

Reflections on actual situation of collective bargaining for the public servants and public services in Romania and in Europe. A theoretical and practical approach

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Abstract

Collective bargaining, as a component part of the social dialogue, which is the main way of achieving social peace, is possible both for the private system and for the public services and the budgetary system. The legal situation of employees in the private system, but also that of workers in the budget system and public services can be improved by concluding collective labor agreements. If in the private system, the negotiation agenda is very rich, in the public system, it has particularities depending on each state. In the present study, the author will analyze the legal regime of collective bargaining for the public services, including also the public servants, starting from the relevant legal provisions, both in Romania and in other European countries. The analysis will reveal aspects related to the evolution of the institution of collective bargaining and their relevance in improving the service relations of civil servants and other employees in the public services system.

Keywords: *collective bargaining, public servants, public services, Europe, legal framework.*

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1. Introduction

Collective bargaining is the main tool for achieving social dialogue and implicitly for social peace².

For the private system, in many legal systems, collective bargaining is the main way of regulation in the field of social policy, the social partners having the possibility to establish, by mutual agreement, the essential elements of labor relations.

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² See Ștefănescu I. T., *Tratat teoretic și practic de drept al muncii – ediția a IV-a, revăzută și adăugită* [Theoretical and practical treatise on labor law - 4th edition, revised and added], Universul Juridic Publishing House, Bucharest, 2017, pp. 110-115; Dimitriu R., *Dreptul muncii. Anxietăți ale prezentului* [Labor law. Anxieties of the present], Rentrop&Straton Publishing House, Bucharest, 2016, p. 210-212, Codreanu G., *Dialogul social și pacea socială* [Social dialogue and social peace], Tribuna Economică Publishing House, 2007, p. 27; Pătru R. Ș., *Contractele și acordurile colective de muncă* [Collective labor contracts and agreements], Hamangiu Publishing House, Bucharest, 2014, pp. 1-6.

Collective bargaining is also relevant in the budgetary system and public services, even if these areas are characterized by greater rigidity, due to the establishment by law of the legal regime in labor relations³.

Following economic and administrative reforms in many European countries, the number of public service staff has increased considerably, and as a consequence the need to strengthen their legal regime has increased, including through collective agreements that give them more rights.

In this context, the Central European states have made significant progress in collective bargaining in public services, trying to bring their legal regime as close as possible to that of employees in the private system, while respecting the specifics of public positions.

Considering the mentioned, an analysis of the situation of collective bargaining within the public services in Europe is required, in order to analyze its impact in order to achieve social peace.

2. Collective bargaining in public system in Romania

In Romania, the collective labor law is regulated by Law no. 62/2011 (of the social dialogue)⁴.

The mentioned law, together with the Labor Code - Law no. 53/2003⁵, represents the most important laws on labor relations.

For the first time for the Romanian legal system, the Law on Social Dialogue regulates both employees and civil servants.

The Law no. 62/2011 substantially modified the previous provisions regarding the legal regime of collective bargaining, establishing a higher representation threshold for trade unions and allowing collective bargaining only at the level of unit, group of units and sector of activity.

Collective bargaining has stagnated due to the entry into force of these legislative provisions, the number of collective labor agreements decreasing significantly.

Another important legislative act in the matter of civil servants in Romania is the Administrative Code⁶, which regulates both aspects regarding the legal regime of the civil servants in Romania, as well as the legal regime of the local and central public administration.

The law of social dialogue defines in art. 1 letter b), the social dialogue as the voluntary process through which the social partners are informed, consulted and negotiated in order to establish agreements on issues of common interest.

³ For the negotiation in labor relations, see Bădoi I., *Negotiation within labor relations*, „Juridical Tribune – Tribuna Juridica”, volume 4, Issue 1, June 2014, p. 7-21.

⁴ Published in the Official Gazette, no. 322 from 10 May 2011.

⁵ Republished in the Official Gazette, no. 245 from 18 May 2011.

