, with a special focus on the job duties characteristic to the position held by the respective employees.

According to the Classification of Occupations of the Republic of Moldova, education specialists are included in the major subgroup 23, with the assignment of the occupation code, resulting from the specific position they occupy, such as, for example, code 231001 for university assistants, or code 231007 – for university professors. According to this act, when establishing the teaching staff job duties, should be taken into account the general tasks listed for education positions in the Classification of Occupations of the Republic of Moldova, namely: preparation and teaching of theoretical and practical courses, coordination of internships, preparation of didactic support in accordance with educational standards; stimulating discussion and critical thinking among pupils/students; supervision, as appropriate, of experimental and practical works, etc.

Carrying out an analysis of the duties to be performed by the teaching staff, we noticed that, practically, at all education levels there are established learning, teaching and education tasks, but, obviously, depending on the level of education and the purpose of the level, initially educational tasks shall prevail, and further on, the learning element is then amplified, with the view to acquire research skills as well acquired knowledge practical application skills. Throughout this process, within the educational task, a separate attention is given to the development of the personality of the pupil/student, in the spirit of critical thinking and the right to express own opinion, including in the relation between the pupil/student and the teaching staff. We consider this to be of major importance in the content of the teaching staff position, and which, by virtue of its highlighted social character, is not lower to that of teaching/learning - transmission of knowledge. Regardless of the level of education, the teaching staff, when performing the job, will carry out the task of preparing lessons, the direct task of teaching – learning, as well as the analysis and assessment, including their own activity and the results thereof. It is also obvious that the performance of didactic duties, and especially the scientific-didactic ones, within higher education institutions, in addition to the didactic and methodical activity, also implies the realization of a scientific and research activity, and the requirements for occupying the positions of university lecturer, associate professor and university professor, directly emphasises this need.

As to the statutory rights and obligations of the teaching staff, first of all, we indicate all those rights and obligations provided in general for all categories of employees stated at Art. 9 of the Labour Code of the Republic of Moldova as well through other legal and normative provisions. At the same time, the legal status of teaching staff includes the specific rights and obligations provided for by special laws, including rights and obligations stated at Art. 134 and Art. 135 of the Education Code of the Republic of Moldova, such as the following rights: to choose and use both didactic technologies, textbooks and didactic materials approved by the ministry, as well as alternative ones, which they consider appropriate for the achievement of State educational standards; to elect and to be elected to the management, administrative and advisory bodies of the educational institution, etc.; but also such obligations, as the following: to ensure the quality of the educational process by complying with the State educational standards and the National Curriculum; to respect the rights of children, pupils and students; to create optimal conditions for the development of the individual potential of the child, pupil and student; to promote the moral values of justice, equity, humanism, patriotism and other values; to collaborate with family and community; to ensure life safety and the health protection of children, pupils and students within the educational process; not admit degrading treatments and punishments, discrimination in any form and the application of any form of physical or mental violence, etc.

One of the essential rights of the teaching staff within the higher education institution is the right to require conferment of teaching titles. According to the provisions of Art. 117 of the Education Code of the Republic of Moldova, the scientific-didactic titles are the title of associate professor and university professor, which are conferred by the senate of the institution, depending on the scientific domain, and confirmed by the national authority vested with the confirmation of scientific titles. According to the Methodology for the Confirmation of Scientific-Didactic Titles in Higher Education, the senate of the higher education institution may confer these titles, depending on the scientific domain and then confirmed by the National Agency for the Assurance of Quality in Education and Research (ANACEC).

Deontological norms have particular importance for determining the rules of conduct of the parties to the employment relationship, which ones, for general and vocational training education, regardless of the type of ownership of the educational institution, are established by the Code of Ethics of Teaching Staff. Thus, through the provisions of the Code of Ethics of Teaching Staff, common rules are established for teaching staff and other staff from educational institutions of the respective level, which shall serve as minimum requirements for the respective domain, and which shall contribute to raising the level of discipline of the subjects, by their self-discipline and by reducing inappropriate or immoral practices in the educational activity, as well as contribute to maintaining a high degree of professionalism when performing the job.

Para. 3.2. *Identification of the Working Time and Rest Time of Teaching Staff*, provides a detailed analysis of some peculiarities of the development of the employment relationship, which results from the specific way of allocating work time, including the concept of didactic norms, but also particularities of the rest time.

In general, the employment relationship is exercised within an operational process of the activity of the institution, having a pre-established regime for employees, which includes periods of a certain pre-established duration, during which the employee shall exercise the job duties, and also periods during which the employee will be exempted from fulfilling job duties, some of them, even with maintain the salary pay. As to the employment relationship of teaching staff, we emphasize that from the perspective of the duration of working time, the way it is distributed during different calendar periods of time as well the granted rest time, it has certain particularities, which emerge from the specifics of the work performed by teaching staff, the increased psycho-emotional effort involved by this work, effort which determines, for these relationships, the applicability of the category of shorter working hours.

In the vein of the phenomenon of holding two positions by teaching staff, in other words, accomplishment of more than one teacher workload during the academic year, we emphasize that the maximum admissible duration of working hours established for an employee is related

specifically to one individual employment contract, even taking into account the category of shorter working hours, and it does not affect the possibility of exceeding the teacher workload, including within the same educational institution, just necessary to conclude an individual employment contract for holding the second position specifying on the duration of the working hours.

