Reconciling Stability and Mobility in Employment Relationships in Rumanian Law

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IN THIS ARTICLE we shall review the principal means employed in Rumania to ensure maximum stability in employment relationships, and in particular the way in which this concern with stability is reconciled with the acceptance and even encouragement of a certain amount of mobility.

Before doing so, however, we should first mention some of the basic features of socio-economic relations in Rumania today, since they have a direct bearing on the principles by which employment relationships are regulated and on the methods used.

In Rumania the principal means of production are the property of the people as a whole in the shape of the socialist State. The State is thus the sole owner of assets of all types allocated to state undertakings (in the fields of industry, agriculture, construction, transport, commerce, etc.), to social and cultural institutions and to all other socialist organisations run by the State. Part of the production process is the business of co-operative organisations (agricultural producers' co-operatives, handicrafts co-operatives), while distribution is ensured by consumers' co-operatives, especially in rural districts.

The activities of state socialist organisations and co-operative organisations are planned. However, the plan drawn up for a given individual organisation is not looked upon as something to be followed rigidly but serves rather as a flexible framework for the organisation's activity and development, which can easily be adapted to specific con-

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ditions. An advanced form of work organisation has thus been established, and it is in this setting that the question of stability and mobility in employment relationships must be examined.

In order to understand the socio-economic context of the problem under study, it is worth recalling briefly the striking economic progress made in recent years.

According to the latest official statistics, total production has risen steadily and by 1965 it was almost ten times greater than in 1938. Electric energy production increased from 1,130 million kWh. in 1938 to 17,215 million kWh. in 1965. During the same period the production of steel rose from 284,000 to 3,426,000 tons, the net production of coal from 2,208,000 to 10,291,000 tons, and cement production from 510,000 to 5,406,000 tons.

In 1965, 52.2 per cent. of all industrial undertakings employed more than 500 workers each. The present number of wage earners exceeds 4.5 million (compared with 2,123,000 in 1950), of whom some 40 per cent. are employed in industry.[1]

The contract of employment and the employment relationship

Passing now to some preliminary legal considerations closely related to the social and economic data given above, we should point out that, according to Rumanian law, the employment relationship between workers of all categories and their employers (in most cases a socialist organisation) is fixed by a contract of employment. The establishment, maintenance and termination of this relationship are all based on the contract of employment. This applies to manual workers (whatever the organisation in which they are employed), salaried employees, and technical and supervisory staff (including those working in the state administration and those who occupy paid elective posts).

This principle is embodied first and foremost in the Labour Code (in its original form of 1950 and as subsequently amended [2]), which recognises the contract of employment as the sole basis for the employment relationship and therefore considers this relationship to be contractual.[3]

This theory of the contractual nature of the juridical employment relationship establishes a principle of far-reaching import: by uniting the concept of planning with that of the right to work and freedom of

[1] *Anuarul Statistic al Republicii Socialiste România, 1966* (Statistical Yearbook of the Rumanian Socialist Republic, 1966), pp. 116, 144, 148, 172, 178.

[2] I.L.O.: *Legislative Series*, 1950—Rum. 1 ... 1960—Rum. 1.

[3] For further details, see L. MILLER: " Rolul contractului în dreptul muncii " (The role of the contract in labour law), in *Studii şi cercetări juridice* (Bucharest), 1966, No. 3, pp. 509 ff.

labour it forms the most suitable theoretical foundation for the building of socialism in an increasingly democratic spirit.

In the first place, manpower planning in fact does no more than determine the requirements for manpower resources in general and for qualified management staff in particular for a given period, the contract of employment (together with the training contract) being the main legal instrument for meeting these needs.

Secondly, the fact that the employment relationship can be established, maintained and modified only with the free consent of the interested parties gives practical meaning to the right to work, defined in section 18 of the Constitution [1] as the possibility for each citizen to engage in an activity (remunerated according to its quantity and quality) which corresponds to his training and in this way to make use of his aptitudes. At the same time a link is forged between the general interest (in particular that of the undertaking [2]) and the personal interests of each employee.

Finally, the principle of the employee's consent constitutes, in a socialist régime, a guarantee of the freedom of labour; the employee alone decides what is in his own interests.

