

Comparative Analysis on Legislative Approaches on the Application of the Right to Work in the Republic of Moldova and the Danube Countries

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Abstract: This research paper affirms that a high level of social and economic development at national level as well as a decent living of the population can be ensured through a secure and well-paid work. The right to work is considered one of the main rights in both national law and international conventions. In his context, this paper aims to perform a comparative analysis of normative acts issued in the Republic of Moldova and the Danube States (EU members) on the right to work as well as the social and economic results from the application of these normative acts. The authors expect to establish the logical link between legislation on labour-welfare and population-economic development of countries by conducting a comparative analysis of the provisions of regulatory documents, by observing and analysing statistical data on the economic and social situation in the analysed states. The results of this research will serve as a theoretical and applied basis for students, researchers, but also to formulate recommendations for the national legislature based on the successful experience of EU countries.

Keywords: right to work; legal work; economic development; social development

JEL Classification: E24; F63; J21; J22; K31

Introduction

Human rights are the main way of explaining people's needs in relation to the concepts of dignity and equality of persons. They help to formulate the needs and actions of those who need to meet them. Human rights are inherent in all people and are based on respect for the dignity and worth of all. At their core are the most

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important human values, which unite all cultures and civilizations. Human rights enshrined in the Universal Declaration of Human Rights and international human rights treaties ratified by states, as well as other documents approved by the governments of different states. There are also regional instruments for human rights, most states have adopted a constitution and other laws that officially protect human rights and freedoms.

Regardless of the number and types of normative acts approved at state level, but also international conventions, in recent years there has been a systematic violation of human rights, especially those in the category of economic, social and cultural rights.

According to several studies, it is found that in the Republic of Moldova, human rights are systematically violated, in particular, the right to health, social protection, the right to work (lack of jobs, wage level, working conditions and others). Violation of these rights has led to a low standard of living of the population, reduced life expectancy, slowed social development, which leads to a lack of savings in the population, decreases purchasing power and at the same time receives economic stagnation.

For the EU member states, human economic, social and cultural rights are not the most pressing issue, but they are the most important. More than 20 years in this field work several commissions created at EU level, but also at regional level. Several conventions and normative acts have been elaborated in order to regulate the problems in this field, but also to achieve the control over the execution of these acts.

However, in Romania, in recent years, there is an active migration of unskilled and highly skilled labour (doctors, teachers). Thus, we find that the normative acts in this field regulate the free movement of labour between the EU member states, but do not ensure the satisfaction of the demand on the national labour market by providing jobs, decent wages, working conditions and others.

So human rights regulations still remain an active topic on the table of rulers, which need to be further reviewed and refined. In order to identify the gaps in the normative acts that regulate human rights at work, we will analyse several national, regional, but also international normative acts. At the same time, we will make a connection between the approved acts, the way of their accomplishment, but also the economic effects.

Conceptualization and classification of human rights. Human rights are respected in so far as they are known and become known only in so far as they are appropriated.

Dissemination of knowledge regarding the observance of fundamental human rights and freedoms is a key area of activity of state authorities. (Munteanu, Rusu, & Vacarciuc, 2015, p. 7;328)

Human rights are “usually” understood as fundamental indisputable rights to which a person has an inherent right simply because he or she is a human being”. Human rights are thus seen as universal (applies everywhere) and egalitarian (same for all). These rights may exist as natural rights or as legal rights, both in national and international law.

Thus, from birth to death man is endowed with certain natural or legal rights. Each person has certain rights, depending on his age, his social status or social position (position / function) or certain legal relations. But all human rights have certain essential characteristics (figure 1), they are: *universal, inalienable, interdependent, interconnected and indivisible*. These characteristics make it possible to ensure the realization of all human rights: civil and political; economic, social and cultural; collective rights.

