



ETHICAL NORMS FOUND IN ROMANIAN LABOR LEGISLATION, IMPLICATIONS FOR HUMAN RESOURCES MANAGEMENT

Poțincu Laura , Foris Tiberiu

Transilvania University of Braşov, Departament of Management adn Economic Informatics

laurapotincu@unitbv.ro, tiberiu.foris@unitbv.ro,

Abstract: *While conducting business, including in the management activity within an organization, the rules underlying business are mainly of a legal nature. Interesting are the cases/situations in which the law is not limited to legal norm, but also includes ethical norms, which it protects, through the sanction of the legal norm. Labor Code stipulates: "it is prohibited, under the sanction of absolute nullity, to conclude an individual employment contract for the purpose of performing an illicit or immoral job or activity". Immoral work or activity means that it does not comply with moral norms. This article refers to the activity that the employee, the human resource of the organization, is obliged to provide within the legal relation of labor law, a relation established between it and the employing organization. A correct and complete human resource management should prioritize aspects regarding the legal protection of the employee, at all stages of management activity. This represents a correct valorization of human resources by the employing organization.*

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Key words: legal norms, ethical norms, human resources management, legal protection of the employee.

1. ON LAW, ETHICS AND BUSINESS

While conducting business, including in the management activity within an organization, the rules underlying business are mainly of a legal nature. These are called legal norms and are included in and regulated by business law. Interesting are the cases/situations in which the law is not limited to legal norm, but also includes ethical norms, which it protects, through the sanction of the legal norm.



In this context, we consider it important to conceptually delimit business law together with legal norms, as well as ethics and business ethics together with ethical norms. But also, the related aspects between labor law – an important component of business law – and management, in particular human resources management.

Business law is the most dynamic component of the private law system. However, civil law was the first to break away from private law and remained common law in the matter of private law. The business law emerged from a deep urge to adapt the rules of law to the needs of the development and blossoming of the business, as „an historical act of emancipation and protest against the civil law and the old customs hindering the development of commerce” (Schiau I. 2004, p. 28).

The commerce (business) term is used with several meanings (Cărpenaru St. D. 2009 p. 7):

1. etymologically, the commerce expression comes from the Latin word *commercium*, and it can be translated by “with merchandize” (*cum* and *merx*). The commerce would in this case consist in a series of operations involving merchandize.
2. economically, commerce is defined as the activity whose purpose is the exchange and circulation of the merchandize from manufacturers to consumers. Thus, commerce would include the entirety of the operations performed between the moment the merchandize is manufactured, issued, and until it reaches the consumers. These operations are performed by professionals/business operators, also known as traders, which are economic agents different from the manufacturers of the merchandize. This meaning of the commerce term is also the customary one. From this perspective, the business law shall be defined as the totality of the juridical norms regarding the interposition and circulation of the merchandize from the manufacturers to the consumers.
3. juridically, the commerce term has a broader content than the one of the notion which has economically been defined. Commerce includes not only the operations of interposition and circulation of merchandize, which are performed by the traders, but also the operations of manufacturing the merchandize, performed by the manufacturers, together with the execution of works and services provision, performed by the contractors, i.e. the services providers or, in general, the enterprisers.



Thus, the business law is defined in the doctrine (Cărpenu St. D. 2009, p. 9) as the entirety of the juridical norms regulating the business (commercial) activity, i.e. the manufacturing and circulation (distribution) of the merchandise, execution of works and services provision.

What is of interest, in relation to the field of management, is the legal regulation/protection of certain ethical norms that are included, precisely in the form of ethical norms, within legal regulation.

The interesting thing is that the compliance with the moral norms is in many cases requested by the very law (Poțincu L., Foris T. 2021, pp. 212-259). Similarly as in the case subject to the analysis.

Ethics or social living rules includes all the rules related to the human behavior, as compared to the law – which is the entirety of the social conduct norms that, if needed, are carried out by the coercive force of the state – it is the genus proximum of law.

In most of the cases, the legally regulated rules and ethics coincide (Abbott K., Pendlebury N., Wardman K. 2002 p. 13). In this context, we consider it useful for this analysis to define the terms "ethics" and "business ethics" and establish the connections between the ethical norm and the legal norm.

Thus, ethics is not a distinct source of law, but a derived one to the extent to which it is incorporated in the law.

The explanatory dictionary of the Romanian language (DEX) (DEX Online 2024), defines ethics as a philosophical discipline dealing with the moral principles, their origin, development and content. According to the explanatory dictionary of the Romanian language, ethics is a synonym of morals. In the Explanatory Marketing Dictionary (Druță M.E., Pop N.A. 2003 p. 238), it is considered that the origin of the term ethics comes from the Greek ethos, translated as morals, science of the moral principles. The rules allowed in an epoch, in a certain society, are considered moral, as well as the effort to comply with these rules and follow them without exception. Thus, the term ethics is a conscious reflection of the moral beliefs and of one's own attitudes, by means of certain moral norms or principles. Ethics is a science of good and bad. Other authors consider (Crăciun D., Morar V., Macoviciuc V. 2005 p. 7) that the term morals stems from Latin, and signifies almost the same thing as the term ethics. The term ethics is defined as including those attitudes, features, and habits, characteristic to a culture, people or human group. There are also authors (Josephson M. 1995 p. 83) who consider that ethics regards



a system or a code of conduct based on moral duties and obligations regulating a certain conduct. Ethics deals with the ability to distinguish between right and wrong and the promise to do well.

