

# The evolution of professional training of employees and public servants on the labour market

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## **Abstract:**

*The market represented in the beginning the place where the product supply and demand met. The relation between the labour force supply and demand represents what is called the labour force market. The labour force market cannot exist outside the legal regulations establishing it and, especially, organizing the relationship between demand and supply. Unfortunately, at present, one can no longer speak of an automatic adjustment being performed between the demand and the supply, the state having the role to strongly intervene on this market, organizing the employees' professional training and taking measures to encourage employment. By professional training is defined the activity performed by a person prior to his/her employment, for the purpose of gaining general and specialty knowledge, necessary to exercise a new profession or trade. In Romania, professional training can be achieved in two variants: either through the national educational system, or outside the national educational system.*

**Keywords:** education, demand and supply, mobility, strategy.

The market represented in the beginning the place where the product supply and demand met. In time, it gained an economic meaning, which no longer determines a physical place, but a self-adjusting mechanism regarding the exchange of products, respectively of goods and services.

At present, in all European Union states, this mechanism represents the principle of economic life<sup>1</sup>.

Everywhere within the European Union, in the conditions of the existence of a market economy, the state can no longer guarantee a workplace to its citizens, regardless of their form or level of professional education. Still, both at the European and at the national level, modalities for stimulating and employing the work force, at the highest possible level, are sought.

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<sup>1</sup> See J. Pelissier, A. Supiot, A. Jeammaud, *Droit du travail*, 22<sup>e</sup> éd., Dalloz Publishing House, Paris, 2004, p. 143.

The relation between the labour force supply and demand represents what is called the labour force market<sup>2</sup>.

**The labour force demand** expresses the need for employed work which appears at a certain moment on the labour market, while the **labour force supply** represents the labour that individuals can perform, based on an individual employment contract<sup>3</sup>.

The labour force market cannot exist outside the legal regulations establishing it and, especially, organizing the relationship between demand and supply. Unfortunately, at present, one can no longer speak of an automatic adjustment being performed between the demand and the supply, the state having the role to strongly intervene on this market, organizing the employees' professional training and taking measures to encourage employment.

This is also due to the principle governing any market economy, respectively gaining profit, at any cost. Thus, any employer will aim to limit its costs with the labour force and to state its sovereignty as decisional factor, taking advantage of the superior position it has over its employees. Any social reform, any concession made to the employees increases the costs of production, diminishing the expected profit so very necessary for future investments. At the same time, the labour law regulations tend to limit the employer's power, to offer employees a minimum level of social protection and protection regarding the work conditions, thus resulting an irreducible conflict of interests, between the employer's and the employees' interests, between the economic and the social reasons.

The labour market evolution made possible that, on the one hand, at present, we can discuss about a legal labour market, an underground (black) labour market and a confluence area, the grey labour market, and on the other hand, about a labour market in the public sector and one in the private sector.

Of course, in the conditions in which private property is in a continuous expansion, having a majority share of the labour force market, it is natural that the ratio between supply and demand is not always balanced and the demand of jobs may exceed the supply. Under these conditions, both at the national and at the EU level, attempts are made, through different social policy strategies, to maintain unemployment at an acceptable level, respectively under 8%.

Property represents a fundamental element in the social organization of our country. Thus, the owner of an enterprise is free to manage his own unit as he sees fit, is free to guide and organize the persons employed to work within the enterprise; to this aspect a conviction is added: any form of human organization, from the ancient times to the present, hence, any enterprise, needs a person to decide in the name of the group. In this way, labour law must, first, confirm and legitimize this right of the employer and then establish the limits of this right (power) the employer has.

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<sup>2</sup> See Al. Țiclea, *Piața muncii. Noțiune. Principii. Limite*, in RRDM no. 3/2002, pp. 10-21.

<sup>3</sup> See I.T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, III-rd ed., rev. and added, Universul Juridic Publishing House, Bucharest, 2014, p. 194.

In the specialty doctrine<sup>4</sup> there are two visions over labour law:

- *on the one hand*, labour law should be fully oriented to protect and promote the employees, towards social progress, representing, in a certain way, the proof of a society's capacity to reform itself or, from another perspective, the proof of social struggle<sup>5</sup>.
- *on the other hand*, labour law should be ambivalent: to really protect the employees against any form of abuse from the employers and, at the same time, to organize and legitimize the exploitation of the employees' work by the employers.

According to the Explanatory Dictionary of the Romanian language, through the term *training* is understood the *action to train and its result; preparation, instructions, education; creation*.

By *professional training* is defined the activity performed by a person prior to his/her employment, for the purpose of gaining general and specialty knowledge, necessary to exercise a new profession or trade<sup>6</sup>.

*Lato sensu*, professional training also comprises the period of improving this training throughout the employee's professional life.