The three fundamental elements of stability in the employment relationship

The contract of employment establishes a juridical relationship between the worker and the undertaking, which is a legal entity. Through it, too, the type of work he will undertake (the work agreed upon) and the place of work (the geographical location in which he will normally work) are necessarily determined and are thus fundamental elements in the legal relationship; as a party to the contract the undertaking is also an essential element in this relationship.

In Rumanian law the concrete legal definition of the type of work is made in terms of the job. In the case of salaried employees (especially technical, administrative and specialised personnel) the definition is based on the nomenclature of jobs in each undertaking, according to its organisational structure; in the case of manual workers it is based on their trade and level of skill. Similarly, the legal definition of the place of work is the locality in which the employee normally works.

In our opinion, it is in terms of these three main elements of the contract—the undertaking, the type of work, and the place of work—that both stability and mobility in employment and in employment relationships can be given concrete definition.

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[1] An official translation into English was published in *Constitutional and Parliamentary Information* (Inter-Parliamentary Union, Geneva), 3rd Series, No. 64, Oct. 1965, pp. 191-213.

[2] In this article the term " undertaking " includes both undertakings in the strict sense and all other socialist organisations.

Stability in employment is thus characterised essentially by the wage earner's remaining for as long as possible in the same undertaking, working at the same job and in the same locality; mobility consists in a change in one of these elements during the employee's working life (for example transferring to a different job requiring the same skills or a job requiring different skills) and the frequency with which such changes take place.

The principal feature of stability in employment is the fact of remaining in one and the same undertaking, in the same community of workers (pursuing a common aim, subordinate to the same management and belonging to the same trade union). Permanency in the same job and in the same locality (within a given undertaking) are secondary aspects which constitute what might be termed " internal stability " (i.e. within the undertaking).

It may nevertheless happen that overriding interests require workers with certain skills or specialisations to remain in the same job (trade or occupation). In such cases the determining factor of stability is the type of work.

Advantages of stability in employment relationships

The advantages of stability in the employment relationship are well known. While it would be too much to maintain that, all other things being equal, the results are always directly related to the length of service, it is nevertheless clear that stability of employment, by enriching the worker's experience, helps to develop his occupational aptitudes and skill, broaden and perfect his knowledge and, therefore, improve his qualifications for the job. In other words, stability increases the prospects of more productive work—and, for the employee, of higher earnings.[1] At the same time it helps to improve co-operation between the worker and other elements, both horizontally (colleagues, and workers from other departments and undertakings) and vertically (chiefs, subordinates, higher and lower units), and creates favourable conditions for passing on experience to beginners.

Generally speaking, stability of employment in socialist undertakings strengthens the wage and salary earners' attachment to the undertaking and makes their participation in its activities more positive and effective. In short, it contributes to the cohesion of the community of workers in each undertaking—which can be thought of as a large family—strengthening their spirit of solidarity and creating an atmosphere that helps the undertaking as a whole to run smoothly. The retention of supervisory staff who have spent their working lives in the undertaking and have

[1] In this respect, see V. BUIA: " Asigurarea stabilităţii în funcţie a angajaţilor " (Ensuring stability with regard to workers), in *Justiţia Nouă* (Bucharest), 1966, No. 6, p. 47.

acquired immense experience is often of critical importance to its trouble-free operation.

In contrast, instability in employment—quite apart from the difficulties it involves for the undertaking—can make it necessary for the workers affected to undergo a period of retraining or adaptation and occasionally the loss—even if only partial—of opportunities to put the experience they have acquired to good use. Difficulties of retraining may be exacerbated by difficulties of a social nature such as integration into a new community of workers. Or again, the departure of supervisory staff who play a vital part in the production process can sometimes cause considerable disruption in the activity of the undertaking.

Thus stability of employment is not an end in itself but a means of attaining certain economic and social objectives; it brings advantages both to the undertaking and to the individual worker.

Advantages of mobility in employment relationships

It is clear that stability of employment can never be absolute and indeed none of the arguments in favour of stability implies an insistence on inflexible employment relationships. So there is no question of a tendency for these relationships to petrify.

The very reasons for wanting stability also call for a certain amount of variability, i.e. some mobility, in the relationship. While stability constitutes the principal, long-term target, mobility complements it and determines its natural limits: it is only possible to grasp the real significance of stability by virtue of its combination with mobility. In other words, limited mobility answering the needs of social and individual progress guarantees stability in its true sense (promotion, for example, can help to keep valuable managerial staff within the undertaking) and is justified in a great number of cases.