⁶ Adopted by Government Ordinance (G. O.) no. 57/2019, published in the Official Gazette, no. 555 from 5 July 2019.

Social dialogue, which can be bipartite or tripartite, can be achieved through information, consultation and negotiation, being the main tool for achieving social peace, a priority objective of collective labor law.

Of these three ways of conducting social dialogue, collective bargaining is certainly the most important.

The Law no. 62/2011 (on social dialogue) in art. 1, letter b) - (iii), defines collective bargaining as the negotiation between the employer or the employers' organization and the trade union or the trade union organization or the employees' representatives, as the case may be, which seeks to regulate labor or service relations between the two parties and any other agreements of common interest.

Collective bargaining in the private sector can have as its object, for example, wage rights, working conditions, working time and rest time and other important aspects related to labor relations.

Civil servants conclude collective labor agreements, but with a much lower content than the one in the private system.

The employees from the budgetary system conclude collective labor contracts, these having the same legal regime as the collective labor contracts from the private system, the difference being only in the matter of content.

The Romanian legislative system preserves certain terminological and content differences in the matter of collective labor contracts concluded in the budgetary system, compared to the private system.

The Administrative Code, establishes in art. 487 the following: the public authorities and institutions may conclude annually, in accordance with the law, collective labor agreements with the representative unions of civil servants or with the representatives of civil servants, comprising only measures related to: a) establishment and use of funds to improve working conditions; b) health and safety at work; c) the daily work schedule; d) professional development; e) other measures than those provided by law, regarding the protection of those elected in the governing bodies of trade unions.

It is observed, therefore, that on the one hand, the collective labor agreements of civil servants are concluded annually, unlike the collective labor contracts of employees that can be concluded for a period of maximum 36 months (initially concluded for a period between 12 and 24 months, with the possibility of extending the period of validity of the collective labor contract by another 12 months), and on the other hand, the content of collective labor agreements is carefully established by the legislator.

The collective agreement is concluded between the institution or the public authority and the representative union, and in the situation when a representative union is not constituted at the level of the employer, the collective agreement will be concluded by the representatives of the civil servants.

Before collective bargaining, the public authority or institution will provide the representative unions or the representatives of the civil servants with the necessary information for concluding the collective agreements, in accordance with the law, as provided by art. 487 para. (3) of the Administrative Code.

If the collective labor agreements do not comply with the mentioned legal provisions, they are struck by absolute nullity.

Employees in the budget system conclude collective labor contracts, but also with the respect of the specifics of collective bargaining in the budget system.

The practice of the social partners has shown that, although the issue of wage rights cannot be included, the social partners can insert other useful clauses for the good development of the labor relations.

For example, the social partners can take over from the Labor Code the legal aspects regarding the protection of employees in case of collective dismissal and can include them in collective labor agreements, provided that the code establishes that these legal provisions do not apply to employees in the budget system⁷.

In some exceptional situations, the legislator may intervene in collective labor agreements.

3. General aspects regarding collective bargaining in public sector in Europe

Collective bargaining in the public sector involves certain peculiarities depending on each state⁸.

The International Labor Organization has recently revealed in a specialized study the aspects that characterize the different categories of legal systems⁹.

In the Nordic countries such as Denmark, Finland, Sweden or Norway, there is a strong tradition of collective bargaining.

⁷ It is a measure also encouraged by the Romanian Constitutional Court, which established, among other things, that... *the above did not mean that collective redundancy measures could not be taken at the level of public institutions and authorities, nor that any Collective redundancies may be ordered by the public employer only by virtue of his own will and his own decision. On the contrary, collective redundancy measures in respect of staff in public institutions and authorities whose employment relationship arises under an individual employment contract may be made only on the basis of special primary regulations, which shall include appropriate accompanying measures, such as not to discriminate this category of employees from employees in the private sector.* For this analyze, see, Uluitu A.G., Pătru R.S., *Observații și comentarii cu privire la Contractul colectiv de muncă încheiat la nivel de grup de unități din Ministerul Afacerilor Interne [Observations and comments on the Collective Labor Agreement concluded at the level of a group of units in the Ministry of Internal Affairs]*, „Revista română de dreptul muncii” [„Romanian Labor Law Review”], no. 9/2015, p. 31-38.