On a separate note, we state that working time is also perceived as a work measurement unit – the teacher workload – the length of time that the employee must fulfil, in a certain calendar period of time. In this sense, we point out that both Art. 167 of the Labor Code of the Republic of Moldova, as well as item 6 of the Regulations on the Way of Organizing Workloads in the Branches of the National Economy, approved by Government Decision no. 98 of 04.02.2013, directly stipulates the time norms, among the work norms, and the time norm itself is conceived as the amount of work time consumption, established for the performance of a work unit by an employee or a group of employees with the respective qualification in certain technical and organizational conditions. The regulation of work norm is the main factor that characterizes the working time within the employment relationship of teaching staff, namely via the institution of work norm the teacher workload is set up – the volume of work to be performed by a teaching staff within the time period which represents an academic year. For example, according to the provisions of Art. 55 of the Education Code of the Republic of Moldova, in general education, the working time of teachers is 7 hours daily, respectively 35 hours weekly, and it includes: teaching-learning-evaluation activities, practical training, according to the educational framework plans; educational activities complementary to the educational process; counselling activities for children, students and parents in psychology-pedagogy issues; mentoring activities; management activities; preparatory activities for carrying out the educational process; activities of developing individualized educational plans and teaching-learning-evaluation, practical training, according to the educational plans for children and students with special educational needs, and among the indicated tasks, teaching-learning-evaluation and practical training activities in primary education, middle school and high school constitute 18 hours per week, and for teaching staff who have the quality of mentor, there’s a smaller teaching workload.

As to the teaching staff's rest time, we specify the benefit of the rest periods provided by labour legislation, within the limits of their applicability to the particularities of the teaching staff's employment relationship. A special feature of the employment relationship of teaching staff is the vacation leave, which is assigned to the category of extended annual vacations.

In para 3.3. *Delimitation of Specific Elements of the Remuneration of Teaching Staff,* we provide the analyses of the basic element of the object of any employment relationship, which is the salary.

We emphasize that the salary may vary, depending on the type of ownership of the educational institution, and in private institutions the salary is negotiable, having duly applied the prescribed by the law structure, the basic salary can be established both according to the tariff system and according to non-tariff systems, with the possibility to be related to time units, piecework, or to a monthly position salary, then in the budgetary area, where work the vast majority of teaching staff, we state that the salary, practically, is deprived of the negotiable character, being established through acting laws and the corresponding implementation acts.

Thus, the salary rules for teaching staff in public education institutions, at all levels, are established by the Law on the Unitary Salary System in the Budgetary Sector no. 270 of 23.11.2018, which at Art. 7 thereof, assigns the field of education and research to the occupational group (E) of the Register of functions in the budgetary sector.

According to the provisions of Art. 10 of the Law on the Unitary Salary System in the Budgetary Sector no. 270 of 23.11.2018, the salary is composed of the fixed part and the variable part. Thus, the fixed part of the salary includes: the basic salary; monthly increment in fixed amount; the monthly increment for the professional degree; the monthly increment for holding a scientific and/or scientific-didactic title; the monthly increment for holding the honorary title, and in the variable part – the increment for performance and increments of a specific nature. With reference to the component parts of the salary, indicated above, we specify that, except the monthly increment for the professional degree, the others are also part of teaching staff salary, and the monthly increment for holding a scientific and/or scientific-didactic title is mainly intended for them.

In Chapter 4 ***Termination of the Employment Relationship of Teaching Staff***, we provide a detailed analysis of the grounds for termination of the employment relationship of teaching staff as well the possibilities of the teaching staff to defend their rights and legitimate interests, by identifying the forms of defence that can be used by the teaching staff to restore the rights considered to be violated. For a complex and more effective analysis, we provided case law studies relating to applying special grounds for dismissal of teaching staff.

In para. 4.1. *Applicability of Grounds for Termination of Employment Relationship of Teaching Staff* we provided analyses of the grounds for termination of the individual employment contract which are directly set for these categories of relationships, as well the particularities of application of some general grounds for the termination of the employment relationships with teaching staff.

In general, the grounds for termination of the individual employment contract is listed at Art. 81 of the Labour Code of the Republic of Moldova, namely: circumstances that do not depend on the will of the parties; upon agreement of the parties; or at the initiative of one of the parties. We

emphasize that obviously, all the grounds for termination of individual employment contract, of a general nature, will be applied to the employment relationship of the teaching staff, but, at the same time, we note that the Labour Code of the Republic of Moldova also contains special grounds, specifically applicable to the respective category of employment relationships.

Among the grounds for termination of employment relationship, which do not depend on the will of the parties, with a high possibility of applying to the employment relationship of teaching staff, we mention the expiration of the term of the individual fixed-term employment contract, from the date stipulated in the contract, except the case when the employment relationships actually continue and none of the parties requested their termination, as well as the case provided for in Art. 83 para. 3 of the Labour Code of the Republic of Moldova – which ground is applicable, especially to the category of teaching and scientific-didactic staff in higher education, whose employment in the position implies a determined duration of the employment relationship.

We highlight the special grounds provided by the law for the dismissal of teaching staff, as well the peculiarities of some general grounds for dismissal, in the case of their application to the employment relationship of teaching staff.

With reference to the dismissal of the employee as a result of the unsatisfactory result of the trial period, we note that it will not be applicable to some categories of teaching staff, namely the teaching staff and scientific-didactic staff from higher education institutions, as result of their employment following a hiring contest, by virtue of the ban on the application of the trial period in their contract according to the provisions of Art. 62 of the Labour Code of the Republic of Moldova, as well as it will be applicable, at the moment, only partially, except part of the teaching staff, in virtue of the provision of item 12 of the Collective Convention no. CCMECC332/2020 of 11.12.2020 in the Domain of Education for the Years 2021-2025 (branch level), which establishes that the trial period does not apply in the case of concluding an individual employment contract with young specialists and teaching staff, except persons performing educational activities for a school discipline other than the one certified by the diploma.

In the same context, we mention the specifics of the application to teachers of the termination grounds due to absence without valid reasons from the workplace for at least 4 consecutive hours (without taking into account the lunch break) during the working day – in case of employees with the daily duration of the working time of minimum 8 hours per day, or for at least half of the daily duration of working time – in the case of employees with a daily duration of working time of less or more than 8 hours per day – specifics that results from the duration of the working day of teaching staff, which involves both auditory work time and work time reserved for non-auditory activities, the management of which is at the choice of the employee, without a possibility of verification by the employer, as it is in case of a classic employment relationship.

When to special grounds for dismissal provided by the law for teaching staff, we state that they have a disciplinary character and in order to apply them, it is necessary to commit the specific disciplinary breach, but also to comply with the general procedure to make employee liable under disciplinary responsibility.