Thus it frequently occurs (especially in the case of managerial staff undergoing training) that the most natural consequences of an employee's acquiring experience are promotion and a change in the type of work (i.e. a change of job), in order to take full advantage of his abilities. However, it is not always possible to achieve this aim if the employee stays in the same undertaking or locality; one or both of these elements then have to be changed.

On the other hand, it may happen—rarely, it must be admitted—that changes result from the discovery after a certain time that the worker does not meet the requirements of his job, and it may be impossible to transfer him to a job better suited to his abilities within the same undertaking.

Changes in the employment relationship can also occur as a result of other circumstances, both objective and subjective. The former include

reorganisation of the undertaking, changes in its activity, the installation of modern equipment requiring more detailed knowledge, the need to help other undertakings (whether already operating or in the process of being set up) by providing them with qualified managerial staff, variations in the volume or rhythm of activity, and transition to a three-shift system (night work being permitted only in the case of certain categories of persons). In the case of the individual worker a whole range of factors, both occupational and otherwise, can lead to changes: the wish to follow a course of study, to carry out experiments in the workshop laboratory, to work with highly qualified specialists, to live together with his family, to bring up his children or put them in a crèche, day-nursery, or other institution for children, and so on.

Reconciling stability and mobility in employment relationships

As a general rule, therefore, stability in employment can correspond fully to the interests of the undertaking and the worker only if it is combined with a certain degree of mobility. Consequently, a judicious combination of stability and mobility, which reflect the dual nature of the employment relationship, is an essential aim of social employment. To achieve this combination in socialist Rumania, several procedures are resorted to, incorporating a number of social, economic, legal, organisational and other safeguards. We shall be concerned here only with those which are predominantly legal in nature and whose object is to establish a system of stable employment relationships.

The measures adopted can be classified under two main heads, according to whether their aim is to regulate the various aspects of establishing, modifying and terminating the relationship, or to introduce various moral and material incentives to encourage stability or, in certain special cases, mobility of employment.

In the first category a distinction must be made between measures which relate to *(a)* the establishment of the employment relationship; *(b)* its modification; and *(c)* its termination.

Establishing the employment relationship

We have seen the advantages of giving the employment relationship a contractual basis. The contract of employment is the legal instrument whereby undertakings are enabled to obtain the qualified supervisory staff they require and, more generally, to build up a community of competent and loyal workers. As far as the workers themselves are concerned, they are free to choose the job they feel will best make use of their abilities and tastes, thus laying the foundations for a long-term employment relationship.

The three essential elements in the contract of employment (the undertaking, the type of work, and the place of work) are also elements of stability and, once determined by the free agreement of the parties, can in principle be modified only by drawing up a new agreement.

Section 14 of the Labour Code lays down the right of the undertaking to stipulate a trial period of a maximum of 30 days. However, this condition is optional. Consequently, whenever no such period has been provided for, the contract is deemed to be definitive from the moment it has been concluded.[1] Similarly, starting from the principle of equality of the parties to the contract, it has been maintained—and, we believe, rightly so—that a trial period can also be stipulated in favour of the worker if he so desires.[2] This conclusion is in conformity with the practice, in Rumanian law, of regarding the contract of employment as having a personal character in respect of both the undertaking and the employee.[3] The two parties are thus in a position to ensure beforehand whether the contract is, in fact, such as to take account of their respective interests and to form the basis of a durable relationship.

A number of other legal provisions also further this aim, such as those relating to the classification, by special technical committees, of workers in different skill categories (subject to later changes by the committees) [4], those regulating the selection by competition of certain specialised staff (foremen, medical staff, university staff, scientific research workers) and those laying down the level of study and training necessary for occupying any technical, administrative or specialised position.

The contract of employment can be concluded for an indefinite period, for a definite period or for the carrying out of a given piece of work (section 13 of the Labour Code). The law nevertheless makes no mention of " provisional " engagements (in which no term is fixed), and jurisprudence has decided that such engagements are not permitted.[5] This is quite understandable, since engagements of this kind could make t easier to circumvent certain provisions (maximum duration of the trial

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[1] In this connection, see Order No. 1002 of 1964 enacted by the Civil Chamber of the Supreme Court, in *Culegere de decizii*, p. 152. The practice of the courts is, moreover, consistent.

