

Global Workplace Law & Policy

Digitalization and work-life balance in the context of the recent evolutions of the Romanian labour law

Magdolna Vallasek (Sapientia Hungarian University of Transylvania (Romania)) · Monday, August 28th, 2023



Introduction

Romanian labour law has developed very dynamically in recent years. Its development curve could be described in key words which, at first somewhat belatedly, are nowadays becoming more and more dominant in line with international trends. One of these key words was *flexicurity*, which was the main theme of the most significant amendment to the Romanian Labour Code ([Law no. 53/2003](#)), by [Law no. 40/2011](#). In the period of the COVID-19 pandemic, the understanding and regulating of *home office* and *teleworking* came to the fore together with the slogan of digitalization, and partly in parallel, the issue of work-life balance. Romania was rather late in implementing the 2002 Telework Framework Agreement negotiated by the EU social partners, through entering in force [Law 81/2018 on teleworking](#).^[1]

Today, the issue of *decent work* has a similar importance, closely linked to the aforementioned work-life balance. The amendment of the Labour Code by [Law 283/2022](#), in order to implement [EU Directive No. 1152/2019 on transparent and predictable working conditions](#) and [No. 1158/2019 on work-life balance for parents and carers](#), is a clear illustration of this, but so is the fine-tuning of the rules on teleworking laid down in [Law 81 of 2018](#).

The issue of digitalisation of the Romanian labour law

We believe that the process of digitisation of labour law has been accelerated by the compelling circumstance of the Covid-19 pandemic. The Covid-19 pandemic hit Romanian labour law in a phase of development that strongly emphasised flexibility, and shaped the rules of individual and collective labour contracts accordingly. This pre-existing process has been accelerated by this unforeseen situation. The mass shift of workers to teleworking has made it necessary to rethink the regulation of teleworking. Only in the period between 2020 and 2021 about 18 pieces of legislation were published that have amended, supplemented or in some way affected the provisions of the Labour Code. Having a significant impact on digitalization, the [Emergency Government Decree No. 36/2021](#) introduced the rules on electronic signatures and electronic contracts of employment, but it also redefined the concept of teleworking in a simpler form than before, and introduced simplifying novelties in terms of labour protection issues, allowing the use of digitalisation tools. The question is, however, to what extent such an amendment to the Labour Law will change labour law practice. In our view, this is a slow process and there are many obstacles for the time being. Firstly, only a minority of employees have an electronic signature, and the law does not allow employers to oblige employees to use electronic signatures[2]. On the other hand, the Labour Law itself is not fully coherent, and labour law alone is not sufficient to ensure the uptake of electronic signatures on employment contracts and other labour law documents. Just to give an example, it is mandatory to attach to an electronically signed employment contract an occupational doctor's certificate regarding the work capability of the employee, which document is not yet fully digitised[3], but whose absence is a ground for invalidity of the employment contract.

Nevertheless, regulating the use of electronic signatures is certainly a welcome and important step. In this context, and in line with the steps taken by the Romanian Government to follow the [EU European Skills Agenda](#), the Romanian labour law literature strongly emphasises the need to develop the digital competences of employees, which, at least in theory, are already becoming more developed among the younger generation[4]. However, a cautious optimism about this seems realistic. Although the digital skills of the younger age group are probably presumably better than those of the older age group, it is youth unemployment that is still significant in Romania. According to data from the National Institute of Statistics, this rate was around 20.9% in 2021, compared to 6.8% for 25-34 age group and 4.1% for those aged 55 and over[5].

Summarizing, currently art. 16(1¹-1²) of the Romanian Labour Code states that the parties may choose to use the advanced electronic signature or the qualified electronic signature when concluding, amending, suspending, or terminating the individual employment contract. In fact, the employer may choose to use the electronic signature for the preparation of all documents resulting from the conclusion of the employment contract, during its execution or upon termination of the employment contract, but only under the conditions set out in the internal regulations and/or the applicable collective labour agreement. In the same time though the employer may not oblige the employee or person selected for employment to use an electronic signature when concluding, amending, suspending or terminating the employment contract, the parties shall use the same type of signature for each document.

Linked to digitalisation, the Labour Code also says that every employer is obliged to set up a general register of employees, which is an electronic register, and as a novelty, it is accessible online for employees or former employees in respect of data concerning them. The right of access is limited to viewing, downloading and printing this data, as well as generating online and downloading an extract from the register.

However, we should note that an employment contract could be signed electronically even before the amendment of the Labour Code by Emergency Ordinance 36/2021, being applicable through the regulations of [Law 455/2001 on electronic signature](#).

As stated in the Romanian labour literature, in an initial form of the Emergency Ordinance No. 36/2021, the employment relationship documents were to be signed only with qualified signatures, but later the authorities changed their mind and established that advanced signatures can also be used in this process. With this extension, the state practically grants the value of handwritten signatures and advanced signatures in the field of labour relations, but this recognition applies only in the territory of Romania, which means that employment documents signed with these instruments will not be implicitly recognised abroad[6].

