# THE PARTICULARITIES OF LEGAL WORK RELATIONS REGARDING THE EMPLOYEE-INVENTOR

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*The legal work relationship provides rights and obligations for both the employer and the employee. These general rights and obligations surpass the main sphere when the work performed by the employee has an inventive character. The invention bears the imprint of the employee's personality and thus generates special rights.*

**Keywords:** legal relationship of employment; the employee inventor; rights; obligations; inventive mission; patent.

Ensuring a higher living standards seems to be the main reason behind most of the lucrative activities, whether physical or mental activities. The most advanced countries today are those in which creative activity is valued, encouraged and effectively protected[1].

Work represents an essential component of human activity, because man is the only creature who can make all possible efforts to obtain benefits[2]. Knowing labor law is necessary not only for those seeking professional training in this field, but also for those who aspire to fully understand the meaning of the legal system.

According to the 1st article from the Labor Code, it results that the rules of labor law contain the sum of individual and collective work relations. The subjects of the legal work relations are the employer and the employee.

Given the collision of labor law with copyright law, we will analyze the issue of creations made within work obligations. Among the many criteria that underpin the classification of work forms we can find the purpose of this kind of activity. This issue has no unitary legislation at a global level, thus

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[1] Viorel Roş, Dragoş Bogdan, Octavia Spineanu-Matei, *Copyright Law,* All Beck Publishing House, 2005, p. 7.

[2] Cosmin Cernat, *Labor Law* Juridical Universe Publishing House, Bucharest, 2011.

copyright law collides with labor law. In common language, the word "author" means the creator of a thing or the person responsible for an act.

In law, the word 'author' has at least two meanings. The first is the creator of a literary, artistic or scientific work. The second meaning refers to a person who transfers a right or an obligation.

**Legal work relations**

Legal work relations are defined as asocial relations regulated by law, which are generated between an individual and, as a rule, a legal entity, due to the provision of a certain work by the individual for the second subject. The latter is obliged to remunerate the individual and create the necessary conditions for the provision of such work.

Individual legal work relations are relations that emerge from the contract between the employee and the employer. According to the law, the employee is subordinated to the employer who exerts its juridical and economic authority over the employee-inventor. It is said that this subordination is controlled by the state authorities which, according the legislation, aim to maintain a balance between the two subjects of work contracts. Law no. 64/1991 regarding patents states in article 1: "the rights over the invention are protected within Romania's territory through the patent granted by the State Office for Inventions and Trademarks, according to the law".

**The legal regime of inventions made in the execution of inventive missions**

For the inventions created by the employee in the execution of an inventive mission stipulated in the labor contract, the patent belongs to the juridical entity (the employer).

The technical achievements obtained in that respective unit are known as work related inventions, which are individualized through a special legal regime.

The bilateral (sinalagmatic) character plays an important role, taking into account that it is given by reciprocity and conditionality of contractual obligations. In this way, the party who has not fulfilled its obligation cannot and has no other way to compel the other party to carry out correlative obligation[3].

Within this labor contract, the employee is hired to carry out an inventive mission, in order to solve technical issues.

If the principles of copyright demand that the work has to be performed by his creator, the economic reasons and specific relations between employers and employees impose that the invention should belong to the employer because the invention represents the result of the employee's work

[3] *Ibidem*, p.25

according to a labor contract. Thus, the question is whether the invention is a simple result of work or a creative contribution.

The inventive mission is explicitly stipulated in the labor contract. The employee should have all the professional skills needed to achieve the inventive mission and must make all the necessary efforts for the purpose for which he was employed. Considering the qualities of the employee, the inventive mission should correspond to his function. In this case, the "intuitu personae" character has its application (strictly personal) in legal work relations; therefore the person who will perform the work is selected for reasons related to his training, his skills and qualities.

Even if a particular employee will be replaced for a certain period of time by another employee, for objective reasons, this replacement will also be based on the personal skills of the second employee. If the second employee does not have the required training and skills or he does not fulfill the legal conditions he could not subrogate to the rights and obligations of the replaced employee.

