

Non-standard employment relationship and the gender dimension

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Abstract

Besides influences economic, political and social on the standard form of individual employment contract, which led to a more flexible regulatory framework in the field of labor relations, an important factor that marked trend evolving contract atypical employment is the number of women who entered the labor market in recent decades. Because most strongly feminized form of employment non-standard employment relationship part-time, this article captures the issues most important about the relationship work part-time and the gender factor, the impact of this form of employment on the size women's social and level of protection provided by labor law and social protection rules in light of states that have agreed to support and legitimize this form of employment. Also, the circumstances of the most important, determining the choice of women in terms of hiring part-time, rationales justifying the strong influence of gender in hiring part-time, along with the identification of negative consequences of the feminization of this atypical forms of work are important factors that are discussed in this article.

Keywords: *employment, labor law, atypical workers, labor market, gender discrimination.*

JEL Classification: K31

1. Preliminaries

Following research in the field of law and the doctrine of labor relations, both internally and in comparative law, we see a proliferation of non-standard forms of employment or atypical. The working relationship non standard forms of work which is spreading most rapidly², is seen as a key element in finding solutions to problems related to the restructuring of economic life, adapting to the reality of fluctuating production on the one hand, and achieving a balance between family and professional³ obligations, on the other hand. This form of atypical work

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² Recent surveys conducted at European level, showing the percentage increase forms of work standard, permanent, full-time is surpassed by the percentage increase forms of work non-standard, atypical, thus creating relations plan individual work part and not insignificant significant European labor markets. (See Jan Buelens, John Pearson, *Standard work: an anachronism?*, Intersentia Publishing Ltd., Cambridge, 2013, p. 4).

³ See, in this regard, Raluca Dimitriu *Flexibilizarea modalităților de încetare a contractului de muncă*, in *Modificările Codului Muncii și ale Legii Dialogului Social*, coord. Alexandru Athanasu, Universul Juridic, 2011, Bucharest University, Clubul de Drept Social – Costel Gîlcă, p. 110.

could be defined as "any type of employment that is not full-time, permanent, a single employer directly"⁴, which includes a wide range of contractual forms of employment (employment contract fixed term contract temporary work, part-time employment contract, the employment at home and teleworking, on-call contract, contract job-sharing, etc.). Besides influences economic, political and social on the standard form of individual employment contract, which led to a more flexible regulatory framework in the field of labor relations, an important factor towards proliferation of such contractual arrangements atypical is the "feminization of labor work". The large number of women who entered the labor market in recent decades, strengthening the position of women in important areas of economic and social life, changed the perception of female identity and its role, the "**role of reproduction**", attributed to women in industrial society, the model "**double role**" in contemporary society⁵. Based on these considerations, this article will contain a comprehensive analysis of the factors and circumstances which competed in the expansion of forms of work non-standard, but we will focus on the prevalence of gender factor in the employment relationship is non-standard, given discrepancy between men and women regarding the employment relationship, in the sense that men are over-represented in standard employment relationships, while women dominate almost all atypical contractual arrangements⁶. And because most strongly feminized form of employment non-standard employment relationship part-time, in this article we limit ourselves to capture the most important aspects about the relationship work part-time⁷ gender factor, the impact of this forms of employment on the social dimension of women and the level of protection provided by labor law and social protection. Also, the circumstances of the most important,

⁴ Debra Hevestone, *National Context and Atypical Employment*, in *International Sociology*, May 2010, Vol. 25, pp. 315-347.

⁵ Industrial society is characterized by the fact that women were assigned "the role of reproduction" their activities were confined in the private sphere of the family in certain sectors of economic activity, industrial (textiles and art food) associated with the pay low and very checked difficult legal. On the contrary, the man play "productive role", both in public and in private employment relationship to be governed. After 1970, due to changes in production, development of services, emergence of new technologies, changes in family structure, the family homogeneous to heterogeneous family - parent families, single mothers, single men and women - the legislation on relations work has evolved to creating job opportunities for women. Despite these changes, concerning popular social division of labor, the woman remains responsible for "social reproduction, representing a further obligation and unequal competition between men and women in the labor market (see Alain Supiot, *Beyond Employment. Changes in Work and the Future of Labour Law in Europe*, Oxford University Press, 2001, pp. 176-178).