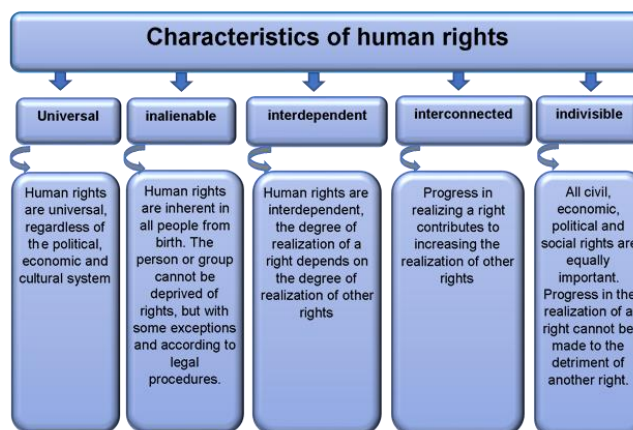


Figure 1. Characteristics of Human Rights (Наций, 2012, p. 11)

The degree of realization of one of the human rights depends on the realization of other rights. Or perfecting the realization of one of the human rights cannot be done to the detriment of the realization of another human right. Or we cannot say that civil rights are less important than economic or social rights.

In order to have a broader understanding of the content of human rights, we will classify them. Many classifications have been made in the literature. One of the broadest classifications is considered to be that given by Pollegirino Rossi, who

distinguished three categories of rights: *private; public; political*. Another common classification is that which presents fundamental rights under two groups: *civil equality; individual freedom*¹.

Human rights can also be classified in several ways, **depending on the object of classification**, such as the vital activity of the person, the time of their occurrence, the persons to whom they belong, the possibility of restricting them, registration in original documents, etc. **Classification by activity**: civil rights, political rights, economic rights and cultural rights. **The classification according to the moment of appearance** refers to human rights as generational: rights of the first, second and third generation. The idea of generational rights was developed by French lawyer Karel Vasak. First-generation rights are, in principle, civil and political, and protect the citizen from the excessive actions of the state. Second-generation rights oblige the state to take action to support the observance and fulfilment of these rights. They concern equality and concern, in principle, economic, social and cultural rights. Third-generation rights are seen as progressive and largely informal. These include: the right to self-determination, the right to economic and social development, the right to cultural heritage, the right to natural resources, etc.²

In the Republic of Moldova the fundamental rights of citizens are classified as follows:

1. The first category is formed of the *inviolability*, ie those fundamental rights, which ensure the life, the possibility of movement of the individual, ensure his physical security, his home. This category includes the right to life, the inviolability of the person, the inviolability of the home, the right to free movement, the right to marriage, the protection of the family and the child.
2. The second category is formed of *the socio-economic and cultural rights*, ie those rights that ensure the material and cultural development of the person, allowing him to participate in social life. In this category we will include: the right to work, the right to rest, the right to education, the right to material and old age insurance, illness or incapacity for work, young people's rights to state insurance of the conditions necessary to develop their physical and intellectual skills, the right to property, the right to inheritance, the right to a decent standard of living, the right to enjoy the best

¹<https://dreptmd.wordpress.com/cursuri-universitare/drept-constitutional/capitolul-17-clasificarea-drepturilor-si-libertatilor-fundamentale-ale-omului>.

² https://adevarul.ro/international/foreign-policy/totul-despre-drepturile-omului-iv-clasificarea-drepturilor-omului-1_556c707ecfbc376e35d16e71/index.html.

physical and mental health you can achieve.

The right to work (freedom of work). It is the most important socio-economic law, with a complex content. In the content of the right to work, we remember the followings as defining elements: the freedom to choose the profession; the freedom to choose the place of work, in the sense of the possibility of the citizen to carry out, according to his training, a free work chosen or accepted in the economic, administrative, legal, social or cultural field, the possibility guaranteed by the state; remuneration for work performed; unemployment benefits; occupational safety and health; specific measures to protect women's work and youth.

Labour law is regulated both internationally and nationally.

3. The third category of rights is formed of the exclusive political rights, ie the rights that through their content can be used only for the participation of citizens in the leadership of the states, in the government, namely the electoral rights.