In outlining the concept of professional training, the *jurisprudence of the EU Court of Justice* played an important role, as follows: in the matter of *Comet II*<sup>7</sup> it was withheld that the distinction between initial training and continuous training is not relevant, the latter being included in the concept of professional training, as established in art. 128 of the Treaty on the European Union; and in the matter of *Blaizot*<sup>8</sup> it was considered that the notion of professional training does not exclude university education.

By means of Law no. 1/2011 of national education<sup>9</sup>, the concept of *life-long learning* was introduced, which "includes the entirety of learning activities performed by each person, starting with early education, for the purpose of gaining knowledge, forming abilities and significantly developing skills from a personal, civic, social and/or occupational perspective" [art. 13 para. (2)].

At the same time, according to art. 53 of Law no. 76/2002 regarding the system of unemployment security and the stimulation of the labour force employment<sup>10</sup>, the objectives targeted in order to stimulate employment are consecrated as follows:

- increasing the employment chances of persons looking for a job;
- stimulating employers to employ unemployed persons and to create new jobs.

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<sup>4</sup> See J. Pelissier, A. Supiot, A. Jeammaud, *op.cit.*, pp. 42-44.

<sup>5</sup> See G. Scelle, *Le droit ouvrier*, 2<sup>e</sup> éd., A. Colin, 1929.

<sup>6</sup> See S. Ghimpu, I.T. Ștefănescu, Ș. Beligrădeanu, Gh. Mohanu, *Dreptul muncii, tratat*, vol. III, Științifică și Enciclopedică Publishing House, Bucharest, 1982, p. 389.

<sup>7</sup> Matter 56/88 of 30 May 1989, *Great Britain v. the Council*.

<sup>8</sup> Matter 24/86 of 2 February 1988, *Blaizot v. Liege University*.

<sup>9</sup> Published in the Official Gazette of Romania no. 18 of 10 January 2011, as subsequently modified.

<sup>10</sup> Published in the Official Gazette of Romania no. 103 of 6 February 2002, as subsequently modified and completed.

The specialized services for the stimulation of labour force employment are executed by means of:

- the territorial labour force employment agencies;
- the service suppliers in the public or private sector, accredited by the National Agency for the Labour Force Employment.

The increase of employment chances of the persons searching for a job is mainly achieved by means of:

- professional training;
- information and professional counseling;
- work mediation;
- consultancy and assistance to start an independent activity;
- completion of the employees' salary incomes.

According to art. 192 of the Labour Code, the objectives of professional training are the following:

- obtaining a professional qualification;
- adapting the salary to the job description;
- updating the knowledge and skills specific to the job and perfecting the professional training for the main occupation;
- professional reconversion determined by social-economic restructuring;
- gaining advanced knowledge, modern methods and procedures necessary to perform the professional activities;
- prevention of unemployment risk;
- promotion in employment and in developing a professional career.

In conclusion, we can consider that the provisions of Law no. 76/2002 regarding the system of unemployment security and the stimulation of the labour force employment is correlated with the provisions of the Labour Code, respectively art. 192-207, with the regulations in Law no. 1/2011 of the national education and, not least, with Government Ordinance no. 129/2000 regarding the professional training of adults<sup>11</sup>, thus resulting two large branches of professional training, with a common goal: the training and stimulation of the professional evolution of the individual throughout the professional life.

These branches are:

- professional training through the national educational system;
- professional training outside the national educational system<sup>12</sup>.

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<sup>11</sup> Republished in the Official Gazette of Romania no. 711 of 30 September 2002, as subsequently modified and completed– last change was brought through Law no. 167/2013 (published in the Official Gazette of Romania no. 318 of 3 June 2013).

<sup>12</sup> See I.T. Ștefănescu, *op.cit.*, p. 201.

### ***A. The professional training of employees***

According to art. 194 para. (1) of the Labour Code, the employers have the obligation to ensure the participation to professional training programs for all their employees, as follows:

- at least once every 2 years, if they have at least 21 employees;
- at least once every 3 years, if they have less than 21 employees.

At the same time, the employer, legal entity having more than 20 employees, elaborates annually and applied professional training plans, after consulting the trade union organization or the employees' representatives. The professional training plan established by the parties, at the level of unit, is part of the applicable collective contract.

The initiative to organize the professional training may belong either to the employer or to the employee.

Since the new Labour Code does not stipulate the essential elements a professional training program must follow, its dispositions are completed with those of Government Ordinance no. 129/2000 regarding the professional training of adults, which, in art. 14 para. (1) regulates:

- the objectives of the professional training program expressed in professional competence which are going to be gained by every person attending the program;
- the preparation time for the achievement of the objectives targeted;
- the minimum and maximum number of participants for a training cycle or series;
- the trainers' qualification;
- the curriculum;
- the means and methods used to ensure the transmission and assimilation of knowledge and the creation of the practical skills necessary for the respective occupation;
- the endowment, equipment and materials necessary for the training;
- the assessment procedure.