⁸ For further analysis see Pătru R. Ș., *Contractele și acordurile colective de muncă [Collective contracts and agreements]*, Hamangiu Publishing House, Bucharest, 2014, pp. 92-124, Addison, J. T., *Trade Unions and Restrictive Practices*, The Economics of Trade Unions: New Directions, Rosa J.J.(Ed.), Springer, 1984, p. 83-119.

⁹ See *Collective Bargaining in the Public Service in the European Union*, International Labour Office. - Geneva: ILO, 2015, weblink: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_429795.pdf, accessed in 24 May 2021.

Collective bargaining covers important aspects of labor relations, including wages, for example, the minimum gross wage per country guaranteed in payment, which are established exclusively through collective bargaining¹⁰.

In Denmark, a central collective bargaining agreement is concluded between the Employers' Authority of the Government (an independent body subordinated to the Ministry of Finance) and the workers' representatives.

In Finland, a national collective bargaining agreement is similarly concluded for the public sector, but contracts can also be concluded at industry level.

In Norway, a central collective agreement is concluded for a period of four years, under which basic agreements can be concluded with municipal employers¹¹.

In Sweden, in recent decades, the use of collective bargained payments to cover parental leave has become increasingly important¹².

In the Central European states, the legal regime of collective bargaining involves several differentiations.

In Germany, where collective bargaining agreements can be concluded in both the private and budgetary systems, 2005 was a reference year for collective bargaining in the public system, due to the repeal of legal provisions establishing a different legal regime between blue collar workers (*Arbeiter*) and white collar employees (*Angestellte*), by introducing a unified status (*Tarifbeschäftigte*)¹³.

In the German system, the modernization of industrial relations and the development of trade union movements amid an increase in the number of employees in public services, have the effect of frequent protests that sometimes lead to the conclusion of collective labor agreements.

In France, although the majority of employees are represented by trade unions, in the public system collective bargaining has no notable results.

Public service workers are organized in 3 main sectors, namely national government/ministries, local government/territories and hospitals and healthcare, but the role of collective agreements is diminished, because the salary level is most often set by law.

In Ireland, the legal status of staff in the state system is established both legally and through collective bargaining. Also, the collective labor agreement

¹⁰ We believe that this practice of establishing the minimum wage exclusively through collective bargaining cannot be extended to all states for obvious reasons. For a legal protection of employees, it is preferable that these issues be established by law. In Romania, the character of social state provided in art. 1 para. (3) of the Constitution, is a solid argument in favor of maintaining the practice of establishing by law the minimum gross wage per country guaranteed in payment.

¹¹ *Collective Bargaining in the Public Service in the European Union*, *op. cit.* p. 4.

¹² Votinius J. J., *Collective Bargaining for Working Parents in Sweden and Its Interaction with the Statutory Benefit System*, „International Journal of Comparative Labour Law and Industrial Relations”, Volume 36, Issue 3, 2020, p. 367.

¹³ See Keller B., *Employment relations without collective bargaining and strikes: the unusual case of civil servants in Germany*, „Industrial Relations Journal”, 51:1–2, 2020, ISSN 0019-8692, pp. 112-113; Kirchner J., Kremp P. R., *Unions and Collective Bargaining*, in J. Kirchner P.R. Kremp M. Magotsch (eds.), *Key Aspects of German Employment and Labour Law*, Springer Publishing House, 2010, p. 187-198, Schenk W.D., *Aspects of German Labor Law*. in: Wendler M., Tremml B., Buecker B. (eds) *Key Aspects of German Business Law*. Springer, Berlin, Heidelberg (2008).

concluded for the budget sector entitled Towards 2016, included financial incentives for staff in the public system, but also a modernization and change agenda, which provided for additional measures of integrity and competence for the civil service, starting with recruitment, performance of the contract, promotion on the basis of competence and additional pension rights¹⁴.