4. The fourth category is formed of the socio-political rights, ie those rights that can be exercised by citizens, at their choice, both in order to ensure their material development and for the purpose of their participation in state leadership, namely: freedom of conscience, freedom of speech, freedom of the press, the right to associate in a strike, freedom of assembly, rally and demonstration, secrecy of correspondence and telephone conversations, right to information.

5. The fifth category is formed of the rights of bail, ie the right to petition and the right of the injured party in his right by an illegal act of a state body to request the competent bodies, under the conditions provided by law, annulment of the act and reparation damage¹.

The regulation of these categories of rights is provided for in several international treaties and conventions, which serve as a basis for the elaboration of regional and national agreements and laws. Thus, the international legal framework on human rights extends from the adoption of the World Declaration of Human Rights by the UN General Assembly on December 10, 1948. After World War II, on October 24, 1945, 51 countries have established the UN to express its commitment to peace. Today, the organization includes almost all states of the world (193 countries). The Declaration has been widely recognized as a basic tool, defining the basic rules in the field of human rights that must be respected, protected and fulfilled. The World

¹<https://dreptmd.wordpress.com/cursuri-universitare/drept-constitutional/capitolul-17-clasificarea-drepturilor-si-libertatilor-fundamentale-ale-omului/>.

Declaration of Human Rights together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights constitute the draft international law on human rights. The United Nations has further adopted nine additional conventions and protocols for resolving issues related to certain groups of the population or for promoting and protecting human rights. By the resolution of the UN General Assembly no. 60/251 of 15 March 2006, the Human Rights Council (HRC) was established and became effective on 19 June 2006, replacing the Commission on Human Rights after 60 years of activity. This council has developed several instruments regulating and monitoring respect for human rights in all countries of the world¹.

The Right to Work in the Republic of Moldova

According to several UN studies during the last 10 years on the perceptions of respect for human rights in the Republic of Moldova, it is found that: “Economic, social and cultural rights are the most violated categories of rights in recent years in Moldova. The right to social protection is violated, given the minimum size of pensions, the amount of social benefits, minor wages, the right to work and favourable working conditions, legal wages, etc. Human rights are largely violated by Parliament and Government, courts and municipalities².”

According to the regular report, presented by the delegation of the Republic of Moldova in Geneva in September 2017 to the Commission for Economic, Social and Cultural Rights, not enough measures are taken to respect economic, social and cultural rights. The Committee’s experts questioned the quality of the statistics presented. Even if they reported the measures taken and the approved laws, they do not fundamentally change the situation created in the Republic of Moldova. “The high level of migration abroad has proved impossible to stop,” said the Moldovan delegation, mentioning that at least 300,000 Moldovans worked abroad. The government has focused not on stopping migration, but on managing it by signing bilateral agreements with other countries on legal migration routes³.”

According to the general ranking of the WJP 2019 index on the rule of law, the Republic of Moldova with a score of 0.49 is ranked 83rd in the world. If the index is

¹ <https://www.mae.ro/node/11990>.

² <https://moldova.un.org/12925-economic-social-and-cultural-rights-are-most-violated-during-last-years>.

³ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22135&LangID=E>.

closer to 1, this speaks to a high degree of importance and compliance with the law. Thus, this index in neighbouring countries is higher compared to our country. In Ukraine it is 0.50 and places the country on the 77th place in the world, and in Romania in 2019 it is 0.64 and places the country on the 31st place in the ranking. It should be mentioned that among the Danube countries the best position in compliance with the law is Austria (7th place in the world) and Germany (6th place), the Republic of Moldova is on the last place among these countries (Law, 2019, pp. 6-7; 193). If we make a tangent with the standard of living and economic development in these states, the positions will be similar.