[2] See, for example, S. GHIMPU: " Termenul de încercare în contractul de muncă " (The trial period in the contract of employment), in *Justiția Nouă* (Bucharest), 1964, No. 4, pp. 46-47; V. I. CÂMPINEANU and G. N. VASU: *Încheierea, modificarea și încetarea contractului de muncă* (The conclusion, modification, and termination of the contract of employment) (Bucharest, Ed. Stiințifică, 1965), p. 52.

[3] See L. MILLER and S. GHIMPU: *Delegarea, detașarea și transferarea angajaților* (The delegation, detachment and transfer of employees) (Bucharest, Ed. Stiințifică, 1966), pp. 184-185.

[4] A provision embodied in Decision of the Council of Ministers No. 240 of 1963.

[5] See, for example, Decree No. 1518 of 1957 enacted by the Civil Chamber of the Supreme Court, in *Culegere de decizii*, p. 210.

period, grounds on which the undertaking can terminate the contract) and since, in default of an explicit clause relating to its duration, the contract is presumed to have been concluded for an indefinite period. Furthermore, if the employment relationship continues after the expiration of the stipulated period, the contract is deemed to be prolonged for an indefinite period (section 23 of the Labour Code). These provisions demonstrate the desire to encourage stabilisation of employment and stability in employment relationships, in so far as circumstances do not require a different approach.

Terminating the employment relationship

With regard to the provisions governing the termination of the employment relationship (by termination of the contract), we must first point out that the principle of equality of the parties, which we noted in the case of the establishment of the relationship, does not apply here, for it is not through equality of the parties but through their inequality that the conflicting demands of stability and mobility are reconciled—the inequality being weighted decidedly in favour of the employee as a means of protecting his basic interests.

Thus, while the employee is entitled to terminate the contract of employment at any time—provided only that he give the employer 12 working days' notice (section 19 of the Labour Code)—the undertaking can do so only in cases specified by law (sections 16-[1], 20 and 21 of the Code). Each of these cases relates to imperative circumstances, which may be objective (the transfer of the undertaking to another locality, closure of the undertaking, reduction in the number of staff employed, reinstatement by court order of the employee who had formerly held the post occupied by the employee in question, the latter's rights being safeguarded) or subjective (the employee's unfitness for the work to which he has been assigned, systematic or very serious violation of plant discipline, prolonged absence through illness or imprisonment, retirement).

Unless the contract has been concluded for a definite period, whereby the employee expresses his intention not to terminate it before its expiry, he is entitled to terminate it without there being any question of an abuse of the law (defined in sections 1 to 3 of Decree No. 31 of 1954 relating to natural persons and legal entities as the exercise of a subjective right in a manner contrary to its economic and social purpose). Since, in fact, the purpose of this right is to secure freedom of labour by not putting any obstacle in the way of the termination of a contract of employment, an abusive exercise of the right is inconceivable.

It follows that, since the exercise of this right is not censurable, the employee is not bound to state the grounds which led him to terminate the contract.

The right of the undertaking to terminate the contract is, however, a different matter. For one thing, termination of the contract by the employer can raise the question of an abusive exercise of this right. Moreover, if he wishes to terminate it on the grounds of the unsuitability of the employee or indiscipline, he must do so within one month of learning of the fault in question. At the same time, the undertaking must inform the employee, in writing, of the termination of the contract and of the reasons, and cite the relevant legislative texts. If the communication is not made in writing or does not contain these essential elements, the termination of the contract is deemed illegal.[1]

In cases where the contract of employment is terminated on objective grounds, the undertaking is bound, within the limits of its possibilities, to transfer the employee to another job or to arrange for his placement in another undertaking. It should be noted that, generally speaking, termination of the contract of employment in the case of employees who are fit to work has been very rare in the past few years in Rumania, and the problems which may arise for undertakings and their staff have been solved in the very great majority of instances by transferring the employees in question. The measures are taken with the consent of the employee and guarantee him the preservation of all his rights.