The mentioned social partnership consisted of two parts, the first part entitled Macro-economy, Infrastructure, Environment and Social Policy, which addressed issues such as Macroeconomic Policy, Enterprise, Innovation and Productivity, Strategy for Science, Technology and Innovation, Better Regulation, Road Safety, Environmental Sustainability, and the second part entitled Pay, the Workplace, and Employment Rights and Compliance, which regulates issues such as Public Service Pay and Related Issues, Service Modernization and others¹⁵.

In Italy, the aim was to harmonize the legislative provisions between the personnel from the private system and the one from the public system.

The legislator is concerned with establishing welfare state measures, including through the encouragement of collective bargaining by establishing additional protection measures for different categories of workers through collective labor agreements concluded at national and unit level¹⁶.

The peculiarity of the Italian system is that collective bargaining agreements are concluded separately for employees holding management positions and those holding executive positions.

The levels of negotiation are the national, sector of activity level of some subsectors equivalent to the groups of units and the level of unit.

It should be noted that the doctrine states that in some countries, such as Portugal, collective bargaining in general is ineffective, in the sense that an analysis of a number of 400 rules in collective bargaining agreements showed that 59% of them reproduce the legal texts identically, and regarding the rest of the norms only 27% are more favorable to the workers, the remaining 11% being favorable to the employers. The conclusion is that collective bargaining in Portugal has a relatively small role as an effective source of labor law¹⁷.

In the United Kingdom, collective bargaining agreements can be concluded in both the private and budgetary systems, in much more relaxed conditions in terms of registration formalities than in other states.

Wage levels are set by law, but in some cases the social partners may set a higher amount of wages for workers.

With regard to the countries of south-eastern Europe, they are mainly characterized by the fact that the state determines working conditions and wages in

¹⁴ *Collective Bargaining in the Public Service in the European Union, op. cit.*, p. 8.

¹⁵ The full text of the agreement can be found at the web address: <https://www.legislationline.org/download/id/1046/file/65d954ba31a36928de065258c9a0.pdf>, accessed on May 24, 2021.

¹⁶ Comandé D., Giubboni S., *The Social Partners in the Welfare System in Italy: From Coordination to Fragmentation*, „International Journal of Comparative Labour Law and Industrial Relations”, Volume 36, Issue 3, 2019, p. 315.

¹⁷ Martins S., Saraiva J., *Assessing the legal value added of collective bargaining agreements*, „International Review of Law and Economics”, Volume 62, June 2020, p. 53.

the public sector by law, with collective bargaining generally having only a secondary role.

Croatia has a very wide area of coverage for public and budgetary workers in collective bargaining¹⁸.

The first national collective agreements were signed in Croatia in 1992, one for the private system and the second for the budgetary system.

The next stage consisted of concluding collective labor agreements at the level of activity sectors.

Gradually collective bargaining has developed, and Croatia has a high percentage of coverage of workers through collective bargaining agreements, especially due to the institution of extending the effects of contracts, the public system is also very well represented¹⁹.

In Bulgaria, collective agreements concluded by public service personnel cover issues such as employment conditions, health and safety, working time, training, vacations and holidays, social security and compensations, conditions for trade union activities, social benefits²⁰.

Overall, the Bulgarian system is restrictive in terms of collective bargaining in the public system, due to the establishment of the main rules that characterize labor relations by normative acts.

However, the salary is not on the list of collective labor agreements concluded in public services, both by civil servants and other professional categories.

In Hungary, civil servants are the only professional category in the public system that can conclude collective labor agreements.

Within each ministry, a special council of civil servants is established, which has competences, including in matters of collective bargaining.