The right to work and labour protection in the Republic of Moldova is guaranteed by Article 43 of the Constitution of the Republic of Moldova. It is a socio-economic right, with a complex legal content and has the following provisions:

- 1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- 2) Employees have the right to labour protection. Protective measures concern occupational safety and health, the employment of women and young people, the establishment of a minimum wage in the economy, weekly rest, paid leave, work in difficult conditions, as well as other specific situations.
- 3) The duration of the working week is at most 40 hours.
- 4) The right to bargain in labour matters and the binding nature of collective agreements are guaranteed (Munteanu, Rusu, & Vacarciuc, 2015, p. 166; 328).

The Universal Declaration of Human Rights, through Article 23, stipulates: Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. All people, without any discrimination, have the right to equal pay for equal work.

The right to work is also proclaimed in Article 7 of the International Covenant on Economic, Social and Cultural Rights. The basic rules set out are developed in several acts of the International Labour Organization (ILO).

The measures to be taken to ensure the social protection of labour are listed in the constitutional text and set out in the Labour Code. The legal relations related to the establishment of measures regarding the insurance of the health and safety of the workers at the workplace are regulated by the Law on safety and health at work no. 186 of 10.07.2008.

The control of the application by employers of this law, as well as on the observance of all legislative and normative acts in the field of labour, of the provisions of collective agreements and collective labour contracts at all units, as well as in central and local public authorities is performed by the Labour Inspectorate. State of Labour. The manner, conditions and procedure of performing state control are established in the Law on the State Labour Inspectorate no. 140 of 10.05.2001.

Under the conditions of the Law on employment and social protection of persons looking for a job no. 102 of 13.03.2003 establishes the payments of some monetary indemnities for limited, differentiated periods.

The National Agency for Employment is the central body subordinated to the Ministry of Health, Labour and Social Protection empowered to promote state policies, strategies and programs in the field of labour market development, social protection of job seekers, unemployment prevention and combating its social effects.

The law on the subsistence minimum no. 152 of 05.07.2012 (with the adjustments approved in recent years) regulates the minimum state guarantees in the field of income of the population, in the process of implementing state policies in the social field, proportional to the cost of living, to ensure an adequate standard of living (Munteanu, Rusu, & Vacarciuc, 2015, pp. 168-169).

In recent years, several normative acts on the regulation of the right to work have been developed and approved, such as: The Administrative Code of the Republic of Moldova, approved by Law no. 116 of 19.07.2018, M.O.: of the R.M., 2018, no. 309-320, art. 466; Law no. 270 of 23.11.2018 on the unitary salary system in the budgetary sector, M.O. to R.M. 2018, no. 441-447, art. 715; Law no. 22 of 23.02.2018 on the exercise of unskilled activities on an occasional basis carried out by day laborers, M.O. in R.M., 2018, no. 68-76, art. 147 and many other normative acts¹.

It should be mentioned that the number of existing laws in the field of the Right to Work and their quality are not questioned, but the manner of execution of the legal provisions, the observance and penalization of the execution of these provisions.

In March 2018, pursuant to art. 4 of Law no. 140-XV of 10 May 2001 on the State Labour Inspectorate, a control was carried out regarding the observance of legislative acts and other normative acts in the field of labour at one of the state enterprises for forestry, being detected the following violations:

¹ <https://ism.gov.md/ro/content/nout%C4%83%C5%A3i-%C3%AEen-legisla%C8%9Bie>.

- *labour relations of some employees were not completed in writing, by concluding the individual employment contract;*
- *the employer's proposal regarding the completion of the individual employment contract in written form was not brought to the attention of some employees under signature, and in other cases the employer's refusal to complete the contract was not communicated to the employees in writing, within 5 working days;*
- *employees were not provided with working conditions corresponding to the requirements of occupational safety and health,*
- *the full payment of the salary was not ensured within the established deadlines;*
- *the notification of an employee regarding the violation of the legislative acts related to the norms of the labour law was not examined, no measures were taken to prevent their violation;*
- *the employer has not taken out compulsory social and medical insurance;*
- *at the unit, the record of the working time actually performed by the employee was not kept in the established manner.*

These violations were examined and penalized in accordance with the Contravention Code of the Republic of Moldova, which provides for certain categories of sanctions for various violations¹.