The modalities of achieving the professional training of employees are indicated in art. 193 of the Labour Code, respectively:

- participation to courses organized by the employer or the professional training service suppliers in the country or abroad;
- sessions for the professional adaptation to the job and workplace requirements;
- practice and specialization sessions in the units in the country or abroad;
- apprenticeship at the workplace;
- individualized professional training;
- other training forms agreed between the employer and the employee.

### ***B. The professional training of public servants***

The base of the matter is represented by Law no. 188/1999 regarding the Statute of public servants and Government Decision no. 1066/2008 for the approval of the regulations regarding the professional training of public servants<sup>13</sup>.

The professional training of public servants has a mixed legal nature, being both a right and an obligation.

The manners of executing the professional training of public servants are established through art. 5 of Government Decision no. 1066/2008, as follows:

- training programs organized and performed by the professional training suppliers, finalized with attendance certificate or, as the case may be, graduation diploma;
- training programs organized and performed or, as the case may be, approved by the employers within the public authorities and institutions – in this case, we are speaking about: specialization in the workplace, practical sessions within the public authorities and institutions, at the national or international level, participation to conferences, seminars, workshops and other types of similar events in the country or abroad, in the fields found in the job description;
- training programs organized and performed within the implementation of projects with foreign financing;
- other forms of professional training established by law.

If the program is organized at the initiative or in the interest of the public authority, in the field included in the job description and it can be found in the annual training plan, the financing is fully ensured from the budget of the public authority; if the program is integrated in the job description, without being found in the annual plan, the public servant may be asked to contribute with a share of up to 50% of the participation fee; if the program is not included in the job description or the annual plan, the financing is fully provided by the public servant<sup>14</sup>.

The public servants attending, in a calendar year, training programs organized in the country or abroad, with a cumulated duration longer than 90 days, must undertake a written commitment that they will remain to work within public administration for a determined period, which varies between 2 and 5 years and which is set by the public institution, depending on certain criteria (for instance, the complexity of the program, the expenses incurred with training the public servant, the concordance with the job description etc.).

According to art. 5 point III of Law no. 76/2002 regarding the system of unemployment security and the stimulation of the labour force employment, the person searching for a job is the *person taking action to find a job, through his/her own means or by registering with the labour force employment agency in whose*

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<sup>13</sup> Published in the Official Gazette of Romania no. 665 of 24 September 2008, as subsequently modified and completed.

<sup>14</sup> See I.T. Ștefănescu, *op.cit.*, p. 207.

*territorial area he/she has his/her domicile or, as the case may be, residence, or with another occupation services supplier, accredited in the conditions of the law.*

In reality, we are in the following situation: we have a person apt for work, unqualified or qualified, who, in the current economic context, cannot find a job. In this situation, the state must intervene, through specific programs, in order to support the respective person to gain a professional qualification, to be able to change, if the case, his/her professional qualification or to gain a higher professional qualification<sup>15</sup>.

From the legal point of view, for a person to be called **unemployed**, he/she must fulfill a series of cumulative conditions:

- must be searching for a job;
- must have the age of minimum 16 years old, maximum to fulfill the retirement conditions;
- his/her health condition and physical and psychological abilities to allow him/her to perform an activity;
- must be available to start the activity in the immediately following period, if a job would be found;
- has no job, achieves no income or achieves from authorized activities lower incomes than the minimum gross income guaranteed for payment in the country.

According to art. 63 of Law no. 76/2002, the persons looking for a job can participate in professional training programs which to ensure them an increase and diversification of professional competences, for the purpose of ensuring mobility and reintegration on the labour market.

Usually, the professional training services are provided free of charge, only once, for each period when the person is searching for a job. The person searching for a job and following professional training courses has a series of rights and obligations.

Out of the rights established, we mention, on the one hand, to benefit of theoretical and practical training throughout the entire course duration and to sustain, free of charge, at the most twice, the graduation exam, upon the completion of the course, and on the other hand, to benefit, on the route from home to the training unit, of free subscription for the public transport or, as the case may be, of the refund of transport expenses, for at most 4 travels during one month, if the person cannot travel daily to the training unit, in the conditions established by the regulations in effect for the employees of public institutions and formerly state-owned companies with particular specific aspects, during the period of delegation or detachment to another locality, as well as in case of traveling within the locality, in the interest of work, as well as free subscription for the public transport on the route from the accommodation facility to the training unit;