As to the dismissal of the teaching staff on the grounds of repeated serious violation, during one year, of the Statutes of the educational institution, we consider this special rule to be useless, since the violation of the Statutes of the educational institution, itself represents a violation of job duties, and for repeated violations of job duties, the law offers the possibility to dismiss employees, under general procedure. The only essential difference between these grounds is the fact that the special rule does not provide that for the previous violation, a disciplinary sanction was to be applied to the employee, a fact which, to a certain extent, in our opinion, is rather a deficiency of the special norm, since the first sanction is aimed to prevent and correct the employee's behaviour, which the special norm does not allow for.

Another special ground for the dismissal of teaching staff is the commission by the employee who performs educational functions of an immoral act incompatible with the position held. We would like to specify that the respective ground is a special one, but also, at the same time, a classic one for the given category of employees – ground that characterizes the specifics of the position and which results from the inherent obligations of the teaching staff to have irreproachable behaviour, both at the place of work, as well as outside of it, both directly during working hours and after – in everyday life. The very notion of an immoral act has an estimative character, which means that the court has the obligation to study, in each concrete case, all the circumstances of the respective act.

Similarly, a special ground for the dismissal of teaching staff is the disciplinary offense, in the form of application, even once by a teaching staff, of physical or mental violence towards students/pupils. In this context analyses, we refer to the previously described by us with reference to the grounds of repeated serious violation by the teaching staff of the Statutes of the educational institution, the absence of the legal conceptual framework, to the provisions of the Education Code of the Republic of Moldova, a fact which limits the circle of subjects that fall under the scope of this ground, only to a certain part of the staff who carry out didactic activities, and the very case of committing of an act of mental or physical violence by the teaching staff towards students/pupils is to be proven through a medico-legal report, the conclusions of the medico-legal expertise, eyewitness testimony, etc.

In para. 4.2. *Synthesis of the Forms of Defence of the Legitimate Rights and Interests of Teaching Staff,* in the light that one of the basic goals of the legislator is the law to be applied in practice, and the rights that will be recognized to the participants in social relations to have a real

possibility to be realized, we present the forms and methods via which teaching staff may defend their violated rights and interests.

For the defence of legitimate rights and interests, the legal system provides for different forms and methods, and these are fully applicable to the employment relationships of teaching staff. The most widespread, and, at the same time, considered to be the most effective forms of defence of legitimate rights and interests in general as well of the teaching staff labour relations, are the administrative form and the judicial form – the forms directly stipulated at Art. 15 of the Civil Code of the Republic of Moldova, not excluding other forms of defence of rights and interests, from self-defence to alternative forms, such as the civic one, carried out within the social partnership.

Ensuring the right of each employee to defend his/her labour rights and freedoms, including of teaching staff, is one of the basic principles in the regulation of labour relations provided by Art. 5 of the Labour Code of the Republic of Moldova, and the legislator directly states that this can take place, including by notifying the supervisory and control bodies and labour jurisdictional bodies, which reflects the applicability of administrative and judicial forms to the defence of labour rights and interests.

The legislation offers to teaching staff various possibilities to defend legitimate rights and interests, also granting the option to choose the concrete form of defence to be applied.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The scientific results obtained as a result of the research carried out were reflected in: determining the place and importance of the legal relationship of teaching staff in the legal system and in the system of the branch of labour law; determining the legal nature of the employment relationship of teaching staff; determining the essence, content and particularities of the employment relationship of teaching staff; establishing the concrete conditions for the appearance of the employment relationship of teaching staff; establishing the circle of rights and obligations that form the content of the legal relationship of teaching staff; establishing the conditions under which the employment relationship of teaching staff is carried out; establishing the grounds for termination of the employment relationship of teaching staff; establishing the forms through which the rights and legitimate interests of teaching staff can be defended; outline the gaps and shortages of the current regulation of the employment relationship of teaching staff; and develop complex proposals to improve the regulatory framework of the employment relationship of teaching staff.

The results of the analysis of labour and educational legislation, of the theory and practice of case law, conducted to the following ***conclusions:***

1. The analysis of the place of the legal employment relationship of the teaching staff shows that it belongs to the branch of labour law, being regulated by the norms of labour law, which are supplemented by the norms from the educational field (Chapter 2, para. 2.1.)

2. The branch affiliation in the legal system of the employment relationship of teaching staff indicates that this is a typical employment relationship, with some atypical elements. (Chapter 2, para. 2.1.)

3. The realization by teaching staff of their right to work is performed under the general conditions established by labour legislation, with peculiarities set through special rules, both of labour legislation and education laws, which is the most efficient way of regulation of the employment relationship of teaching staff. (Chapter 2, para. 2.1.)

4. The legal nature of the employment relationship of teaching staff is a contractual one, emphasized by features characteristic to any employment relationship, but also by particularities resulting from the specifics, as well as the importance, of these relationships in the society. (Chapter 2, para. 2.1.)

5. The employment relationship of teaching staff is a complex one, with certain particularities, which are present during all the stages of its development, from its appearance (set-up) to its termination. (Chapter 2, para. 2.2; Chapter 3, para. 3.1., para. 3.2. and para 3.3; Chapter 4, para. 4.1.)

6. The analysis of the normative base that regulates the legal relationship of teaching staff shows an inconsistency between the terms used to identify the categories of personnel in higher education, where the Labor Code of the Republic of Moldova, at Art. 297, uses an outdated terminology, and the provisions of Art. 117 of the Educational Code of the Republic of Moldova classifies scientific and didactic staff into scientific-didactic staff, scientific staff, teaching staff and auxiliary teaching staff. (Chapter 2, para. 2.1.)

7. The legal regulations of the legal relationship of teaching staff present inconsistencies of competence between the level of normative acts that are to establish bans on the occupation of teaching positions, on grounds of health and/or the existence of criminal antecedents, with the normative acts that currently regulate de facto these situations. (Chapter 2, para. 2.1.)

8. The legal regulations of the legal relationship of teaching staff present inconsistencies between the normative acts in force regarding the competence of approving the Framework Regulations for organizing, conducting the competition and occupying teaching and scientific-didactic positions in higher education. (Chapter 2, para. 2.1.)