The tripartite social dialogue specific to the budgetary system takes place in several institutions, the most representative of which is The National Labor Council of Civil Servants, in which civil servants can participate in decision-making.

In Poland, collective bargaining followed by the conclusion of collective bargaining agreements is allowed in the public system only for workers who do not have the status of civil servants.

For certain professional categories, such as the military, the legal regime is more restrictive, especially in terms of their unionization.

The doctrine states that Poland is going through a crisis of collective bargaining, with only 15% of workers covered by collective bargaining agreements, although the Polish labor market is quite large. The explanations reside in a legal framework unfavorable to collective bargaining and misunderstandings between the social partners²¹.

¹⁸ See Smokvina V., Laleta S., *Croatia*, in Ulla Liukkonen (editor), *Collective Bargaining in Labour Law Regimes, A Global Perspective*, Springer, 2019, pp. 183-205.

¹⁹ Bagić D., *Croatia: stability amidst heterogeneous collective bargaining patterns // Collective bargaining in Europe: towards an endgame. Volume I, II, III and IV / Müller, Torsten; Vandaele, Kurt; Waddington, Jeremy (ur.)*, Brussels: The European Trade Union Institute, 2019, p. 94-96.

²⁰ *Collective Bargaining in the Public Service in the European Union, op. cit.*, p. 24.

²¹ Pisarczyk L., *The Crisis of the Collective Bargaining System in Poland*, „International Journal of Comparative Labour Law and Industrial Relations”, Volume 35, Issue 1 (2019) pp. 57-77. For regulation of the collective labor law in Poland see Seweryński M., *Collective labour law*

A more relaxed approach took place in 2009, regarding the maximum amount of the basic remuneration of officials of self-governing entities, with can be established by collective agreements²².

4. New achievements in collective bargaining for public sector in Europe

European Public Service Union recently published a study highlighting the most important collective agreements concluded for public services²³.

In Germany, two collective agreements were recently concluded, one at federal and municipal level in 2019 and the second at regional level in 2020, both for a period of 2 years.

It should be noted that both agreements also involve the granting of salary increases for public service employees²⁴.

In addition to the provisions on financial increases, collective bargaining for public service workers in Germany also involves negotiating social security issues²⁵.

The social partners are negotiating the conclusion of such an agreement aimed at the social protection of the elderly, by paying an amount of 1500 euros for the staff who care for such people²⁶.

Other important collective agreements have been concluded in the field of energy, one for the Hesse region, which includes 6,000 workers and involves the granting of salary bonuses of 2.6%, including bonuses for work in pandemics (valid until 2022), and the second for RWE (a German utility company, respectively energy and gas), an agreement that applies to a number of 20,000 workers and which involves the granting of staggered salary increases, respectively 2% from March 1, 2021 and 1,7% from April 1, 2022. The agreement includes the same facilities granted proportionally and for part-time workers²⁷.

In France, as we have shown, collective bargaining for public services is not encouraged, an agreement is currently in force applicable to medical employees, which establishes small salary increases for them.

Also, a working group was set up in order to assess the situation of jobs in public services in order to improve the situation of these workers, until January 2022,

codification, polish experience, in „Revista Latinoamericana de Derecho Social”, vol. 2013, no. 17. pp. 315-325.

²² *Collective Bargaining in the Public Service in the European Union*, op. cit., p. 32.

²³ <https://www.epsu.org/article/collective-bargaining-developments-public-services>, accessed on 24 May 2021.

²⁴ The collective bargaining agreement at regional level provides for salary increases of up to 8% in installments over a period of 33 months, for civil servants, including civil servants and teachers. See <https://www.ei-ie.org/en/item/22769:germany-a-collective-agreement-with-an-8-salary-increase-for-public-workers>, accessed on 26 May 2021.

²⁵ For an analyses see, Bosch G., *The making of the German minimum wage: a case study of institutional change*, „Industrial Relations Journal”, Volume 49, Issue 1, 2018, pp. 19-33.