⁶ Women dominate almost all categories of atypical work, with the exception of what is called "self-employment" atypical contractual form well developed in countries such as Greece, Romania, Czech Republic, mainly dominated by men (see Allmendinger, J., Hipp, L., Stuth, S. 2013 *Atypical Employment in Europe 1996-2011*, Berlin, www.wzb.eu)

⁷ In the sense that in almost all EU countries about 80% of part-time workers are women, compared with the percentage of men in such jobs, which rarely exceeds 10%. (See Nicky le Feuvre and Muriel Andriocci in *Employment opportunities for women in Europe*, p. 36, Source: Doing Women's Studies: Employment Opportunities, Personal Impacts & Social Consequences, 2005, pp. 13-63), Eurostat statistical information related data: http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_statistics/ro, accessed on 10/28/2015.

determining the choice of women in terms of hiring part-time, rationales justifying the strong influence of gender in hiring part-time, along with the identification of negative consequences of the feminization of this atypical forms of work are important elements in this scientific endeavor.

Since Romania is among countries that have not yet granted enough attention to work atypical and has developed a system of social protection to include atypical workers, we try to determine whether other states have agreed to support and legitimize this form employment⁸ and to what extent the legal framework of these countries incorporate gender issues. In conclusion of this paper analyzed in, we made a number of *lege ferenda* proposals of the measures and policies aimed at mitigating gender discrimination, strongly associated with part-time employment relationship.

2. Domestic and international legal frame work

The legislative guidelines at EU level towards harmonizing the legal framework with structural changes that occurred in the labor market in recent decades about the upward trend of the involvement of women in the labor market have improved significantly in the prohibition of gender discrimination in the labor market. Fundamental documents such as Universal Declaration of Human Rights⁹, ILO Convention. 100/1951 on equal pay¹⁰, the Treaty of Rome (1957), taken and developed in Directive 75/117 / EC as amended by Directive 2006/54 / EC on the elimination of discrimination based on sex and the principle of equal pay If the provision of equal work or of equal value, Council Directive 97/80 / EC on the burden of proof in cases of discrimination based on sex and Council Directive 97/81 / EC implementing the Framework Agreement on work part-time¹¹, all promoting non-discrimination principle and establish the general framework of equal opportunities and equal treatment between women and men¹². Along with the Directive, the European Pact for equality between women and men (2011-2020) adopted by the Council includes a set of measures on eliminating gender gaps in employment, social protection, combating segregation gender in the labor market and to promote a better balance between work and private life for women and men¹³. Also Directive. 97/81 / EC, which regulates work part-time, promoting

⁸ View the Netherlands, UK, Germany, which is the purpose of supporting optical legislative work part-time contract.

⁹ Art. 23 pt. 2 which provides that all people without any discrimination, has the right to equal pay for equal work.

¹⁰ Art. 1, letter b provides that for work of equal value, pay between women and men is equal.

¹¹ Clause 1 of Directive 97/81 / EC provides that the Framework Agreement aims: a) to ensure elimination of discrimination against part-time workers and improve the quality of part-time work; b) to facilitate the development of part-time on a voluntary basis and to contribute to the flexible organization of working time in a way that takes into account the needs of employers and workers.

¹² See A. Supiot, *Beyond Employment...*, p. 174

¹³ For an exhaustive analysis of the measures contained in the European Pact for equality between women and men (2011-2020), see Adrian-Claudiu Popoviciu, *Lucrătorul în dreptul european*, 2014, C.H Beck, Bucharest, pp. 199-203.

equality between men and women, prohibit discrimination against workers part-time, paid pro-rata elimination of restrictions limiting part-time, encourages employers to ensure the transfer of work full-time to part-time work and vice versa¹⁴. In Romania, one of the most important regulations regarding the principle of gender equality is the Law no. 202/2002 *regarding equal opportunities and treatment between men and women*¹⁵, which covers measures to promote equality between men and women, to remove gender discrimination in all areas of public life, including with regard to employment. In addition, the Labour Code, art. 6 para. 3 enshrine expressly the principle of "equal work or of equal value, equal pay"¹⁶ and combat discrimination on grounds of sex.