Work-life balance in the context of the digitalisation of labour law

On the one hand, the Covid-19 pandemic has helped to accelerate the digitalisation of Romanian labour law, but on the other hand, it has generated additional questions in terms of achieving employees' work-life balance. It is quite clear, that the Covid-19 pandemic has exacerbated income and labour market inequalities and disproportionately affected women and vulnerable and disadvantaged groups. In this light, we must notice the importance of the implementation soon after the end of the pandemic of Directives 2019/1152 and 2019/1158 in Romanian labour law. In order to properly implement the provisions of Directive 2019/1158 on work-life balance into Romanian law, several amendments to the existing legal framework had to be made, including the adjustment of the legislation containing the norms of application. As a result, the Labour Code, Law 210/1999 on paternity leave, Emergency Ordinance 111/2010 on childcare, or even Law 202/2002 on equal opportunities and equal treatment between women and men, have been amended and supplemented. None of the above norms, apart from the equal opportunities rules, was enacted by the August 2022 deadline, despite the fact that only the legislation amending the provisions of the Labour Code and the Administrative Code was passed as a law in the ordinary parliamentary legislative procedure. For the other pieces of legislation, the government undertook to draft the legislation in emergency procedure.

The institution of carer's leave, which did not previously exist in Romanian labour law, was introduced. A similar innovation for the Romanian labour law is the introduction of rules on time off from work on grounds of *force majeure*.

Analysing the amendments of the Labour Code, we consider that there can be found two clear features of the Romanian legislator's approach to labour law. One is the broadening of the applicability of labour regulation. This trend did not appear, of course, only in the above presented process of implementing the Directives. This trend also can be seen, for example, in the attention paid in recent years to the regulation of atypical forms of work (day labourers, domestic workers, but also teleworking), too. The other characteristic is that Romanian labour law continues to follow a relatively rigid regulatory line in terms of flexible working, which is not necessarily detrimental to workers' security. In the context of the Directive 2019/1152 this approach can be seen in relation to unpredictable working hours and on-call contracts, which have not been taken over in Romanian labour law.

In fact, there are three areas of the Directive which have not been implemented despite the fact that, in some cases, the legislator had originally intended to introduce them under the draft law. The first such field is the regulation regarding the maximum duration of any probationary period.

Regarding the minimum predictability of work, the starting point of the regulation is that the employer is obliged to take into account, as far as possible, the request of an employee to transfer from a full-time to a part-time job or from a part-time to a full-time job, or to increase his/her work schedule, if the possibility arises. This article was to be supplemented by three new articles in the draft transposition law, which would have defined the concept of part-time worker with an unpredictable work schedule, the concept of unpredictable work schedule and the conditions for working in an unpredictable work schedule. A similar provision would have been included in Article 278² for employment relationships not based on an employment contract, but this pattern was not adopted and it is still not possible in Romanian labour law to conclude such kind of employment contracts.

Finally, the Romanian legislator also omitted to regulate the on-demand employment contracts, as this possibility is completely alien to the Romanian labour law traditions.

Conclusion

As a general conclusion the dynamic development of labour law in Romania is mainly in line with international and EU development directions. The biggest challenge nowadays is to comply with the decent work paradigm, along which the legislative changes concerning digitalization and work-life balance of the employees, have taken place. However, all these changes must be interpreted in the context of Romanian labour law in its entirety, taking into account the additional rules on individual and collective labour law. The positive assessment of the developments is certainly justified, even if Romanian labour legislation and practice still present numerous shortcomings and inconsistencies in certain cases.

References

- [1] Iuliana, Cebuc, 2019. “**Considerations Regarding The Legal Teleworking Regime In Romania And The European Union,**” *Management Strategies Journal*, Constantin Brancoveanu University, vol. 45(3), pages 163-168.
- [2] In this context, it is also worth noting that Romania ranks last among EU countries in terms of the **DESI** index.
- [3] Although some healthcare providers now offer the possibility to perform an online work capability test (e.g. **Re?eaua Privat? de S?n?tate Regina Maria/Regina Maria Private Health Network**)
- [4] Alexandru ?ICLEA: Robo?ii ?i for?a de munc? (Robots and the Workforce). *Revista Româ? de Dreptul Muncii*, no. 4. (2021), pp. 24-32.
- [5] National Institute of Statistics: **Romanian Statistical Yearbook 2022**
- [6] Dan ?OP: Digitalizarea contractului individual de munc?, încheierea, derularea ?i încetarea în format electronic a acestui document, cu semn?tur? electronica (Digitisation of the individual employment contract, conclusion, execution and termination of this document in electronic format, with electronic signature). *Revista Româ? de Dreptul Muncii*, no. 4. (2021), p. 38.

This entry was posted on Monday, August 28th, 2023 at 8:00 am and is filed under [Labour law](#), [Romania](#), [Work/life balance](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.