Similarly, if the obligation to find the employee alternative employment has not been fulfilled when in fact a job is available, the termination of the contract is deemed illegal.[2]

In all cases where termination of the contract is unfounded or illegal, the employee is entitled not only to damages for loss of earnings but also to reinstatement in his job (section 21-[1] of the Labour Code), and, furthermore, he is entitled to have the whole period during which he was prevented from working credited to his length of service. It is thus always possible to re-establish stability of employment that has been disturbed by an abusive or illegal act, the responsibility for the act naturally devolving upon its author.

Modifying the employment relationship

The aim of provisions governing changes in the juridical employment relationship is to provide for some flexibility in this relationship, as circumstances require, while nevertheless setting certain limits. They show a significant concern to establish a just balance between the respective demands of stability and mobility.

Thus sections 15 and 16 of the Labour Code embody a fundamental

[1] See, for example, Decrees No. 1409 of 1963 and No. 1002 of 1964 enacted by the Civil Chamber of the Supreme Court, in *Culegere de decizii*, pp. 182 and 152.

[2] This has been consistently confirmed by the courts. See, for example, Decrees No. 1188 of 1957 and No. 1012 of 1964 enacted by the Civil Chamber of the Supreme Court, in *Culegere de decizii*, pp. 241 and 156.

principle with respect to the transfer of employees to other work (another job), another locality or another undertaking[1]: such transfer is possible only by agreement of the parties, the express consent of the employee being required. The mutual consent of the parties, as a prerequisite to the modification of an essential element of the relationship is without doubt the most effective and thus the most important means of combining stability and mobility in applying the principle of freedom of labour in a flexible and judicious manner.

The employee's consent is also required before he can be promoted to a higher post or take the place of an absent colleague. Even if the employee is not able to carry out the task for which he has been engaged, that is to say if he does not match the demands of the post, the undertaking—in conformity with the express provisions laid down by section 20-[3] of the Labour Code—can only invite him to take on a vacant job requiring the same occupational qualifications but cannot transfer him without his consent. Similarly, in cases where, after the promotion of the employee, it is found that his ability has been wrongly assessed, the promotion cannot be retracted by a unilateral decision on the part of the undertaking.[2]

Consequently, the above-mentioned provisions (like those relating to the establishment and termination of the employment relationship) lay down the right of the employee to his job, to his remaining in the locality stated in the contract for the purpose of social benefits, and to his remaining in the same undertaking. In other words, they stipulate his right to stability of employment.

The employee's freedom to accept or refuse changes in one of the three essential elements of his employment relationship may not be interfered with. It is for this reason—as in the case of the employee's terminating his contract of employment—that the theory of an abusive exercise of a right, which is generally a matter of considerable importance in Rumanian law, cannot be applied here.

If, in spite of this, the management of the undertaking decides to transfer the employee to another job, another locality or another under-

[1] In the event of the employee's being transferred to another undertaking, it is possible to speak of having " modified " the employment relationship only in the broadest sense of the term, which would also include the transmission, by virtue of a tripartite agreement reached between the employee and the two undertakings, from one legal entity to another of the rights and obligations of which the employment relationship, a complex juridical relationship, consists. In our opinion, from the legal standpoint we are dealing here with the transmission under particular circumstances of a whole contractual situation. By virtu e of the initial contract the juridical relationship continues with the second undertaking, which inherits the rights and obligations of the first. We consider that this legal interpretation can best explain why the employee transferred to a different undertaking retains all the rights to which uninterrupted employment entitles him. For further details see MILLER and GHIMPU, op. cit., pp. 232 ff.

[2] In this connection see Decree No. 890 of 1954 enacted by the Civil Chamber of the Supreme Court, *Culegere de decizii*, Vol. I, p. 235.

taking without his consent, the employee is not bound to comply and of course his refusal to do so cannot give rise to disciplinary measures. Furthermore, if the employee accepts the decision to be transferred but contests its legality before the competent labour authority (or if, having been transferred, he is prevented from working), the undertaking can be obliged to reinstate him in his job and to pay him damages for the whole period during which he has been deprived of his earnings.

Situations nevertheless arise in which particular interests of the employee or the undertaking have made it necessary to admit the right of one or the other of the contracting parties to modify one of the essential elements of their relationship. As we shall see, when providing for such contingencies legislation has been concerned with maintaining a balance between the interests involved.