3. The need to create a system of social protection for atypical workers

As noted above, the new atypical contractual arrangements are dominated mostly by women. Women's role is not only limited to housework and reproduction; they carry on adjacent and paid work, becoming a very important element in strengthening gender identity, which ensures them equal footing and autonomy in contemporary society. Women, regardless of their status, are those who carry the burden of reconciliation between work and family care are bearing responsibilities towards family and children.

From this perspective, taking "double role" differently between men and women born controversy and indirect discrimination of gender regarding the conditions of participation in the labor market on the one hand, and on the other hand, the dual role assigned to women in contemporary society, to create a balance between work and family is one of the major factors that force women to resort to such opportunities, enabling them to reconcile household work carried out in their own household with gainful employment¹⁷. How this sphere of atypical jobs is often characterized by insecurity¹⁸, more importance should be given to the impact of these forms of precarious work on women and women's level of protection afforded by labor law and social protection. Women have entered the labor market in an environment "strong masculine" regarding rights and obligations granted by law, their work is perceived as additional major role, namely reproductive and family care with labor laws designed for industrial society and collapsed on the

¹⁴ Clause 5 par. (3) point a) and point b) of Directive 97/81 / EC.

¹⁵ Republished in the Official Gazette of Romania, Part I, no. 326/5 June 2013. See in this regard Ion Traian Stefanescu, *Considerații referitoare la Legea nr. 202/2002 privind egalitatea de șanse între femei și bărbați, cu privire specială asupra domeniului muncii*, in *Revista Română de Dreptul Muncii*, no. 2/2002, pp. 9-14

¹⁶ Art. 6 paragraph (3) of the Labour Code which provides for "equal work or for equal value any discrimination on grounds of sex with regard to all aspects and conditions of remuneration".

¹⁷ See European Foundation for the Improvement of Living and Working Condition in *New Forms of Work: Labour Law and Social Security Aspect in the European Community*, 1988, p. 26

¹⁸ Precarity involving several dimensions: in terms of low income, low level of protection and safety, low-skilled (see J. Buelens, J. Pearson in *Standard work.....*, p. 6)

standard employment contract¹⁹, facing so many obstacles in granting rights and benefits provided by law. Given that women constitute a majority in respect of these forms of precarious employment domination, creating a solid system of social protection for atypical workers appears imperative. Insufficient social protection for workers atypical prejudice to the principle of gender equality in the labor market principle, which in recent years, especially in relation to work part-time, enjoyed the recognition by the law of a formal equality²⁰, along with decisions issued the Court of Justice of the European Union²¹, which promotes and supports the objectives of Council Directives concerning equal treatment for men and women in the social security system.

According to an opinion, to which we rally, the high incidence of these contractual atypical highly dependent on employment protection legislation, institutional pressure, which is different from state to state. Where Member Encourages the legal point of view the use of such contractual arrangements non-standard by creating a social protection system stronger for workers atypical increase the use of forms of flexible working and part-time, so there is a direct relationship between a high level of protection of employment and the use of non-standard employment contracts²².

There is still no common points of regulation across Member States on the issues raised by atypical work, legislative optics is different. According Member Eurostate recent are countries, such as Holland²³, Austria, Germany, UK, encouraged by legislation using forms of atypical employment, while others, such as Greece, Portugal, Denmark, Romania, which gave enough little attention atypical employment. On these issues they will refer to as the subsections of employment for part-time.

¹⁹ See Alain Supiot, *Beyond Employment. Changes in Work and the Future of Labour Law in Europe*, Oxford University Press, 2001, p. 176. The social security system is built on the close link between the contribution of normal full-time work in the labor market by providing sufficient benefits for a certain period of paid employment and only after some time. (For more details, see Karl-Jürgen Bieback, *Protection of Atypical Work and Family Benefits: Comparison of the Australian, German and British Social Security Systems*, in *Policy Studies Review*, 1993, p. 191

²⁰ See Council Directive no. 91/383 / EEC on the health and safety of atypical workers, Council Directive no. 97/81 on part-time work and Council Directive no. 99/70 concerning fixed-term work, all implements and promotes the principle of equal treatment.