In what concerns the obligations, the person in question must attend all activities comprised in the professional training program and must fulfill all requirements imposed by it, as well as must return the expenses incurred for the

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<sup>15</sup> See I.T. Ștefănescu, *op.cit.*, p. 210.

professional training, if he/she does not present to the first graduation examination or to the second examination, except for the case when not presenting is due to reasons that cannot be imputed to the person;

At the European level, the consolidated *Directive no. 2005/36/EC regarding the recognition of professional qualifications*<sup>16</sup> establish the following legal framework:

- any member state in which a certain profession is regulated must consider the qualifications obtained by a person in another member state and to verify if the respective qualifications correspond to its own requirements<sup>17</sup>;
- a citizen of a member state cannot be requested to obtain qualifications which are required only in relation to the national educational system in the respective state, if the person in question, the citizen, already obtained a part or all these qualifications in another member state; still, a member state may require from the citizen who is going to work on its territory certain special requirements, grounded by the enforcement of professional regulations determined by a general interest;
- with respect to the liberal professions:
  - doctors, dentists, pharmacists, medical nurses, veterinarians, midwives and architects can work in other states than those where they obtained their professional qualification, in the same conditions as in their state of origin; in this case, the qualifications gained in a member state are automatically recognized in any member state;
  - in case of the other liberal professions (attorneys, notaries etc.), the member states have the possibility to reject the recognition of the diploma if, because of the assessment performed according to the law, the candidate is not fit; if only certain differences are established, the member state where the person in question is going to work may propose either as assessment period or a professional assessment test;
  - for professional qualification reasons, a member state cannot restrict the liberty to provide services in another member state;
  - if access to a regulated profession – or its exercise – depends, in a member state, by a determined professional qualification, the competent authority of the respective state must grant access to the profession in question and the right to exercise it – in the same conditions established for its own citizens – to the applicants from another member state, which have the competence certificate or the qualification title; a training sessions of maximum 3 years can be imposed, or a skills test, in certain situations, respectively:
  - if the duration of training which can be proven is shorter by at least 1 year than in the host-member state;
  - if the training received covers subjects significantly different than those covered by the necessary qualification in the host-member state;
  - if the regulated profession in the host-member state comprises one or several regulated professional activities which do not exist in the corresponding

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<sup>16</sup> JO L 255 of 30 September 2005.

<sup>17</sup> See N. Voiculescu, *Recunoașterea calificărilor profesionale în dreptul comunitar. Reglementări recente și incidente asupra dreptului intern*, in RRDM no. 3/2008, pp. 11-16.



profession in the applicant's origin-member state [art. 13 para. (1) and art. 14 of Directive 2005/36/EC].

In the domestic law, the directive was fully transposed through *Law no. 200/2004 regarding the recognition of diplomas and professional qualifications for the professions regulated in Romania*<sup>18</sup>.

Thus, on the one hand, access to a regulated profession – or its exercise – cannot be denied, if the applicant exercised the professional in question, full time, for 2 years within the last 10 years, in a member state where, by hypothesis, the profession in question is not regulated and, on the other hand, the competent Romanian authority may request the applicant, according to his/her choice, to follow an adaptation session, of maximum 3 years, or to take a skills test, if:

- the applicant's training refers to fields substantially different than those required in Romania, in order to obtain the higher education diploma [art. 20 para. (1) letter a)];
- the profession in question includes in our country the exercise of one or several professional activities which cannot be found within the same profession in the applicant's state of origin [art. 20 para. (1) letter b)];
- in the state of origin, the duration of the professional training was with at least 1 years shorter than the period requested in Romania (art. 19).

The right to access a regulated profession or to exercise it in Romania, for which holding a competence certificate is required, cannot be denied, if:

- the applicant has a competence certificate issued by a member state, allowing access to the respective profession or its exercise in the member state and offers guarantees equivalent to those requested by the Romanian law for practicing the profession, especially in the field of health, security, environmental protection and consumer protection;
- the applicant proves the qualifications gained in a member state in order to practice the respective profession and offers guarantees equivalent to those requested by the Romanian law for practicing the profession, especially in the field of health, security, environmental protection and consumer protection.

In conclusion, in the conditions when, in Romania, access to a regulated profession or its exercise is conditioned only by the holding of a document certifying education and confirming general training at the level of primary, gymnasium or high-school level, the competent authority cannot deny to a citizen of a member state, for reasons of inadequate qualification, access to this profession or its exercise in the same conditions and for the Romanian citizens, if the applicant has official qualifications of corresponding level granted in a member state. Still, if the applicant does not have the competence certificate or the qualifications established by the law, the dispositions of the Romanian law regulating the respective profession will be applied.

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<sup>18</sup> Published in the Official Gazette of Romania no. 500 of 3 June 2004, as modified and completed.