9. Some employment relationships of teaching staff appear as result of a complex legal fact, composed of the individual employment contract, preceded by hiring contest, or the assignment to work. (Chapter 2, para. 2.2 and para. 2.3.)

10. Following the analysis of the nature of the work of teaching staff in higher education institutions and the acting rules, we conclude the lack of argumentation for the time limitation of the legal employment relationships of some categories of teaching staff and, respectively, the lack of argumentation of the possibility to set up of the fixed term of the individual employemnt contract for these categories. (Chapter 2, para. 2.1.)

11. We conclude that it is necessary to replace the fixed term nature of the individual employment contract of some categories of teaching staff, with the procedure of periodic attestation of the results of the activity of these employees. (Chapter 2, para. 2.1.)

12. The subjects of the employment relationship of teaching staff have special legal labour capacity. (Chapter 2, para. 2.3.)

13. The content of the legal relationship of teaching staff is one of the most complex in the labour law system, consisting of several groups of correlative rights and obligations, which are part both of the general rules and in the special provisions of the law, and includes general labour rights and obligations as well rights and obligations arising from the educational activity carried out by the teaching staff, to which are added the rights and obligations stipulated by the deontological norms of the branch for which the teaching staff prepare specialists. (Chapter 3, para. 3.1.)

14. The attributions that form the content of the function of the employment relationship of teaching staff are specific, and one of their basic features is the creative nature of the work performed. (Chapter 3, para. 3.1.)

15. The teaching staff's working time is reduced, compared to the normal duration of working time, distributed according to a specific work regime - the fragmented work regime. (Chapter 3, para. 3.2.)

16. The working time and payment for the work of teaching staff are governed by the concept of the teaching norm, which determines the content, structure and extent of the working time of this category of employees, as a result of which the basic salary of the teaching staff is also determined. (Chapter 3, para. 3.2. and para. 3.3.)

17. The composition of the teaching staff's working time is a complex one, where part of the activities to be carried out are subject to strict regulation and a well-determined regime – the teaching activity in direct contact to students, and another part of the activities – outside the direct contact to the students, methodical, scientific – despite the workload regulation, has a flexible regime, the teaching staff having a greater or lesser degree of freedom in choosing the period of its implementation. (Chapter 3, para. 3.2.)

18. The termination of the employment relationship of teaching staff is done both on the basis of the general grounds for termination of the employment relationship, and on the basis of special grounds provided by the laws for these categories of employees. (Chapter 4, para. 4.1.)

19. The teaching staff can benefit from all forms recognized by the law maker for the defense of legitimate civil rights and interests, from self-defense of rights and interests, to the judicial form of defense. (Chapter 4, para. 4.2.)

Considering the above conclusions, to improve the labour legislation that regulates the legal relationship of teaching staff, we propose the following ***recommendations*** as ***lex ferenda:***

1. Reword the text of Art. 296 of the Labor Code of the Republic of Moldova as follows:

"Article 296. The right to practice teaching activity

(1) To the teaching activity, to the activity in the corresponding educational institutions and in the organizations in the domain of science and innovation are admitted persons who have necessary level of education, established by acting laws.

(2) Persons deprived of this right by court decision or based on the corresponding medical certificate, as well as persons with a criminal record for certain crimes, are not admitted to the teaching activity. The list of crimes that do not allow the practice of teaching activity is established by law."

2. Supplement the provisions of Art. 3 of the Education Code of the Republic of Moldova with the definition of teaching staff, as follows: *"the teaching staff is the person who possesses the*

necessary knowledge and skills, employed through an individual employment contract concluded with an educational institution, or who provides the respective services in accordance with the provisions of the legislation in force, and who carries out an activity of knowledge transmission and development of the abilities of a person or a determined circle of people in the context of their education in the spirit of recognized social values".

3. Amend para. (4) of Art. 71 of the Education Code of the Republic of Moldova, by removing the syntagm *"and of teaching staff",* and the sentence *"Young specialists can be assigned by the Ministry of Education and Research to vacant positions",* and supplement this article with a new paragraph (5), to read as follows: *"(5) The hiring of teaching staff is done through direct negotiations and the conclusion of the individual employment contract, in the case of the existence of a single application for the position. If there are at least two applicants for the vacant position, employment is done by concluding the individual employment contract, preceded by a contest, organized in accordance with the regulations approved by the Ministry of Education and Research. Young specialists can be assigned to vacant positions by the Ministry of Education and Research."*

4. Remove the syntagm" teaching *staff and"* from letter g) para. (1) of Art. 55 of the Labour Code of the Republic of Moldova and the syntagm "*for fixed period of time"* from para. (1) of Art. 297 of the Labour Code of the Republic of Moldova, and supplement Art. 117 of the Education Code of the Republic of Moldova with a new paragraph – (9), to be read as follows: *" "The scientific-teaching staff is subject to periodic attestation once every 5 years, by verifying the accomplishment, in the last 5 years, of the tasks provided for by the Minimum Standards for the conferment of scientific-teaching titles, established by Government Decision",* and the reinstatement of para. (1) of Art. 301 of the Labor Code of the Republic of Moldova with the following wording: *"In addition to the general grounds provided by this code, the individual employment contract concluded with scientific and didactic staff from higher education institutions can be terminated following the negative result of the periodic certification, if the transfer to a lower position to which the employee corresponds according to the results of the attestation is not possible for objective reasons or the employee refuses the transfer."*

In conclusion, without pretending that this is an all-embracing study, we do hope it will be useful for next researchers to come, serving as a benchmark and support in exploring such directions as the correlation of general and special norms in the regulation of employment relationships of teaching staff, as well improving regulatory mechanisms thereof.