²¹ Court of Justice of the European Union, in its judgment 170/84 of 13 May 1986 showed that workers' rights granted under the company pension scheme is an advantage covered by the application of Treaty provisions that protect equal treatment (see European Foundation for the Improvement of Living and Working Condition in *New Forms of Work: Labour Law and Social Security Aspect in the European Community*, 1988, p. 128).

²² George I. Kassinis, Eleni T. Stavrou, in *Non-standard work arrangements and national context*, p. 467, apud. Schott, W. (2012). *Going back part-time: Family leave legislation and women's return to work. Population Research and Policy Review*, 31, 1-30.

²³ Netherlands recorded the highest level of use of part-time work, followed by Austria, Germany, and the opposite is Greece, Portugal, Spain (for development, see Allmendinger J., Hipp L., Stuth S., 2013, *Atypical Employment in Europe 1996-2011*, 10785 Berlin, www.wzb.eu, p. 10).

4. Possible positive reasons and arguments which determine the use of part-time employment relationship by women

Today, reconciling work and family life is an important element of European legislative optics and part-time employment relationship seems to be the best instrument for achieving it. As average, the ratio of part-time work is the most feminized non-standard employment relationship of the European Union, but the situation regarding the use of female part-time employment relationship is much different from state to state. In 2011, the proportion of part-time was relatively low among women in countries such as Italy, Spain, Portugal, Denmark, Italy (less than 18% of women work part-time) and on the opposite side are: Austria, Germany, UK, with a share of over 40% of women anchored in part-time employment relationships. In 2009, European Commission data shows that in Romania 10.6% of employed women work in part-time contractual arrangements while only 9.1% of men working part-time employees. Here the percentage difference between the two sexes is quite low compared to the situation recorded in the European Union, where the difference in the average of 23.2%²⁴. The proportion is reported from the Netherlands, where about 2/3 of working women work part-time²⁵. It is easy to see the difference quite large percentage of part-time work in the Netherlands and other European media and therefore female identity reasons to adopt this model work varies considerably from country to country.

In countries such as Holland, Germany, UK, who developed and improved legislation and social protection systems for workers part-time, thus encouraging the use of such practices, the main reasons justifying the choice of women work part-time are non-economic ones, imposed by family responsibilities, most families with children agreeing this employment model²⁶.

In contrast, in other countries, such as Portugal, Denmark, Italy, Spain, where the social security system for this type of employment is precarious uncertainty of the job is low and therefore the vulnerability of women in this type of employment is relatively high, the main reason cited was lack of job opportunities related to full-time employment difficulty finding a safe, and other reasons, namely combining paid employment with a period of study or illness²⁷.

However, an underline appears necessary if the legislation states that encourage the use of part-time work, in the sense that resorting to this form of contract is assumed that a voluntary basis. The situation is created by the very

²⁴ Profiles of unequal opportunities in Romania - cause and effect. Sector analysis, project co-financed from the European Social Fund through the Sectoral Operational Programme Human Resources Development 2007-2013, <http://www.fundatia.ro/mara/sites/default/files/Profil>, accessed on 29 October 2015.

²⁵ For development, see the study by Allmendinger J., Hipp L., Stuth S., 2013, *Atypical Employment ...*, www.econstor.eu, pp. 14, 23, 27, 33, 45, 48, 60, 66, 76.