In this context, an ethical conception is essential in order to attract the support and positive implication of all participants in the success of a business operator: employees, clients, shareholders, creditors, suppliers, as well as the community in which the respective economic agent performs their activity. If all of them have a lot of confidence in the business operator, if they feel that they are treated right by them, and benefit from them, then they will contribute to the proper course of business.

In a broad sense, ethics is divided into theoretical ethics and normative ethics. Theoretical ethics reflects the philosophical theory of morals, usually including a doctrine on its essence. Normative ethics refers to a foundation of a system of norms, values, moral categories (Țigu G. 2005 p. 10).

Business ethics is, in the opinion of certain authors (Painter-Morland M. 2008 p. 3), the capacity of the person to properly respond to the competition pressures and others' claims, within their daily participation in the activity performed by the business operator to which they pertain as an employee, both within and outside the business operator. Other authors (Iamandi I.E., Filip R. 2008 p. 28) call business ethics, economic ethics, and define it as a particular form of the applied ethics, an entirety of rules and moral norms concerning the conduct of the business operators in their economic activity, both individually and collectively. The notion business ethics is also defined as that balance which should be found between the economic and social performances of the company. Business ethics, in the opinion of the Romanian authors (Druță M.E., Pop N.Al. 2003 p. 238) does not consist in a series of recipes, techniques, problems and prescriptions but consists in an attitude – supported by a set of values – in a certain manner to look beyond the professional problems and the financial results. Business ethics is not the ethics applied to business but the very foundation of business. Business ethics is determined by the fact that the economic life is a social sub-system. In evaluating this social subsystem, one must also use extra-economic criteria, while one of them is the ethical criterion.

In our opinion, (Poțincu L. 2024 pp. 20-31) the definition given to business ethics which considers the moral conduct of the individuals that are part of the business operator in their



double relation, with the other employees on the one hand, and with the business partners, clients and consumers on the other hand, best captures the essence of this concept.

2. LEGAL LIMITATIONS REGARDING HUMAN RESOURCES IN MANAGEMENT PLANNING

The juridical norms belong to a broad category of norms, namely the social norms. The evolution of the juridical norms emphasizes their ethical origin (Djuvara M. 1995 pp. 41-42). Morals include all conduct rules of the people. Law means all the social conduct rules which are fulfilled, when needed, by the coercion force of the state. We state that morals, as compared to law, is *genus proximus* of the law (Poțincu L. 2021 p. 112). The idea of obligation underlies all the moral and law norms; we believe that an example could be the moral obligation to give young people the opportunity to work, a freedom established by the Constitution of Romania and developed by the provisions of the Labor Code in art. 3 "Freedom of work is guaranteed by the Constitution. The right to work cannot be restricted. [...] No one can be forced to work or not to work in a certain workplace or in a certain profession, whatever it may be", in conjunction with art. 13 "a natural person acquires work capacity upon reaching the age of 16. A natural person can sign an employment contract, as an employee, and upon reaching the age of 15, with the consent of their parents or legal representatives." However, while protecting young people between the ages of 15 or 16 and 18, the latter being able to be employed "for activities appropriate to their physical development, skills and knowledge, if this does not endanger their health, development and professional training" (Labour Code art. 13 ph. 2) by prohibiting business operators from employing them "in heavy, harmful or dangerous jobs". " (Labour Code art. 13 ph. 4) These jobs can only be occupied "after reaching the age of 18".

The norms which have not been legislated are called moral norms. The ethical norms do not become juridical unless they have been legislated, i.e. they have been included in a word of law, states the Romanian juridical literature (Poțincu L. 2023 pp. 40-41). Thus, a morals social norm becomes a law norm as soon as its neglect or violation is followed by the enforcement of a sanction, exerted by the state by means of its judicial authorities.

Law has gradually detached itself from the morals norms and customs. In time, morals/ethics has preceded the law. Historically, the evolution of law has occurred in close connection with



that of morals (Popa N. 1994 pp. 135-141). We state that, at present, the juridical norms which contradict the principles of ethics are unjust. The influence of ethics on law regards both the process of creating the law, and the process of enforcing the law.

The law, in a broad sense, is an important means of ethical education. An example in this sense is represented by art. 161 of the Labor Code, which provides that “salaries are paid before any other financial obligations of employers”. Thus, any employing organization is educated to understand the "dependence" on the salary of employees, given that the purchase of a home or a car is impossible without a bank loan, which involves monthly installments payable on a date close to that of receiving the salary, or the payment of the employee's housing utilities involves the payment of those services monthly.

Etymologically, the word “drept” (law) is a metaphor, stemming from the Latin word “directum”, which signifies what is according to the rule of law. The legal rules forming the law are called juridical norms.

