

The Phenomenon of not Declaring Paid Activities to the Public Authorities

Morariu Alunica

„Stefan cel Mare” University of Suceava, Faculty of Law and Administrative Sciences
alunica.morariu@fdsa.usv.ro

Abstract

In the actual situation when an employer receives the work of a person without the completion of the individual labour contract (in written form) before the start of the work, we are dealing with the “black”/undeclared work, and respectively, with the failure of declaring to the public authorities the remunerated activities. It does not matter if the non-declaration is partial or total. As it takes place on a large scale, we are talking about a phenomenon. It produces both financial (budgetary) as well as social negative consequences, affecting, in time, the workers. We refer in this paper to certain issues connected to this theme, with particular reference to Romania.

Key words: undeclared work, social insurance, significant concepts, sanctions, legislative expressions

J.E.L. classification: J81, O15, K31, K34

1. The concept of undeclared work

In the real economy, we often encounter the situation when various employers either do not declare the entire activity of the employee to the specialized state institutions or declare only partly the activity. In both cases we are dealing with what we call undeclared / unofficial / “black” work which implies that the employees can not benefit from the protection deriving from the laws on labour, and, on the other hand, they fail to exercise to the State - in relation to their income from the performed work – the tax attribute, in whole or in part. In other words, “it is not registered, it is not taxed, it is not protected, it is not ensured and it is not socially assisted” (SOCINRO, 2017).

A recent definition is the one found in a legislative act amending the Labour Code, according to which the undeclared work represents: a - the employment of a person without having concluded an written individual contract a day before the beginning of the activity; b - the employment of a person without prior registration of the employment agreement to the Electronic Registry of Employees no later than the day before the start of the activity; c - work provided by an employee having its employment contract suspended; d - twork provided outside working hours by an employee working part-time” (the Romanian Government, 2017a).

At the same time, we must point out that, in the sense of what we mention here, the specialty literature is relatively abundant (Anita, 2011; Bostan, 1999, 2007; Costea, 2010; Drosu-Saguna & Tofan, 2010; Tofan & Cigu, 2017), dealing with this issue from various angles.

It should be noted that at the European level, the undeclared work is seen / defined in terms as simple as possible, namely “any paid activities that are lawful as regards their nature, but are not declared to the public authorities” (Romanian Government, 2017b). Also, in all EU Member States, there is relatively efficient legislation to prevent and fight this phenomenon, but, however, the phenomenon is present in different dimensions and takes various forms.

Most often we encounter: “a - the agreement between the native employer and the Romanian employee who accepts to perform the work without signing an individual labour contract; b – the illicit use of the day labour or seasonal workforce (day-labourers, apprentices, etc.) by various employers or service providers, especially in the agricultural or constructions sectors; c - the lack of identification of the entire volume of work and its lack of taxation, at the same time with the

keeping of double evidence and the "cash-in-hand" wages representing an amount in addition to the one being paid officially" (SOCINRO, 2017).

For the reasons given, since 2001, the issue in question falls under the incidence of the Employment Guidelines for the Member States and is also integrated into the European Employment Strategy (D.L., 2014).

2. Unofficial work in Romania: dimensions, prevention, combat

If at the level of the 28 EU Member States, 50% of the surveyed citizens (Eurobarometer Special Surveys, 2014) mention the advantages for both parties as the main reasons for the undeclared work, 21% mentioned the difficulty of finding a job with legal forms, 16% - the perception that taxes are too high and 15% - the absence of other incomes, in Romania there is rather the difficulty of finding a job with legal forms or the lack of another source of income.

Then, while most of the undeclared European work occurs in sectors such as home repair, gardening, cleaning and childcare, in Romania, "the most common areas are constructions (during the construction season), services, security firms, clothing, part of the agriculture sector (...), public alimentation, we must not forget the restaurants, referring to the summer period" (Capital.ro, 2015).

Referring to certain dimensions of the phenomenon, we show that an official document of the Fiscal Council, elaborated / published in 2014 (Fiscal Council, 2014), states that "among the sectors with the highest share of undeclared work from the total of the undeclared labour is the civil constructions sector (66,2% of the workforce is undeclared), repair, maintenance and installation of machinery and equipment (63,6% undeclared work), IT services (60,3%), manufacture of textile products (48,1%), land transportation and by pipelines (40,6%)".