²⁶ But in countries such as Holland, Germany, Great Britain is nothing unusual for women to work part time even if they have dependent children (see Brian Bercusson *European Labour Law*, Butterworths, 1996)

²⁷ See N. Feuvre and M. Andriocci in *Employment opportunities for*, p. 36.

favorable institutional environment and active policies oriented towards promoting and ensuring equal rights for part-time workers. In Holland, which, although reporting a large number of workers employed part-time by guaranteeing equal rights for workers part-time, recorded among them one of the lowest rates of employment part-time involuntarily in Europe²⁸. Important documents were adopted by the Dutch government to support part-time work. One of the most important is the *Act of changing working time*, adopted in 2000, which gives employees the right to move from one job full-time at a job part-time and vice versa, refusal is justified on objective grounds provided by law. However, the law obliges the employer to adjust the working time of employees according to their wishes and their needs and propose models of alternative work to better meet operational needs, and if the employer has not acted on the request of the employee within 1 month of the request, the time will be adjusted in accordance with the request of the employee. Moreover, by adopting the *Work and Care Act* in 2002, the legislature has created conditions for a better balance between work and family law, among other things, provides for the possibility of employees to interrupt their professional careers between 2 and 6 months to educate and care for other family members²⁹.

From this example, we emphasize the importance it has for the state in managing this phenomenon of part-time women, the state can intervene through public policies and institutional level by creating opportunities for flexible working hours for women in harmony with family needs. Studies prove that women are still bearing the brunt of family responsibilities and therefore are disadvantaged in terms of labor market participation in labor relations standard, compared to men. We believe that great importance presents monitoring and proper sizing of the general problems and active policies in promoting part-time work must outline the consideration of this social factor affecting women.

Besides the major argument, reconciliation between work and family, political discourse in Europe is built on the premise that working time flexibly adapted to the needs of the family, can be a tool through which businesses can improve their productivity and efficiency, resulting in parallel women to increase employment opportunities. Both arguments in favor of part-time work are associated with a demographic goal, because an aging European population and low fertility rate in most European Union countries raises serious long-term problems³⁰.

²⁸ See D. Hevenstone *National Context and...*, p. 324. In 1993, Dutch law extended the minimum wage and paid holidays to part-time workers who work more than 1/3 of normal hours and in 1996 these provisions were extended to strengthen pro-rata pay and benefits from full-time workers to part-time.

²⁹ See the study by Antoine T. J.M Jacobs *The Netherlands*, 2003, in *International Encyclopaedia for Labour Law and Industrial Relations*, Vol. 10, edited by Prof. Dr. R. Blanpain, 2004, Kluwer Law International, pp. 78-81.

³⁰ See Angela Coyle *Changing times: Flexibilization and the reorganization of work in feminized labour markets*, in *The editorial Board of the Sociological Review* 2005, Vol. 53, pp. 73-88.

5. The impact of the negative consequences of part-time employment on women

The individual part-time job, besides that supports women and meet specific requirements thereof³¹, is often associated with high levels of insecurity of employment, with lower pay and benefits compared with jobs full-time, limited application of rights, protection of the law and reduced labor protection bodies, lack of promotion prospects and the fact that usually accompany low-skilled jobs with³².

In light of these negative consequences³³ of part-time and the high number of women in the European Union involved in such a relationship of atypical work, such work has been identified as one of the most important factors that generated increasing "feminization of poverty" in contemporary society. An important aspect to note is linked to financial difficulties faced by women who accept part-time work, which is perpetuated in time. In addition to financial dependence on other sources of income, which determines such work, financial difficulties affect women and later life because of the low level of benefits of retirement³⁴. Despite the legal recognition of the principle of equal pay for men and women since 1957 under the Treaty of Rome³⁵, wage discrepancies regarding remuneration per hour and overall between work full-time and part-time work still persists. On average, women's salaries per hour is approximately 84% of the hourly wage of men in Denmark, Belgium, Luxembourg, 73% in France and Spain and 64% in the UK, the difference being applied to women performing the same activity and have a level of education comparable³⁶.

We note that the situation in the UK in terms of pay gap between women and men is substantially different from other EU countries, despite the adoption of the *Equal Pay Act* of 1970 which had aimed at increasing the gross hourly earnings

³¹ See in this respect Ion Traian Ștefănescu *Tratat teoretic și practic de drept al muncii*, third edition revised and enlarged, Universul Juridic 2014, p. 535. To analyze the benefits of this type of contract, see also Alexandru Țiclea *Tratat de dreptul muncii. Legislație. Doctrină. Jurisprudență*, eighth edition, revised and enlarged, Universul Juridic, 2014.