In case of inventions made in the execution of inventive missions, there is a problem when, during the execution of his mission, the employee stops meeting the conditions of professional skills to achieve inventive missions. Therefore, art.61 - Labor Code- provides reasons for firing the employee for reasons related to the employee. Thus is the case when the employee does not meet the professional requirements for the position he has (but only after a verification of the employee according to procedures established by the applicable collective labor contract or by internal rules).

According to art.37 and art. 38, Labor Law:

- Rights and obligations of the employment relationship between employer and employee are established by law by negotiating the collective agreements and individual employment contracts;
- Employees cannot waive the rights granted to them by law.

According to the labor contract, the inventor is obliged to inform in writing the progress of the invention. Both parties have the obligation to abstain from disclosure of the invention.

After being informed in writing of the invention of writing, the unit is required to file a patent application with the State Office for Inventions and Trademarks.

If in 60 days the unit does not apply for the patent, the right for the patent will belong to the employee[4].

Under Decree no.321/1956, the artistic work made by the author - under obligations resulted from a labor contract- could be used by the

[4] Ioan Macovei, *Tratat de drept al proprietaţii intelectuale*, C.H. Beck Publishing House, Bucharest, 2010.

employing unit, for activity related purposes. Law no.8/1996 uses the term "works created in carrying out the job specified in the employment contract. This legal regime applies only for the authors who are employees under a labor contract, and not for those who are under a common agreement with other parties.

**The juridical state of inventions realized by the employed inventor**

For the innovations realized by the employee, either in the prosecution of his function, either in the unity domain of activity, through the knowledge or use of the unit's technology or specific tools or of the existing dates in the unity, either with the material help of the unity, in the absence of a contrary contractual clause, the right on license belongs to the employee. The mentioned situations are not being demanded cumulative. The innovation can be realized by the employee in any of the four ipothesis mentioned before.

It is worthy of note the fact that, within the innovations realized by the employee inventor, trough the specifications of a contract clause, the right to license release can be ascribed to the unity.

The contrary clause can be included in the work contract or in other contract, being a consent cession by the employee after the innovation is realized.

The Romanian law does not contain a presumption of cession in the employer benefit. The problem regarding the possibility of the employed author and employer to agree, in the moment of work agreement on an anticipated total cession for the works created within the work contract is well disputed in France.

From the law regulations can be inferred the following rules:

- the moral copyrights always belong to the work's author, physical person;
- on principle, the patrimonial moral rights on works within service belong to the author; exceptionally, where there is such a contractual clause, the patrimonial rights belong to the employer. We believe that the contrary express clause can be inserted in the work contract, being no need of separated cession conventions for each of the works.
- if a contrary clause exists, this one needs to contain the term for which the patrimonial copyrights where transferred. If the parts didn't provide the cession period, the cession will last for three years, starting from the work's handing over.
- when the established period runs out, or, in missing of a duration, when the period of three years runs out, the patrimonial rights are ascribed to the author.
- in all cases, the employed author keeps his exclusive right to use the work as a part of his creation assembly.

The law doesn't contain any limitation regarding the duration for which, in case of works within the service, the patrimonial rights can be transfered. It is although obvious that this period cannot exceed the duration of patrimonial copyrights protection. The cession period runs from the moment when the work is created.

The inventor and the unity have the obligation to inform in written each other regarding the stage of the creation and the realization of the innovation. Furthermore, the inventor and the unity need to hold back from any public disclosure.

According to item (6) of article 5, the unity has a preferential right to contract a cession or license regarding the innovation of his employee. These right needs to be wield in three years from the moment the employee makes the offer. In absence of the parties' agreement regarding the price, this one will be established by the law courts.

**The juridical state of made on order innovations**

For the innovations which outcome from a research contract, in absence of a contrary clause, the right to license belongs to the unity which ordered the research [art. 5 align.(2)][5]

The unity which commissioned the research is different from the research unity whose employee is the inventor. In the research contract, there's a possibility to include a clause which stipulates that the right to license release belongs to the unity which ordered the research or to the unity of research or both of them.