BIBLIOGRAPHY

1. AVORNIC, Gh., COJOCARU, V., MORARU, Iu., *History of codification of private law in the Republic of Moldova*. În: *Supremația Dreptului*, 2021, nr. 1, pp. 8-28. ISSN 2345-1971.
2. BĂIEȘU, A., *Tendințe anuale în procesul de armonizare a dreptului privat în Europa.* În: *Promotions of Social and Economic Values in the Context of European Integrations*. Ediția 4, Vol.1, 2021. Chișinău, 3-4 decembrie 2021. ISBN 978-9975-3527-1-0.
3. BOIȘTEANU, Ed., ROMANDAȘ, N., *Dreptul muncii. Manual*, Chișinău: S. n., 2014 (F.E.-P. ”Tipografia Centrală). 736 p. ISBN 978-9975-53-444-4.
4. BOIȘTEANU, Ed., ROMANDAȘ, N., *Dreptul muncii: Partea generală: Manual.* Chișinău, CEP USM. 2012. 154 p. ISBN: 978-9975-71-292-7.
5. CAPȘA, T. *Comentariu ştiinţifico-practic la Codul Muncii al Republicii Moldova: (cu toate modificările şi completările operate la 01.03.2014)*; Universitatea de Studii Europene din Moldova. Chișinău, 2014. 443 p. ISBN 978-9975-4024-4-6.
6. CRISTOFOREANU, E. *Teoria generală a contractului individual de muncă.* București, editura Curierul judiciar, 1937. 416 p.
7. DONOS, Ev. *Dreptul muncii: Note de curs.* Acad. de Studii Econ. Din Moldova. Ch.: Dep. Ed.-Poligr. al ASEM, 2005. Vol I. 320 p. ISBN 9975-75-281-0.
8. *Drept procesual civil: Partea specială.*// BELEI, Elena, BORȘ, Ana, CHIFA, Felicia et.al.; coord., BELEI, Elena. Chișinau: S.n., tipografia ”Lexon-Prim”, 2016. 464p. ISBN: 978-9975-4072-9-8
9. GHIMPU, S., ȚICLEA. A. *Dreptul muncii*. Ediția a III-a, București, 1997 (Casa de Editură și Presă ”Șansa” SRL), 574 p. ISBN 973-9167-72-1.
10. **JOSANU, D., DRUMEA, Iu.** *Reglementări juridice privind timpul de muncă și timpul de odihnă.* Confederația Națională a Patronatului din Rep. Moldova (CNPM), Biroul Org. Intern. a Muncii pentru Activități cu Organizațiile Patronale. Chișinău: S.n., 2014. Tipogr. ”Sofart Studio”. 64 p. ISBN 978-9975-4033-7-5
11. **JOSANU, D., DRUMEA, Iu.** *Reglementarea juridică a salarizării.* Confederația Națională a Patronatului din Rep. Moldova (CNPM), Biroul Oranizației. Intern. a Muncii pentru Activități cu Organizațiile Patronale (ILO – ACT-EMP). Chișinău: S.n., 2014. Tipogr. ”Sofart Studio”. 68 p. ISBN 978-9975-4033-9-9
12. MACOVEI, T., *Subiecții litigiilor de muncă*. În: *Revista Națională de Drept*, nr. 4(186), 2016, pp. 13-17. ISSN 1811-0770.

13. MIHAILOV, T. Forme juridice actuale de prestare a muncii. Studiu monografic. Universitatea de Stat din Moldova, Facultatea de Drept, Departament Drept Privat. – Chișinău: S.n., 2022 (ArtPoligraf). 270 p. : sceme, tab. ISBN 978-9975-3395-7-5. [95, p. 22-23]
14. MIHAILOV, T., CHISARI-RURAK, A., *Încetarea contractului individual de muncă în legătură cu atingerea vârstei de pensionare*. În: Studia Universitatis Moldaviae. 2022, nr. 3 (153) ISSN 1814-3199.
15. NEGRU T., SCORTESCU C. Dreptul muncii - Curs universitar. Ch. Labirint–Cutasevici ÎI, 2010 (F.E.P. ”Tipogr. Centrală”). 320 p. ISBN: 978-9975-943-19-7.
16. PĂSCĂLUŢĂ, F. *Controlul obştesc asupra respectării legislaţiei muncii în Republica Moldova*. În: *Analele Ştiinţifice ale Universităţii Cooperatist - Comerciale din Moldova*, 2011, nr. 9(2), pp. 231-235. ISSN 1857-1239.
17. ROMANDAȘ, N. Dreptul muncii. Curs de prelegeri, Chișinău: Universitatea de Stat din Moldova, 1997. 410 p. ISBN 9975-900-28-3.
18. ROMANDAȘ, N. Contractul individual de muncă. Chișinău: USM, 2001. 220 p. ISBN 9975-917-91-7.
19. ROMANDAȘ, N., BOIȘTEANU, Ed. *Dreptul muncii. Manual*. Ch.: S.n., 2007 (Tipogr. ”Reclama” SA). 404 p. ISBN: 978-9975-900-74-4.
20. SADOVEI, N., *Dihotomia raportului juridic de muncă: Studiu monografic*/Nicolai Sadovei; Univ. de Stat din Moldova, Facultatea de Drept; Catedra Dreptul Muncii. Ch.: ”Garomont – Studio” SRL, 2011. p. 203. ISBN 978-9975-4223-0-7.
21. SADOVEI, N., *Reflecții privind jurământul cadrului didactic în calitate de act social public în cadrul procesului educațional*.// În: nr. 3 (16) al Revistei de ştiinţe socioumane, 2010. p. 47-55
22. SOSNA, B., *Contractul individual de muncă. Legislație. Îndrumar pentru jurist, antreprenor, șef de întreprindere, lucrător la cadre.* Ed. Cartier, (Colecția Cartier juridic) 2001. 336p. ISBN: 9975-79-130-1.
23. ȚICLEA, Al. *Dreptul muncii*. Ediția a V-a, revizuită și actualizată. București: Universul Juridic, 2012. 515 p. ISBN 978-973-127-941-1.
24. ȚICLEA. Al. *Tratat de dreptul muncii: legislație, doctrină, jurisprudență*. Ed. a 7-a, rev. și adăugată. București: Universul Juridic, 2013. 1048 p. ISBN 978-606-673-094-5.
25. БОДНАРЧУК, О. Г. *Трудове право України.* /О. Г. БОДНАРЧУК, К. М. ВАСЬКІВСЬКА, П. Р. ЛЕВЧУК. Ірпінь: Університет ДФС України, 2021. (Серія «На допомогу студенту УДФСУ» 572 с. ISBN 978-966-337-630-1.
26. ДОЛГІХ, Н. П. *Трудове право: навч. посіб.*/ Н. П. ДОЛГІХ, В. П. МАРУЩАК. – Одеса: ОРІДУ НАДУ, 2011. 252 с.