THE RIGHT OF THE EMPLOYEE TO MODIFY THE EMPLOYMENT RELATIONSHIP

The employee may, when he considers it to be in his interests, request the undertaking to transfer him to another post, another locality or another undertaking, or may request any other change in his conditions of work. The undertaking is free to accept or reject the employee's request but is bound to exercise this right in conformity with its social and economic purpose.

In certain cases, however, where the vital interests of the employee are involved, the law grants him the right to request (and consequently to obtain) the transfer, the undertaking being obliged to accede to the request. This right applies in the following contingencies: transfer in order to comply with the obligation to ensure that the employee is given another job (section 20-[2] of the Labour Code), transfer to lighter work (pregnant women engaged in heavy work, section 90 of the Code), transfer to another job as a result of illness (section 9 of Decision of the Council of Ministers No. 880 of 21 August 1965).

Furthermore, the employee also has the right to be transferred to another undertaking—while retaining all the advantages arising out of continuity of employment—on having successfully passed a practical test in the other undertaking, provided that the first undertaking does not engage in operations requiring the qualification he has newly obtained (section 5 of the regulations approved by Decision of the Council of Ministers No. 240 of 1963). If, under such circumstances, the undertaking rejects his request for transfer, the employee can assert his rights by putting the matter before the labour authorities.

THE RIGHT OF THE UNDERTAKING TO MODIFY THE EMPLOYMENT RELATIONSHIP AND CERTAIN CONDITIONS OF WORK

There are only two situations in which the management of the undertaking can unilaterally impose a change in the type of work (the job) on

the employee, both of which are exceptional and applicable for a limited period only.

The first case, provided for by section 15, paragraph 3, of the Labour Code, involves the necessity of averting a threatened stoppage of the unit or danger to human life—in other words, an emergency. The second involves serious misconduct; here the management can demote the employee for a maximum of three months.

Action by the management can take the form of transferring the employee to a different locality (posting) or a different undertaking (detachment). According to section 17 of the Labour Code, posting consists of sending the employee to a place other than his place of employment for a period not exceeding 60 days for the purpose of carrying out certain work for the undertaking. Detachment, on the other hand, consists of sending him for a period not exceeding six months to another undertaking in the same or another locality, in the interests of that undertaking, or to a part of his own undertaking situated in another locality, in the interests of the undertaking.

In neither case may the type of work assigned to the employee under the terms of the contract be affected; furthermore, the law provides for safeguards against over-frequent or too prolonged detachments.

The main justification for posting and detachment is a desire to promote the normal growth of the undertaking in all its sections and sub-units by ensuring that its various tasks are carried out, and to maintain links of co-operation and mutual help with other undertakings; this explains why the employee must give proper grounds for refusing to comply with a posting or detachment order.

Besides these two cases in which a temporary modification of the relationship can be decided upon unilaterally, other contingencies are provided for in which the management of the undertaking can change certain conditions of work permanently.

Thus it is entitled to change the conditions of work relating to a given job (modifying certain responsibilities of the employee or fixing new conditions under which the work is to be performed). It can, furthermore, transfer the employee to a basically similar job (requiring the same skills and involving responsibilities of the same type), but this may not entail a reduction in his salary. In such situations, and with the reservations given below, the acceptance of a given job by the employee is considered to imply his agreement to undertake another, similar, one. So although the employee transfers from one post to another there is no change in the type of work as an element in the contract of employment.

Similarly, the management of the undertaking can request the employee to work in another place (in the same locality or in its immediate proximity)—for example a different department or workshop, a different section or sub-unit—for these are only matters of internal administration within the undertaking.

LIMITATIONS ON THE RIGHT OF THE UNDERTAKING TO MODIFY CONDITIONS OF EMPLOYMENT

Once the parties to the contract of employment have explicitly agreed on certain conditions regarding the type and place of work (in conformity, of course, with the law) these conditions, which are determined by circumstances or by the interests of the parties, can be changed only through a new agreement between them.