The calculations of the same state body, in terms of the impact on the budget - tax evasion resulting from the undeclared work, prejudicing the income taxes (IV) and social security contributions (CAS), indicate significant values (Table no. 1):

Table no. 1. The evolution of the tax evasion from the undeclared work

Mil. lei	2009	2010	2011	2012	2013
Total tax evasion from undeclared work	14.652	16.665	17.510	16.966	16.414
Income tax	3.473	3.950	4.151	4.022	3.891
Social Security contributions	11.179	12.715	13.359	12.944	12.523

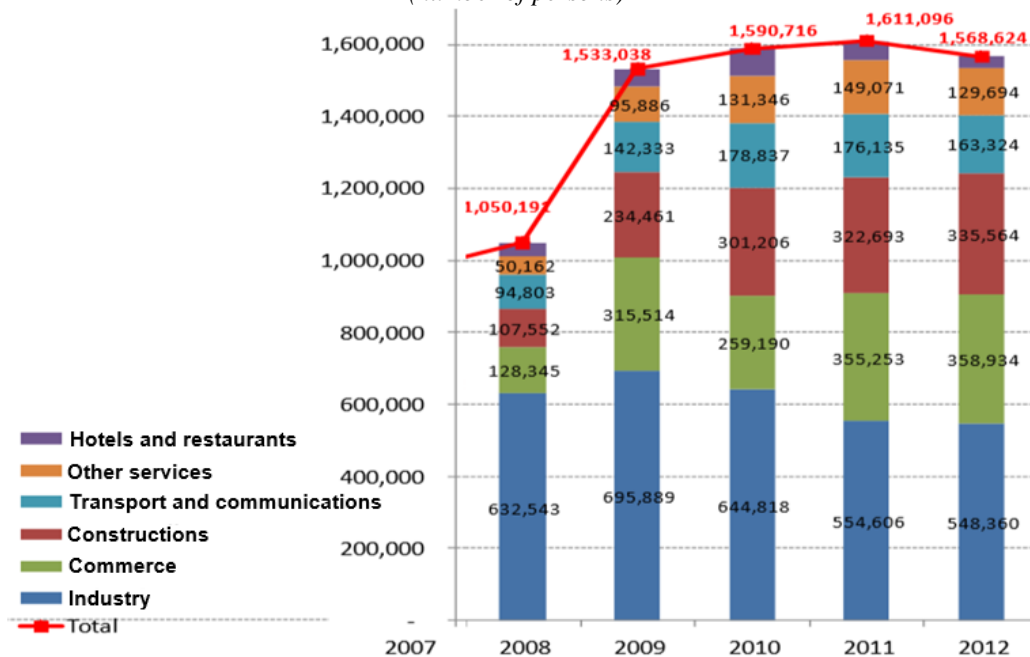
Source: <http://www.consiliulfiscal.ro/ra-2013.pdf>

The Fiscal Council is also the state body that highlights that five years ago, "in Romania there were about 1,57 million undeclared employees, employers and individual entrepreneurs ("black market"), representing approximately 27.7% of the total of employees, employers and individual entrepreneurs in the economy". The evolution of the undeclared work and the unregistered individual entrepreneurs is shown in Chart no. 1.

As it can be observed from what we presented above, in Romania, the phenomenon of non-declaring the paid activities to the public authorities, presenting a particular social risk, has a magnitude which, through its action and consequences, cannot be neglected.

Even more, it is estimated that "Romania is among the first countries in Europe when it comes to illegitimate workers. Every day, more than 1,5 million Romanians work without benefiting of the security of a legal contract. Such evasion damages the Romanian state with 4 billion Euros annually (...)" (Capital.ro, 2015).