Regarding the supervision and control over the observance of the right to work in the Republic of Moldova, there are also rules, procedures and competent bodies. Supervision and control over the observance of legislative acts and other normative acts containing norms of labour law, collective labour agreements and collective agreements at all units are exercised by:

- State Labour Inspectorate;
- State Sanitary-Epidemiological Service;
- Ministry of Economy;
- Civil Protection and Exceptional Situations Service;
- other competent bodies with supervisory and control functions in accordance with the law;
- unions.

At the same time, in the labour legislation of the Republic of Moldova, we have the

¹<https://monitorul.fisc.md/editorial/nerespectarea-legislaiei-muncii-genereaza-sanciuni.html>.

following forms of supervision:

a) State supervision, including:

- State Labour Inspectorate;
- State energy supervision, (state supervision on the implementation of measures to ensure the safe operation of electrical and district heating is exercised by the state energy supervision body within the limits, according to the requirements and procedure established by law).
- The state sanitary-epidemiological surveillance (the state surveillance on the observance of the sanitary-hygienic and sanitary-anti-epidemic norms in all units is carried out by the State Sanitary-Epidemiological Service within the limits, according to the requirements and procedure established by law).
- State supervision and control over nuclear and radiological activities (State supervision and control in the field of nuclear and radiological activities are exercised by the National Agency for the Regulation of Nuclear and Radiological Activities).

b) Supervision by the unions of the labour legislation.

The bodies empowered to carry out supervision and control are:

- The State Labour Inspectorate is an administrative authority, subordinated to the Ministry of Labour, Social Protection and Family, which exercises state control over compliance with legislative acts and other normative acts containing norms of labour law, collective agreements and collective labour agreements at all units, by individual employers, as well as in central and local public authorities.
- The Ministry of Defence, the Ministry of Internal Affairs, the Intelligence and Security Service, the State Protection and Guard Service, the Department of Penitentiary Institutions of the Ministry of Justice, the National Anticorruption Centre organize labour inspection activities through their specialized services, which have competence only for structures subordinate.
- State energy supervision - State supervision over the implementation of measures to ensure the safe operation of electrical and district heating installations is exercised by the state energy supervision body within the limits, according to the requirements and procedure established by law.
- State sanitary-epidemiological surveillance. The state surveillance on the observance of the sanitary-hygienic and sanitary-anti-epidemic norms in all units is

carried out by the State Sanitary-Epidemiological Service within the limits, according to the requirements and procedure established by law.

- State surveillance and control over nuclear and radiological activities. State supervision and control in the field of nuclear and radiological activities are exercised by the National Agency for the Regulation of Nuclear and Radiological Activities.

- Trade union bodies have the right to control the observance by employers and their representatives of labour legislation and other normative acts containing norms of labour law in all units, regardless of departmental subordination or branch affiliation¹.

The Right to Work in Romania and the EU

If we refer to the respect of human rights and especially the right to work in Romania, which since 2007 is an EU member state, here things are different.

In 2000, the European Parliament, the European Commission and the Council proclaimed the EU Charter of Fundamental Rights. This document sets out the fundamental rights and freedoms recognized by the European Union.

With the entry into force of the Lisbon Treaty in 2009, the rights, freedoms and principles set out in the Charter have become legally binding on the EU and the Member States when implementing European Union law.

In April 2016, the Council and the European Parliament adopted a legislative package aimed at reforming and modernizing the protection of personal data².

In 2012, the Council adopted a Strategic Framework on Human Rights and Democracy, accompanied by an action plan for its implementation. The framework defines the principles, objectives and priorities for improving the effectiveness and consistency of EU policy over the next 10 years. The new action plan for 2020-2024 is being developed³.

One of the key documents governing the right to work is the European Employment Strategy, which was introduced in 1997, when EU Member States decided to set a common set of employment policy objectives. Its main purpose is to create more and

¹ <https://dreptmd.wordpress.com/cursuri-universitare/dreptul-muncii/jurisdictia-muncii-supravegherea-si-controlul-asupra-respectarii-legislatiei-muncii/>.