²⁶ <https://www.epsu.org/article/collective-bargaining-developments-public-services>, accessed on 24 May 2021.

²⁷ *Ibid.*

and for workers who are paid the minimum wage on the economy, salary increases are expected by 15%²⁸.

The Netherlands is a state in which the role of collective agreements for public services is significant.

Collective agreements are concluded at national, regional and local level. The collective bargaining agreement at the state sector level expired in 2020, with the social partners resuming talks after the pandemic crisis, but negotiations for a new collective agreement have not been finalized because the social partners have not reached a common agreement.

In the Netherlands, however, there are other important collective agreements for public services, such as for example for municipalities, hospitals, which sector, mental health, public libraries, maternity which, in these sectors salary increases being between 1%, reaching 6, 5% if the sector²⁹.

In some countries, collective bargaining for public services has not improved recently, as is the case in Italy, where collective labor agreements concluded in the previous period for essential public services have not been renewed, being negotiations only for the medical system and in the matter of private healthcare, in Spain, where the law predominates in establishing the legal regime for public service workers (however, certain collective bargaining agreements are still concluded which provide for small wage increases of about 2% for some segments of public services), in Austria, where legal regulations also predominate, with collective bargaining only for the private health and social sector, but collective bargaining is influenced by the evolution of the pandemic.³⁰

In the field of health, collective agreements are negotiated for public services in countries such as the Czech Republic, Belgium, Sweden (where collective bargaining is very widespread, with incidence in other areas as well), Denmark.

In Romania, during the declaration of the alert state, Law no. 55/2020, on some measures to prevent and combat the effects of the COVID-19 pandemic, established, inter alia, the extension of the validity of contracts and collective labor agreements by 90 days from the end of the alert period, so that collective bargaining, under the conditions data cannot take place.

Collective labor agreements concluded by civil servants are mainly concluded in the central or local public administration, but, as we have shown, they cannot include aspects related to remuneration.

Nevertheless, it can be stated that Romania is among the countries where collective bargaining for the public system is in real difficulty³¹.

This is due, among other things, to the decline in workers' trust in trade unions, amid a legal framework that does not encourage trade union movement,

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ See Visser, J. *What happened to collective bargaining during the great recession?*, IZA J Labor Policy 5, 9 (2016), Springer.

mainly by establishing a high level of representation in the unit (half plus one of the number of employees) and lack of efficiency and often the integrity of union leaders.

5. Conclusions

Collective bargaining specific to the budgetary system and public services differs depending on the particularities of each state.

As we have presented, in the Nordic states, collective bargaining has a decisive role in shaping the legal regime of labor relations, which characterizes the public system and public services.

In other states, collective bargaining accompanies the legal provisions that establish the legal framework for public service workers, thus establishing a mixed system, both legal and negotiated, that allows public service workers to improve their legal status at work.

Other, more rigid systems allow for collective bargaining only under certain conditions and for a limited number of issues that can be negotiated.

In this category there are states that do not allow collective bargaining only for civil servants, and others that allow collective bargaining only for other categories of workers.

As we have shown, in the more closed systems based especially on the law in shaping the legal regime of public service workers, collective bargaining cannot target wage increases, because workers' wage rights are established by the legislator.

It is noteworthy that social peace, which, as we have shown, is a state of understanding between the main factors involved in labor relations and together with the governmental factor is fulfilled and depending on how the relationship with public service workers is managed, including from the budgetary system.

In this context, there are appreciable states such as Germany or the Netherlands, which, although they regulate by law the legal regime of workers in the public system, allow the negotiation of salary increases for workers in this field, so as to achieve social consensus.

Such approaches and changes in optics may be necessary for as many states as possible, especially as public services expand, but these issues must be carefully considered so as not to burden the state budget and not reach the opposite pole, by establishing inequities at the level of society and also by facing the new challenges in the field of labor relations like the digitalization of the work.

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