Chart no. 1. The evolution of the undeclared work and undeclared individual entrepreneurs (number of persons)



Source: <http://www.consiliulfiscal.ro/ra-2013.pdf>

It is for such reasons that it is necessary to ensure the current verification of the compliance with the legal obligations by the employers in the field of labour relations. Such tasks appertain to the Labour Inspection (State Authority), which is a specialized body of the central public administration, subordinated to the Ministry of Labour and Social Justice (Romanian Parliament, 1999).

The specific attributions of the above mentioned institution are oriented towards: “the prevention, detection and sanctioning of the undeclared work, aiming, by its specific means, to decrease and to fight against this phenomenon, the ultimate goal being to obtain the employment with individual labour contracts of as many employees as possible in order to reduce the risks of the occurrence of undeclared work in all economic and social fields“ (Labour Inspection, 2017). At the level of year 2016, according to the above mentioned source, the results of the control actions on the detection and combating of undeclared work cases are as follows:

- 74.097 control activities carried out;
- 3.164 disclosed employers, of which 2.901 were sanctioned for work without legal forms (88 employers were sanctioned for using employers aged 15 - 18 without concluding the legal labour contracts) and 263 acts referred to by the Labour Code, republished, as representing crimes, for employing more than 5 persons without legal work contracts;
- 9.936 persons found working without legal employment forms, of which 2.415 women and 123 young people aged 15 – 18;
- 6.041 persons for whom the individual work contracts have not been transmitted and registered with the Electronic Registry of Employees (REVISAL) and 22.415 persons for whom the contracts have been sent by the employer with delays;
- 2.860 individual labour contracts concluded and registred with REVISAL for employees found to be working without legal forms;
- 42.171.700 lei - the value of the penalties applied for work without legal forms, of which 42.127.000 lei applied to employers (99,89%) and 44.700 lei applied to the persons discovered to be working without an individual work contract (0,11%);
- 3.702 measures applied as consequence of the found inconformities.

Source: <https://www.inspectiamuncii.ro/>

Although the results of the control work on the fight against the undeclared labour seem to register certain efficiency, the discussion should be nuanced. Therefore, it is precisely for the reason of making this activity more efficient that the legal framework applicable in this direction has recently been amended. The severely amended norm (Labour Code) states that starting with the 1st of August 2017, "to keep a copy of the individual work contract for the employees who work in that place", "the conclusion of the additional act amending the individual work contract prior to making the change" and "keeping at the workplace the record of the hours worked daily by each employee, highlighting the starting and ending time of the work program" (Romanian Government, 2017b).

At the same time, the disincentive character of the legal norm was emphasized, for the situation of the undeclared work, the amount of the contravention fine being set at "20.000 lei for each identified person and the cessation of the activity of the organized work place subjected to the control activity (...), with the possibility of resuming the activity only following the payment of the fine and remediation of the deficiencies ..." (Romanian Government, 2017a).

On the other hand, the act of employing more than 5 people without an individual work contract is no longer a criminal offence, but the maximum limit of the fine of 100.000 lei has been eliminated, so that if previously there was a possibility for the guilty part, against which criminal prosecution started to obtain a resolution not to commence the criminal prosecution or of acquittal or, often, an administrative fine (500-1.000 lei), it is now extremely difficult to avoid the payment of the fine (20.000 for each identified person).

In addition, in order to encourage the offender to comply with the voluntary payment of the contravention fine, it has also been established the possibility of paying half of the fine within 48 hours from the date of the conclusion of the report or its communication.

3. Conclusions

The utter most negative consequences of the phenomenon of non-declaration to the public authorities of the paid activities led us to bring into question the social danger that arises. The vulnerabilities generated within the state budget by the lack of payment of the contributions corresponding to the wages, but especially the effects it has upon the workers, who are deprived of the protection which is provided by the labour legislation and generally of the social protection, have attracted the legislator's concern to create a more efficient normative framework.

If the Western states adopted the establishment of a line of incentives to formalize undeclared activities (underground/black) - administrative streamlining, direct tax benefits for shopping/value coupons for services, measures to promote a commitment culture, Romania appealed to the establishment of a deterrent system of sanctions.

It operates - through the Labour Inspectorate as a state labour relations authority - for any employer tempted to avoid the payment of the social contributions and taxes on the wages of the workers, by using undeclared work in his own interest.

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