The juridical norm is a limitation of the possibilities of manifesting the will, a compulsoriness of behavior. An example in this sense is represented by art. 175 of the Labor Code, which stipulates: "The employer has the obligation to ensure the safety and health of employees in all aspects related to work". However, there are situations in which it is more beneficial for the employing organization to ignore certain existing health problems in the case of the human resource. Such a situation is represented by digital addiction. Use of digital devices has become a part of everyday life, as indicated by recent statistics. Individuals are attracted to the digital world for various reasons. Digital Adiction is an increasingly important issue for organizations in the current fast-pace digital age. Studies (Lam H., Harcourt M. 2024 pp. 519-533) conducted in this field show that organizations in this quadrant attribute Digital Adiction to their own policies, practices, and culture, and their observations suggest Digital Adiction has positive organizational effects, because digitally addicted employees are effectively workaholics who use digital devices to do more work during nonworking hours. These organizations actively encourage employees to use digital devices, provide more than the necessary tools for digital access, deliberately cultivate a high-stress work culture that involves working after normal hours, and even develop explicit policies about expectations of prompt online communication responses at all times.



The law norms – called “justum” –, the moral norms – named “honestum” – and the politeness norms – called “decorum” – have been differentiated as far back as the 18th century.

The difference between the rules of law and the other categories of social norms was the fact that their enforcement is provided by the coercion of the state. However, one cannot state that the other types of social norms are not sanctioned; for instance, the politeness norms are sanctioned by the public opprobrium, because all the norms regulating the social cohabitation, irrespective of their nature, imply a certain kind of constraint. Consequently, in relation to other categories of specifically sanctioned social norms, the juridical norms have a type of sanction which is set and enforced by the bodies created by the community for this purpose, while following a preset procedure to that effect.

However, most of the juridical norms are the result of a social regulation process, which has spontaneously been followed, leading to setting certain customs and habits regulated by behaviors, which have later been legislated.

The primary difference between moral and juridical norms – although the latter ones stem, in most of the cases, from the former ones – consists in the fact that the juridical norms are ascertained by a law which protects them. Consequently, the juridical norms are prepared, preserved and guaranteed in their enforcement by the state, while the fear of the juridical sanctions is, in many cases, the basis for enforcing this type of norms (Poenaru E. 2001 pp. 3-7).

Just as other social norms, the juridical norms are the result of the aspiration towards instituting in the society the spirit of justice and the ethical spirit (Ungureanu O. 2000 p. 19).

Thus, ethics has been incorporated into the law, while evolving at the same time as the evolution of the laws.

Interesting, however, from both a legal and economic point of view, is the situation in which the legal provisions evolve so much over time, that they use ethical norms as limitations of certain rights. For example, in the analysis to be presented, in which the employing organization is limited in the planning using the human resource, by the employees carrying out only activities that are not only legal (in accordance with legal norms) but also ethical (in accordance with ethical norms).

Commercial law is the center of business law. However, business law - a branch of law or legal science that establishes the "rules of the game" in the field of business - also uses other legal



institutions belonging to other legal sciences such as labor law, consumer law, financial law, environmental law, European Union law or intellectual property law.

CONNECTION BETWEEN ETHICAL AND JURIDICAL NORMS

In this context, labor law is one of the most important branches of law integrated into the complex of law used in business, having a clearly applicable character in the field of human resources, especially in human resources management.

This legal analysis takes into account one of the articles of the Labor Code, which establishes an interesting connection between business law and business ethics.

Thus, Art. 15 of Law no. 53 of 2003, the Labor Code stipulates: "it is prohibited, under the sanction of absolute nullity, to conclude an individual employment contract for the purpose of performing an illicit or immoral job or activity".

This article refers to the activity that the employee, the human resource of the organization, is obliged to provide within the legal relation of labor law, a relation established between it and the employing organization.

What is interesting is not the prohibition, from a legal point of view, of the request to perform an illicit work or activity for the organization, but the prohibition, from a legal point of view, of the request to perform an immoral work or activity.

Immoral work or activity means that it does not comply with moral norms. In translation, the most important law in the field of labor law in Romania, the Labor Code, introduces the necessity/obligation of observing moral norms regarding the activity that may be requested by the organization from its own employee.

The sanction, in the case of a human resource management in which the legal limitations regarding a possible immoral activity are not observed, is the absolute nullity of the individual employment contract. This means that there can be no clause inserted by the employing organization, within the individual employment contract, through which an immoral activity of its own human resource is possible.

Specifically, these legal provisions consider an approach in which respect for human resources is important in the entire management activity. Generalized respect promotes employee well-being and enhances productivity (Arnold G. D 2025).



CONCLUSIONS

We consider the inclusion of ethical norms, expressly or indirectly, in the Romanian labor legislation to be beneficial, not only for the employee, but also for the employing organization, because human resources are the most important resource of an organization. This is a sign of the refinement and improvement of legislation over time.

A correct and complete human resource management should prioritize aspects regarding the legal protection of the employee, at all stages of management activity. This represents a correct valorization of human resources by the employing organization.

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