³² POSDRU/84/6.1/S/53513 - Project co-financed by the European Social Fund Operational Programme Human Resources Development 2007-2013, p. 7.

³³ In this regard, see for development J. Buelens și J. Pearson in *Standard work...?*, pp. 6-9 and European Foundation for the Improvement of Living and Working Condition in *New Forms of Work....*, pp. 46-47.

³⁴ See N. Feuvre and M. Andriocci in *Employment opportunities for women in Europe*, p. 36 Source: *Doing Women's Studies: Employment Opportunities, Personal Impacts & Social Consequences*, 2005, pp. 41, 55

³⁵ See also Treaty of Amsterdam, Council Directive 2006/54 / EC on the prohibition of discrimination. Art. 1 of Directive 75/117 / EC in conjunction with Art. 4 of Directive 2006/54 / EC expressly provides that when the system is used for determining pay job classification should apply the same criteria for determining salaries in both women and men.

³⁶ See Alain Supiot, *Beyond Employment. Changes in Work and the Future of Labour Law in Europe*, Oxford University Press, 2001, p. 184; POSDRU/84/6.1/S/53513 - Project co-funded by European Social Fund through the Sectoral Operational Programme Human Resources Development 2007-2013, pp. 14-15.

of British women. An important element to maintain this gap at British women's salary, is the major role of family responsibilities which is mostly assumed by women. As a consequence of this, here, nearly half of women are engaged in part-time contractual arrangements and the average hourly earnings in their case against the men was only 61% in 2000³⁷.

Also in Romania, the wage gap between women and men continues, but the percentage difference between the sexes is only 8%, so that this difference is not a major concern³⁸.

This wage difference between men and women can be explained on one hand by the fact that a pronounced degree of feminization occurs in less skilled sectors and associated with a lower remuneration. On the other hand, a major contribution to salary differences has business interruption by women in certain periods of life, which determines the level of accumulation of knowledge and specialization less than men³⁹.

6. Final Considerations

In view mitigate the negative effects of discriminatory employment relationship and part-time, as noted above, clearly associated with a gender aspect, the following *de lege ferenda* proposals are required:

Creating a system of part-time employment protection by enhancing social rights and protection, by increasing pay and access to social security benefits to eliminate inequality and social disadvantage of women and men in the labor market.

The main reason, that of reconciling family and professional life, obliging women to take part-time work and other arrangements for flexible working, to look both sexes, through measures and active policy of education for equal opportunities and treatment between women and men and to promote family responsibilities equally by them.

Legislative measures to encourage companies to develop policies and programs to balance the professional and personal life of life of employees, to assist workers who have dependent children.

Given the over representation of women in these contractual arrangements non standard (part-time, at home, on fixed etc.) associated with low social protection and poor in relation to the employment relationship, must be adopted legislative measures to sanction cases of discrimination in terms of gender relations in the labor market.

³⁷ See the study by Stephen Hardy *Great Britain*, 2006, in *International Encyclopaedia for Labour Law and Industrial Relations*, Vol. 6, edited by Prof. Dr. R. Blanpain, 2004, Kluwer Law International, p. 204

³⁸ <http://www.zf.ro/zf-news/femeile-din-romania-au-salarii-cu-8-mai-mici-decat-ale-barbatilor-13914965>, accessed at October 28, 2015.

³⁹ According to the EU Commission in 2009, over 40% of women work in health, education and public administration (See Mihaela Hrisanta Mosora, *Analiza discriminării pe piața forței de muncă din România*, ASE Publishing House, Bucharest, 2013, p. 46).

To strengthen hiring full time employment among women, we consider that the improvement of employment protection legislative framework by granting paid leave to meet the needs of the family. These policies would allow women return to full-time employment and promotion opportunities for maintaining them. It argues that in countries where family friendly policies are more generous use of part-time employment options in companies would be lower⁴⁰.

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⁴⁰ See G. I. Kassinis, E.T. Stavrou, în *Non-standard work arrangement.....*, p. 467

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