27. ПИЛИПЕНКО, П. Д. *Проблемы теорії трудового права: Монографія.* Львів: Видавничий центр Львів Національного ун-ту імені Івана Франка. 1999. 214 с. ISBN 966-613-035-1.
28. ЯКОВЛЕВА, Г. О. Інтелектуально-фізіологічні критерії специфіки наукової діяльності В: Правове регулювання відносин у сфері праці і соціального забезпечення: проблеми і перспективи розвитку: тези доповідей і наук. повідомлень учасників VI Міжнар. наук.-практ. конф. (м. Харків, 3–4 жовт. 2014 р.) / за ред. В. В. Жернакова. – Х. : Право, 2014. – 376 с. ISBN 978-966-458-690-7.
29. АЛЕКСАНДРОВ, Н. Г. *Трудовое правоотношение.*//Юридическое издательство Министерства Юстиции СССР, Москва, 1948. 335 с.
30. АХМЕТОВ, А. М., МИНГАЛИ, Г. *Трудовое право Республики Казахстан.* Учебник. 4-е издание/А. М. АХМЕТОВ. «ЛитРес: Самиздат», 2018. 550 с. ISBN 978-5-532-11312.
31. БАРУ, М. *Унификация и дифференциация норм трудового права*. În: Советское Государство и право. Ежемесячный Журнал. Москва, nr. 10, 1971.
32. БУЦКОВА, А. Н. *Особенности возникновения и прекращения трудовых правоотношений с научно-педагогическими и руководящими работниками вузов*. Дис. … канд. юрид. наук. Москва, 2005.
33. ГОГОЛЕВ, А. М. *Трудовой договор (контракт) с преподавателями средних специальных учебных заведений*. Дис. … канд. юрид. наук. Пермь, 1999.
34. ГОРОЖАНКИНА, М. А. *Правовое регулирование труда профессорско-преподавательского состава государственных вузов.* Дис. … канд. юрид. наук. Томск, 2006.
35. ДМИТРИЕВА, Е. К. *Трудовой договор научно-педадогических работников вузов.* М.: изд-во МГУ, 1991. 166 с. ISBN 5-211-01731-5.
36. ЗАВГОРОДНИЙ, А. В. *Конкурсные и трудовые правоотношения педагогических работников образовательных организаций Российской Федерации.: Монография.* Москва, Проспект, 2023. 288 с. ISBN: 978-5-392-38665-9.
37. ЗАВГОРОДНИЙ, А. В. *Трудовой договор с преподавателями вузов (проблемы и особенности правового урегулирвоания).* Диссертация на соискание ученой степени кандидата юридических наук. Санкт-Петербург, 2000г.
38. ИВАНОВ, С. А., ЛИВШИЦ, Р. З., ОРЛОВСКИЙ, Ю. *Советское трудовое право: вопросы теории.* Издательство «Наука» МОСКВА 1978. 369 с.
39. КАПША, Т., СОСНА, Б., ЗАХАРИЯ, С. *Трудовое право Молдовы, Учебно-практическое пособие,* Saarbrucken, Deutschland: 2016 (LAP LAMBERT Academic Publishing). 476 с. ISBN 978-3-659-90413-4.

40. КАРИНСКИЙ, С. С. *Дифференциация и унификация советского трудового законодательства.* În: Известия Высших Учебных Заведений. Правоведение, № 3 1966, Москва, Издательство Ленинградского Университета.
41. *Нестандартные формы занятости: Анализ проблем и перспективы решения в разных странах. Обзорная версия.* Международное Бюро Труда – Женева: МБТ, 2017. (ISBN 978-92-2-431001-0), 45 с., https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_554952.pdf. [Accesat la 20.10.2023]
42. РОЖКОВ, И. А. Основы регулирования труда работников общеобразовательной школы// Москва, 2002. 160 с. ISBN 5-88753-058-8.
43. ТАЛЬ, Л. С. *Трудовой договор: Цивилистическое исследование. (Классика российской цивилистики).* М.: Статут, 2006. 539с. ISBN: 5-8354-0306-2
44. ФЁКЛИН, С. *Правовой статус педагогического работника в сфере трудовых отношений: методическое пособие*. Москва: Арсенал образования, 2008. — 152с. ISBN 978-5-91383-027-2.
45. ШКАТУЛЛА, В. *Образовательное право, Учебник для вузов:* Москва, 2001 (Издательство НОРМА). 688с. ISBN 5-89123-564-1.
46. ШКАТУЛЛА, В. И. *Работникам дошкольных учреждений о трудовом законодательстве: Пособие для работников дошк. учреждений.* М.: Просвещение, 1990. 192с. ISBN 5-09-001645-3.

LIST OF THE AUTHOR'S PUBLICATIONS ON THE THESIS TOPIC

Articles in scientific journals

1. ЖОСАНУ, Д., СОСНА, Б., О некоторых проблемах, возникающих при применении законодательства, регулирующего труд педагогических работников. În: *Legea şi Viaţa.* 2018, nr. 2(314), pp. 29-36. ISSN 2587-4365. (categoria C)
https://ibn.idsi.md/vizualizare_articol/59517

2. ЖОСАНУ, Д., ПЕТРОВ, В., Особенности заключения и прекращения индивидуальных трудовых договоров с педагогическими работниками. În: *Vector European. 2018*, nr. 1, ISSN 2345-1106. Pp. 44-49. (categoria B) https://ibn.idsi.md/vizualizare_articol/78725

3. JOSANU, D. Forme de apărare a drepturilor și intereselor cadrelor didactice. În: *Studia Universitatis Moldaviae, Seria Științe sociale nr. 8(168) 2023*. pp.155-159. ISSN 1814-3199. (categoria B) https://ibn.idsi.md/ro/vizualizare_articol/193819/datacite