² <https://www.consilium.europa.eu/ro/policies/human-rights/>.

³ <https://www.europarl.europa.eu/factsheets/ro/sheet/165/human-rights>.

better jobs for all citizens of the Union. It is currently an integral part of the Europe 2020 Growth Strategy and is implemented through the European Semester, an annual process that promotes close policy coordination between national governments and the EU institutions.

The implementation of the Strategy, supported by the work of the Employment Committee, involves the following four stages of the European Semester:

1. Employment guidelines - common priorities and objectives for relevant policies.
2. Joint Employment Report. It is published by the Commission and adopted by the EU Council.
3. National Reform Programs - submitted by national governments, reviewed by the Commission to ensure that they are compatible with the objectives of the Europe 2020 Strategy.
4. Based on the evaluation of the reform programs, the Commission publishes a series of country reports, in which the economic problems and policies of the Member States are analysed, after which it transmits the country recommendations¹.

In addition to all normative acts approved at EU level, first of all, the right to work is provided in Article 41 “Labour and social protection of labour” of the Romanian Constitution and has the same general provisions:

- 1) The right to work cannot be restricted. The choice of profession, trade or occupation, as well as the job is free.
- 2) Employees have the right to social protection measures.
- 3) The normal duration of the working day is, on average, a maximum of 8 hours.
- 4) At equal work, women have equal pay for men.
- 5) The right to collective bargaining in labour matters and the binding nature of collective agreements are guaranteed².

Currently, the Romanian legislation on employment is governed mainly by the Law on the Labour Code and the Law on Social Dialogue. At the same time, there are several special provisions on occupational health and safety and insurance for accidents at work and industrial diseases. Employment legislation has been constantly changing over the last 20 years as a result of government reforms. Today,

¹ <https://ec.europa.eu/social/main.jsp?catId=101&langId=ro>.

² <https://www.constitutiaronaniei.ro/tag/dreptul-la-munca/>.

Romanian legislation offers a wide range of protection for Romanian employees, as well as from other states.

Conclusions

Human rights are those that guarantee their lives, health and well-being. The well-being of a country's population guarantees the purchasing power and economic growth of that country. The growth and development of the national economy will be achieved only by increasing the living standards of the population. In order to ensure this, the state must take care first of all of the respect of human rights.

We must pay special attention to human rights for work. From the information presented in this article we find that there are many international and national normative acts that regulate this right, acts that control the correct realization and observance of the laws. However, we do not have a very good situation in this regard.

If in Romania the unemployment rate at national level was 2.97% about 260 thousand people in December 2019 ¹, then in the Republic of Moldova the annual average was 5.1% or 46.9 thousand people in 2019 (compared to 3.0% in 2018)².

If we analyse more statistics such as population migration, youth unemployment, and others, we will see that in both states there is still work to be done on compliance with the legislation on population rights. Certain legal provisions are required to:

- stop the total migration of the population and in particular of the active labour force;
- “curbing” the exodus of young workers,
- encouraging young people to study and work at home;
- prevention of unofficial remuneration;
- providing decent wages and working conditions;
- punishing / sanctioning non-compliance with the laws regarding working conditions;

¹ <https://www.wall-street.ro/articol/Careers/249440/cei-mai-multi-someri-din-romania-au-varste-cuprinse-intre-40-49-de-ani.html>.

² http://statbank.statistica.md/PxWeb/pxweb/ro/30%20Statistica%20sociala/30%20Statistica%20sociala__03%20FM__03%20MUN2000__MUN010/MUN010200.px/table/tableViewLayout1/?rxid=2345d98a-890b-4459-bb1f-9b565f99b3b9.

- tougher sanctions for non-compliance with the laws on conditions of employment, at the same time it should be mentioned that employment must be done not on the basis of political visions, but on the basis of knowledge and skills in the field.

Several directions for improvement can be listed, but first, we must all learn to strictly obey the law.

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