The inventor has the right to a supplementary remuneration established through additional documents on the contract. To represent object of a juridical work rapport and to fit in those types of paid rights which are passive to income taxes, it is necessary work is paid. The payments of remunerative activities that are born within this rapport are capital for the work law. The work done as a way of help, or in own interest, or the work that has not a material purpose, even if it exists in every society, doesn't make the object of juridical regulation in work law.[13]

According to art.159 from the labor Code, the remuneration represents the counter-prestation of the work done by the employee on the strength of the individual work contract. For the work done on strength of the individual labor contract, each employee has then right to a remuneration determined in money.

The basic remuneration additions represent the variable part of the remuneration, because they are paid only related to the individual

[5] Ioan Macovei, *Intellectual property law treaty*, C.H. Beck Publishing House, Bucharest 2010, p.77.

performances of any employee (the results obtained in work), for the time during which work is done in certain special conditions (for the compensation, through this way, of the extra effort or high level of risk demanded by work) or if the gained experience in the period of seniority in work is materialized in the economic development of the work done. In the absence of any clarifications, the inventor's supplementary remuneration within the innovations on commission can be postulated in the additional document to the research contract or to the labor contract.

The inventor and the unity have the mutual obligation to abstain from revealing any aspect of the innovation.

If the license demand was not filled at the State Registry for Innovations and Marks in term of 60 days from the date when the unity was informed about the redactation of the innovation's description, the inventor has the right to obtain the license.

**The employed inventor's juridical state of work in other right systems**

Other law systems, by establishing the employed author's state and the created works state within the fulfillment labor obligations, they adopted more liberal solutions. Therefore, in Belgium, Luxemburg and Italy, the labor works state is submitted to the contract clauses which is closed by the author and the employer, meanwhile countries such as Great Britain and Poland grant in favor of the employer a right regarding the work realized by its employees, but allowing the contracts which conserve for the author the rights regarding the work.

In Germany's law, through 25 July 1957 Law, modified in 1961 and 1967, the labor innovations are delimited from the free innovations. The labor innovations are realized during the labor contract, either as a result of the activity which the employee is forced to accomplish, or as innovations essentially based on the unity's experience and activity. The others innovations are considered liberal.

In UK's law, the employee who accomplishes a useful and licensed innovation within his labor obligations owns it for his employer with the title of a trustee. The employer is the owner of the rights that derive from the labor innovations, the one who establishes the inventor's remuneration.

In the United States of America law, it applies the first and true inventor's rule. The license can be obtained by another person only in base of a cession from the inventor.

At a governmental experts' reunion for the standard disposals elaboration regarding the state of authors employed works, which took place at Geneva, between 27 and 31 January 1986, there were pointed out two possible solutions:

1) to consider the work's author, physical person, as initial titular of copyright; the right of exclusive use being deferred to the unity, in the right measure according to his activity domain, the way parties had in mind, rationally, at the time the work was created;

2) to consider the unity as initial titular of copyright over the work created by the employee, aside from the case when parties decided otherwise

**Conclusions**

Considering that protecting the law order is the reason of law, all the juridical precepts have a very important function of protecting the legitimate interests. In the analyzed domain, the legal regulation dictates certain rules as regards the post work statute, but it cannot be passed-by the fact that an important role at this level is held by the contrary clauses that can be inserted in the labor contract the employee closes with the employer.

Although the regulations of the work law are being catalogued as having a marked humanist character, putting in the fore-ground the protection of man as new maker and utile-lucrative activities performer, this placement of the labor rapport's subjects is fully justified. The justification comes out of the fact that the employer is the one that invests capital in reaching the proposed economic purpose, through purchasing raw material, work machines, production spaces and employing/paying skilled labor force, and which in respect of the normative frame assigns the subordinate instructions in order to make profit. This way, as for what the employer expects from his employees, we must award the employer a privilege towards his employees, and for this one there's a position of both economic and juridical subordination towards the employer.

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