Articles Published in Works of Confereneces and Other Scientific Events

4. JOSANU, Dorin. Защита трудовых прав педагогических работников. În: *Promovarea valorilor sociale în contextul integrării Europene*. 4 mai 2018, Chişinău. Chişinău: Tipografia "Adrilang", 2018, pp. 134-140. ISBN 978-9975-3185-7-0. https://ibn.idsi.md/vizualizare_articol/150338

5. JOSANU, Dorin, SOSNA, Alexandru, SECRIERU, Alexandru. Некоторые особенности правового регулирования материальной ответственности медицинского работника по трудовому праву и особенности её отличия от других видов ответственности. In: *Sănătatea, medicina şi bioetica în societatea contemporană. Studii inter şi pluridisciplinare*. Ediția a 4-a, 29-30 octombrie 2021, Chişinău. Chișinău, Republica Moldova: "Print-Caro" SRL, 2021, pp. 168-176. ISBN 978-9975-56-935-4.
https://ibn.idsi.md/vizualizare_articol/153171

6. JOSANU, D. Apărarea drepturilor și intereselor cadrelor didactice prin intermediul instituției parteneriatului social. În: *Materialele Conferinței științifice naționale cu participare internațională "Integrare prin cercetare și inovare"*, Chișinău, 9-10 noiembrie 2023. pp. 365-369. ISBN 978-9975-62-687-3.
https://cercetare.usm.md/wp-content/uploads/Culegerea-de-articole-Seria-Stiinte-juridice-si-economice_2023.pdf

7. JOSANU, D. Particularitățile statutului juridic al cadrelor didactice și științifico-didactice din instituțiile de învățământ medical. În: *Materialele Conferinței științifico-practice naționale cu participare internațională "Dimensiuni private și publice în drept medical", Chișinău, 14.12.2023.*

https://conferinte.stiu.md/event_page/742

8. ЖОСАНУ, Д. Нормативно-правовая база регулирования труда педагогических работников в Республике Молдова.//*Тенденции развития юридической науки на современном этапе: сборник трудов международной конференции, посвященной 40-летию юридического факультета Кемеровского государственного университета*//отв. ред.: Ю.Ф. Дружинина, Кемерово, 2015. 797с. ISBN 978-5-8353-1883-4

ADNOTARE

JOSANU Dorin, „Reglementarea juridică a raportului de muncă al cadrelor didactice”, Teză de doctor în drept, Chișinău, 2024.

Structura tezei: adnotări (în trei limbi), lista abrevierilor, introducere, 4 capitole, concluzii generale și recomandări, bibliografie din 258 de titluri, 19 anexe, 170 pagini text de bază (pînă la Bibliografie). Rezultatele obținute sunt publicate în 8 lucrări științifice.

Cuvintele-cheie: raport juridic de muncă, cadru didactic, contract individual de muncă, angajare, concediere, litigiu de muncă, convenție colectivă, concurs, instituție de învățământ, sistem educațional.

Scopul lucrării: studierea complexă a cadrului legal care reglementează raportul juridic de muncă a cadrelor didactice și fundamentarea teoretico-practică a statutului juridic a cadrului didactic.

Obiectivele cercetării: (1) analiza raționamentelor științifice în determinarea apartenenței ramurale în sistemul de drept a raportului juridic de muncă a cadrelor didactice; (2) analiza eficienței reglementării raportului juridic de muncă a cadrelor didactice prin prisma îmbinării normelor cu caracter general și a normelor cu caracter special; (3) determinarea naturii juridice a raportului juridic de muncă a cadrelor didactice și particularităților acestor raporturi în cadrul sistemul raporturilor juridice din ramura dreptului muncii; (4) cercetarea complexă a tuturor etapelor parcurse de raportul juridic de muncă a cadrelor didactice, de la constituirea și până la stingerea acestuia; (5) identificarea lacunelor și deficiențelor în reglementarea lor actuală; (6) elaborarea propunerilor și recomandărilor privind modificarea și completarea normelor juridice în vederea perfecționării și eficientizării reglementării.

Noutatea și originalitatea științifică: insuficiența studierii raportului juridic de muncă a cadrelor didactice în doctrina dreptului muncii. Pentru prima dată în doctrina națională a fost realizat un studiu multiaspectual și comprehensiv al reglementării juridice a raportului de muncă a cadrelor didactice cu abordarea subiectului atât prin prisma dreptului muncii, cât și a dreptului educațional.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante: conceptualizarea instituției raportului juridic de muncă a cadrelor didactice, întru determinarea specificului acestui raport și a specificului normelor juridice din acest domeniu, fapt care contribuie la eficientizarea reglementării juridice și determinarea locului acestui raport în sistemul de drept, ceea ce va facilita și determinarea legii aplicabile în cazul apariției litigiilor rezultate din activitatea de muncă a acestora.

Semnificația teoretică: pentru prima dată în doctrina dreptului muncii a fost realizată o cercetare multilaterală și complexă a reglementării juridice a raportului de muncă a cadrelor didactice, cu implicații profunde asupra naturii juridice, conținutului și evoluției raportului juridic a cadrelor didactice.

Valoarea aplicativă: propunerile și recomandările elaborate în rezultatul analizei complexe a raportului de muncă a cadrelor didactice pot fi utilizate la perfecționarea legislației muncii în domeniu, la analiza ulterioară a naturii juridice a diferitor tipuri de raporturi de muncă și la aplicarea corectă în practică a reglementărilor normative.

Implementarea rezultatelor științifice: utilizarea rezultatelor științifice în procesul educațional al Facultății de Drept a Universității de Stat din Moldova, precum și în activitatea practică a administrării muncii cadrelor didactice și în soluționarea litigiilor care apar între instituțiile de învățământ și cadrele didactice.

АННОТАЦИЯ

ЖОСАНУ Дорин, «Правовое регулирование трудовых отношений педагогических работников», диссертация на соискание ученой степени доктора права, Кишинэу, 2024.