Furthermore, in our opinion, when specific personal considerations have determined the employee's consent to the conclusion of the contract and the other party is aware of these considerations, or it would be justified to suppose that he is aware of them, even though the considerations are not explicitly stated in the contract, this other party may not unilaterally modify conditions relating to these considerations. This is an application of the theory of purpose in civil contracts.[1]

When, therefore, the employee accepts employment only under certain special conditions for personal reasons which to his mind are of decisive importance, and the management of the undertaking, knowing of this situation, agrees to sign the contract, the latter is deemed to have tacitly accepted these conditions; in this case the management considers *either* that to accept these conditions is not (and will not be) detrimental to the interests of the undertaking *or* that the conditions must be accepted in view of the imperative need to take on the individual concerned (because of his exceptional qualifications or skill or because persons in his occupation are in great demand).[2]

Thus the first limitation on the right of the undertaking to modify the employment relationship or the conditions under which the work is carried out relates to the purpose of the contract.

The purpose of the contract, which is both a universal criterion applicable to all cases and a differentiated one allowing for flexible solutions adapted to the circumstances of each case, makes it possible to delimit the conditions which the management of an undertaking may or may not change unilaterally.

Furthermore, the right of the undertaking to change certain conditions of work on its own initiative, like other subjective rights, may be exercised only in conformity with the socio-economic ends which led to

[1] This theory has been brilliantly expounded by the Rumanian lawyer Professor Traian IONASCU. See " Les récentes destinées de la théorie de la cause des obligations ", in *Revue trimestrielle de droit civil* (Paris), 1931, in which he summarises the main conclusions of his thesis of 1923. He arrived at these conclusions without knowing of the work by the well-known French civil lawyer Henri CAPITANT: *De la cause dans les obligations* (Paris, 1923). More recently Professor Ionascu has put forward his theory in his *Curs de drept civil. Teoria generală a obligațiilor* (Bucharest, 1950) (mimeographed), pp. 67 ff.

[2] For more details, illustrated by numerous examples, on this theory, see L. MILLER: " La mutation des salariés dans le droit de la République populaire roumaine ", in *Revue des Sciences sociales* (Bucharest), Série des sciences juridiques, 1964, No. 2, pp. 180 ff.; MILLER and GHIMPU, op. cit., pp. 169 ff.

its being recognised. Otherwise the right in question no longer enjoys the protection of the State. The employee's conditions of work (in so far as they have not been included in the contract by the explicit or tacit wish of the parties) can therefore be modified by the undertaking when this appears necessary, for example for the achievement of planned targets —qualitative or quantitative—or for the improvement of work organisation. On the other hand, a change in the conditions of work cannot be asked of the employee on grounds other than these or, more generally, without justification. If, nevertheless, such a situation were to arise, the employee would be entitled to have the abusive action annulled and the former conditions restored, while the undertaking would be obliged to pay him damages for any loss suffered.

In other words, the theory of the abuse of a right, as conceived by Rumanian legislation, represents a second limitation on the right of the undertaking to modify conditions of work. This same limitation also applies to the right of the undertaking to make a temporary change in the juridical employment relationship by transferring the employee to a different job or by posting or detaching him.[1]

In this way the theory of purpose in a contract of employment and that of the abuse of a right (i.e. the aim of the contract and the aim of subjective rights), when applied to the modification of conditions of work and thereby limiting the right of the undertaking to change these conditions, can also help, by application of the law, to strike a balance between stability and mobility in employment relationships.

The role of material and moral incentives

Legislation in the Socialist Republic of Rumania attaches great importance to the material participation of workers in the results of their work and, in general, in the results of the activity of the community of workers to which they belong, i.e. the undertaking in which they are employed. Material participation is not only a specific means of reconciling the interests of society and the individual but also one of the most effective means of achieving economic objectives.

A wide variety of incentives contribute directly to the wage earners' material interest. Some aim at " stabilising " the workers, at helping to establish and develop durable employment relationships, which by their nature are subject to changes in the course of time, though not to prejudicial ones. We shall confine ourselves to a few examples of such incentives.

Graduates from institutions of higher education and specialised colleges who work in a locality other than that in which they are domiciled

[1] For more details and examples, see MILLER and GHIMPU, op. cit., pp. 71, 94, 180-184 and 198.

are entitled to the reimbursement of transport expenses for themselves and their families and of removal expenses. In rural localities they are also granted an installation allowance. In all cases the undertaking and the local authorities must obtain suitable lodgings for the employee and allow him to take his meals at the canteen if he so desires. The local authorities are further obliged to build dwellings for members of the teaching staff of primary and secondary schools and their families if none are available. In villages each family has the use of a kitchen garden.

Reflecting the same concern to confer a degree of " permanency " on workers who are indispensable to the national economy and the socio-cultural sector and to encourage them to remain in their jobs, several provisions grant annual and sometimes monthly bonuses (awards) for uninterrupted service in the same undertaking or the same branch of activity, while others establish a wage scale for specialist staff according to their length of service.

Length-of-service bonuses are granted in certain important branches of the national economy (extractive and metallurgical industries), for certain occupations in the meat and fish industries and agricultural units, in rail and water transport, in the post office and telecommunications services, etc., after the first year of service. The rate rises in proportion to the length of continuous service (with certain variations) and the total can amount to twice the annual wage.

A wage scale according to length of service in the same branch is applied in the medical and health services, teaching, the judiciary, and in the case of certain officials. Technicians attached to agricultural units and veterinary and medical staff employed in rural districts are granted a special allowance.

Certain categories of employees receive bonuses (for arduous or unhealthy work, for work carried out in isolated workplaces, etc.), which further increase their material interest in their jobs.

Provisions relating to the practical experience necessary for classification in certain skilled categories (in the case of manual workers) or for the performance of certain functions (in the case of salaried employees and specialised personnel) also serve as incentives to remain in the same jobs for a long period. The length of training required varies according to the level of the category or job, and the prospects of promotion increase with the length of service. The numerous facilities available to employees to enable them to improve their qualifications (vocational and technical training, evening classes and correspondence courses organised within the system of secondary and higher education, specialised industrial, agricultural, economic and other institutes, and short courses for training technical and administrative staff) also help to provide each employee with good chances of promotion and, consequently, to lengthen the " life " of an employment relationship (each occupational career thus undergoing successive adaptations).

The " stabilisation " of employees is further promoted by the fact that all workers taken on for an indefinite period have more extensive rights, in some respects, than temporary wage and salary earners.[1]

It was with this in mind that the provisions granting the first annual holiday after 11 months of continuous service were adopted, while under section 63 of the Labour Code employees with a long period of continuous employment are entitled to an additional leave period, depending on the length of service. The same is true of provisions fixing sickness, maternity, and other allowances under the state social insurance system according to the length of uninterrupted service (Decision of the Council of Ministers No. 880 of 1965).

The recent Pensions Act of December 1966[2], while maintaining the principle of pensions graded according to length of service, introduces several measures that have the effect of bringing the levels of pensions closer to those of wages. It further provides for supplementary pensions for employees who can show continuity of employment. This is an added incentive—and an effective one—to stability in employment relationships.

In addition to incentives offering material advantages, stability is also encouraged by moral incentives: distinctions for regular and conscientious work, various honorary distinctions or titles such as " leader ", " emeritus ", etc., and the award of high-ranking decorations and medals.

On the other hand, some legal provisions (much fewer in number, of course) aim at encouraging changes in certain elements of the employment relationship when the needs of the undertaking so require. Thus they promote mobility in employment in certain cases. There are, for instance, the rights and safeguards enjoyed by employees when posted, detached, or transferred to another job: the guarantee in all these contingencies (including transfer to a different undertaking) of uninterrupted service and the many advantages it entails; safeguards covering employees who have been posted or detached; and various indemnities and other material benefits to which employees in these three situations are entitled.

In addition to all these incentives provided for by the law, there is a virtually unlimited range of possibilities to which managements of undertakings can have recourse—depending on the circumstances—in order to retain their workers. It will suffice to mention their increasing freedom to take measures affecting the working or living conditions of employees (to lighten the work, to organise shift work and to fix working hours in general, to take steps to improve levels of skill, to develop and try out inventions and new devices, to provide transport for employees living at a distance, housing, and crèches and nurseries for children, to encourage other social and cultural institutions and activities, etc.). All these meas-

[1] In this connection, see BUIA, op. cit., p. 48.

[2] Act No. 27 of 28 December 1966 (*Buletinul Oficial*, Part I, 28 Dec. 1966, No. 85, pp. 618-631).

ures, whether laid down in the contract of employment or taken at a later date, represent further ways of promoting stability in employment relationships.

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Statutory, contractual and other measures designed to encourage stability—combined with the necessary degree of mobility—thus form a whole. Through them the right to work is being more fully realised, and at the same time they serve to lay the necessary foundations for the harmonious development of the economic, social and cultural activities of the country.