Структура диссертации: аннотация (на трех языках), список использованных сокращений, введение, 4 главы, общие выводы и рекомендации, библиография из 258 наименований, 19 приложений, 170 страниц основного текста (до Библиографии). Полученные результаты опубликованы в 8 научных работах.

Ключевые слова: трудовое правоотношение, педагогические работники, индивидуальный трудовой договор, найм на работу, увольнение, трудовой спор, коллективное соглашение, конкурс, образовательное учреждение, образовательная система.

Цель исследования: комплексное исследование правовой базы, регулирующей трудовые правовые отношения педагогических кадров и теоретико-практических основ правового статуса педагогических кадров.

Задачи исследования: (1) анализ научного обоснования отраслевой принадлежности в системе права трудового правоотношения педагогических работников; (2) анализ эффективности регулирования трудового правоотношения педагогических работников посредством сочетания общих и специальных норм; (3) определение правовой природы трудового правоотношения педагогических работников и специфики этих отношений в системе правоотношений отрасли трудового права; (4) комплексное исследование всех стадий трудовых правоотношений педагогических работников от их возникновения до прекращения; (5) выявление пробелов и недостатков в действующем регулировании трудовых правоотношений педагогических работников; (6) разработка предложений и рекомендаций по изменению и дополнению правовых норм в целях совершенствования и повышения эффективности регулирования трудового правоотношения педагогических работников.

Новизна и научная оригинальность: недостаточность изучения правового регулирования трудовых отношений педагогических работников в науке трудового права. Впервые в национальной доктрине разработано многостороннее и комплексное исследование правового регулирования трудовых отношений педагогических работников, как с точки зрения трудового, так и образовательного права.

Полученные результаты способствуют решению важной научной проблемы: концептуализация института трудовых правоотношений педагогических работников, с целью определения специфики данных отношений и особенностей правовых норм в данной сфере, что способствует повышению эффективности правового регулирования и определению места этого правоотношения в системе права, то что облегчит выбор применимого права в случае возникновения споров обусловленных трудовой деятельностью педагогических работников.

Теоретическая значимость: впервые в отечественной науке трудового права было осуществлено многостороннее и комплексное исследование правового регулирования трудовых отношений педагогических работников, с детальным анализом правовой сущности, содержания и этапов развития трудовых отношений педагогических работников.

Прикладная ценность: предложения и рекомендации, разработанные в результате комплексного анализа трудовых отношений педагогических работников, могут быть направлены на совершенствование норм трудового права в данной области, к дальнейшему анализу правовой природы различных видов трудовых отношений и правильному применению на практике нормативных положений.

Внедрение научных результатов: использование научных результатов в учебном процессе Юридического факультета Молдавского государственного университета, а также в практической деятельности по урегулированию трудовой деятельности педагогических работников, а также при разрешении трудовых споров возникающих между образовательными учреждениями и педагогическими работниками.

ANNOTATION

JOSANU Dorin, Legal Regulation of the Employment Relationship of Teaching Staff, Philosophy Doctoral Thesis in Law, Chisinau, 2024.

Doctoral thesis structure: Annotation (in three languages), List of Abbreviations, Introduction, 4 chapters, General Conclusions and Recommendations, Bibliography including 258 titles, 19 Addendums, 170 pages of main text (ante the Bibliography). The results obtained were published in 8 scientific papers.

Keywords: employment relationship, teaching staff, individual labour contract, hiring, dismissal, labour litigation, collective bargaining convention, contest, educational institution, educational system.

Purpose of the study: comprehensive research of the legal framework governing the legal employment relationship of teacher and the theoretical-practical substabtiating of the legal status of teaching staff.

Objectives of the study: (1) analyse the scientific reasoning in determining the branch affiliation within the legal system of the employment relationship of teaching staff; (2) analyse the efficiency of the regulation of the employment relationship of teaching staff through combining general and special norms; (3) determine the legal nature of the employment relationship of teaching staff and the specifics of these relationships within the system of legal relationships in the branch of labour law; (4) perform a complex study of all the stages of the employment relationship of teaching staff, from its creation to its termination; (5) identify the gaps and deficiencies in the current regulation of the employment relationship of teaching staff; (6) elaborate proposals and recommendations for the modification and completion of the legal norms to improve and make more efficient the regulation of the employment relationship of teaching staff.

Novelty and scientific originality: the lack of sufficient study of the legal regulation of the employment relationship of teaching staff in the labour law doctrine. This is the first in kind study in the national doctrine which presents a multilateral and comprehensive approach of the legal regulation of the employment relationship of teaching staff, analysing it both through the lens of labour law and educational law.

The obtained results contribute to the solution of an important scientific problem: conceptualisation of the institution of the legal employment relationship of teachers, to determine the specifics of this relationship and the specifics of the domain-related legal norms, which contributes to the efficiency of the legal regulation and the determination of the place of this relationship within the legal system, which will facilitate and determine the applicable law in event of litigations resulting from their work activity.

Theoretical significance: for the first time in the national labour law doctrine, was performed a complex research on the legal regulation of the employment relationship of teaching staff, with detailed outline of the legal essence, content and development of the employment relationship of teaching staff.

Applied value: the proposals and recommendations developed as result of the complex analysis of the employment relationship of teaching staff may serve to improve the domain related labour legislation, to further analyses of the legal nature of different types of labour relationshios and to the correct application, in practice, of normative regulations.

Implementation of scientific results: application of the obtained scientific results during the educational process of the Law Department of the Moldovan State University as well as in the practical activity of the administration of teaching staff work and for the resolution of disputes that arise between educational institutions and teaching staff.

JOSANU DORIN

LEGAL REGULATION OF THE EMPLOYMENT RELATIONSHIP OF TEACHING STAFF

553.03 – LABOUR AND SOCIAL PROTECTION LAW

Abstract of the PhD Thesis

Approved for printing: ___.____.2024 Paper size 60×81/16

Offset paper. Offset printing. No. of printed copies: 15

Printed sheets: 2,57 Order no. _____

Publishing-Printing Center of the Moldova State University
60, Alexei Mateevici Str., Chisinau municipality, MD -2024