



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 10, 2020

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



9 772668 779000

The consequences of non-E.U. labor instability

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Abstract. This study focuses on a current problem arising from the lack of labor force on the Romanian market and the solution to this problem that lies in the employment of NON-EU citizens. During the study of this issue, we analyzed aspects related to the irregularities caused by foreigners who have the right to work in Romania, a right that they obtain by the Romanian employer's fulfilling of the conditions stipulated by art. 36 of the Labor Code, respectively by obtaining the work permit and the residence permit. Another alarming problem is the lack of a clear, concise and strict procedure, which is in line with fundamental human rights. The material and image harm exclusively caused by the lack of labor force is also created by the lack of loyalty of the NON-EU citizen and by the fact that he/she considers Romania only a launching pad to Europe. In the case of seasonal activities, it is imperative that the employer be able to rely on labor security, otherwise there may occur both image and material harm, caused by an uncollected profit. These damages can be difficult to repair or recover, sometimes there is a risk that they can never be repaired or recovered. Based on the strong demand for workforce, entrepreneurs take the risk of engaging in everything that means complying with and fulfilling the prior procedures represented by obtaining a work permit, hiring foreigners and obtaining residence permits for them ¹. However, there is also a risk that, following the completion of all prior formalities and procedures in order to obtain residence permits, NON-EU citizens end up having the right and even decide to do so to terminate employment, choosing to enter into contractual relationships with other companies. Even if the initial employing company, which made every effort to provide a residence - a mandatory condition for obtaining a residence permit, accommodation and meals for the NON-EU citizen and training, could recover part of the damage. caused if the citizen is legally employed in another company, by instituting the seizure of one third of the salary following the trial of the case and the issuance of an enforceable title, this being a difficult and lengthy procedure, damages to the image are also created due to the fact that the company had an organization and an organization chart that was turned upside down by the lack of foreign employee.

Keywords. labor force, NON-EU citizen, damage, safety, employment

General considerations on the instability of the non-E.U. citizens' workforce

The problem of labor shortage is known both nationally and internationally. Precisely because of this, both Romania and the EU member states have quickly started the procedures

¹ the identity document issued by the Romanian Immigration Office, in accordance with the law, to the foreigner whose right of residence in Romania is extended or to whom the right of long-term residence is granted, as the case may be.

to hire NON-EU citizens, considering this choice as the most suitable to satisfy the needs and development ideas of each business, depending on the domain of activity.

An aspect that facilitates the smooth running of bringing NON-EU foreigners to Romania is the fact that the procedure for obtaining work permits is difficult because, despite the difference in the economic situation between EU member states and NON-EU countries (being preferred in the labor force for employment, being countries with a disadvantaged economic situation: Philippines, Ethiopia, etc.), people who choose Romania as an adoptive country to work, have a very well-defined goal, namely to reach developed countries in Europe to who do not have initial access, using the company that, from a legal point of view, is the employer in Romania, and then choose to give up the status of an employee to work illegally at the risk of becoming citizens living in Romania without the right of residence.

One can initiate and develop a discussion about the maladaptation of foreigners and their desire to evolve materially, to respect fundamental rights, to access positions (here to introduce the impossibility of public office), the desire given by the impossibility of obtaining these things in country of origin.

In this sense, due to the dissatisfaction of several Romanian employers with the performance and instability of the foreigner as a labor force, they support the need to supplement the Romanian legislation with a special regulation to debate the regime applicable to non-E.U. citizens. who choose to work in Romania.

Regulating the procedure for employing non-E.U. citizens

In Romania, the voices of the need for a regulation to protect employers from the instability of foreigners grow increasingly strong.

In addition to the image harm caused by the lack of labor of entrepreneurs who relied on a number of future employees for whom they also took all measures to obtain the work permit, the damage caused by the uncollected profit, respectively the material damage is the main cause for which businesses suffer. The material damage represents the amount of all expenses represented by the costs of transport, accommodation, meals, consular fees, the fee for obtaining work permits, the fee for obtaining a work permit, etc.

The current regulations on the employment of foreigners can be found in the following documents:

- The Labor Code - Law 53/2003, with subsequent amendments.
- G.O. 25/2014 on employment and secondment of foreigners in Romania and for revision and completion of some normative acts regarding the foreigners' regime in Romania, approved by Law 14/2016
- G.O. 25/2016 for the amendment and completion of some normative acts in the field of foreigners
- G.E.O. (Government Emergency Ordinance) 194/2002 on the regime of foreigners in Romania, with subsequent amendments.

This study aims to address the instability of the non-E.U. workforce which bears direct consequences on the Romanian economy of entrepreneurs, to highlight the fact that the law does not protect the employers' interests and rights, by failing to protecting their assets or activities. Moreover, in addition to the fact that Romanian legislation does not encourage Romanian citizens to work in Romania and they are forced to emigrate, the legislation does not protect the efforts of employers to balance the costs of bringing a non-E.U. citizen. at work, withstanding the taxes with the moral duty of the foreigner to stay and work for the respective company, according to the initial negotiations with the employer.

In my research, I aim to present a perspective on a topic that is continually open for discussion and of great importance for Romanian investors and for the Romanian economy. It is necessary to have a specific employment contract for this category of employees, which should include a certain loyalty clause mentioned specifically, intended for the company that has completed all the formalities of bringing the foreign employee in the country, during the period initially negotiated, by compliance with the negotiated period by both parties, the employer being able to recover the expenses he/she incurred with transport, accommodation and taxes in order to obtain work permits.

In addition, the possibility of the foreclosure of the foreigner on the basis of an individual employment contract should also be discussed, without the need for the court procedure of suing and being involved labor and non-compliance disputes concerning the individual employment contract, a procedure that puts the employer at risk of the impossibility of reparation and recovery of the damage caused due to the fact that the foreigner left the territory of Romania.

The current conditions of employment of foreigners

Under art. 36 of the Labor Code, foreigners can be employed in the field of work based on the work permit or residence permit.

The Citizens of a state outside the E.U. and the European Economic Area wishing to working in Romania, must, first of all, identify an employer in order to take the tests required by him/her, according to the field of activity.

If the employer decides to proceed to employment, the procedure for obtaining the employment permit is mandatory.

The foreigner can be employed in Romania only by a single employer.

In order to obtain the employment permit, the employer will submit a series of documents to the territorial formations of the General Inspectorate for Immigration from the county district within which area it has its registered office.

Regulatory aspects according to G.E.O. (government emergency ordinance) no. 194/12 December 2002 regarding the foreigners' regime in Romania

According to art. 5 paragraph (2)., The Government establishes the national strategy in the field of immigration.

In this regard, I consider it appropriate that there need to be concluded agreements on the conditions of residence and employment of NON-EU citizens, which should regulate and highlight clearly and evidently the importance of labor stability for Romania and the need for security for the Romanian employer both from a financial point of view (by recovering the damage created from bearing all the sums of money paid representing taxes, accommodation costs and providing daily meals to NON-EU citizens) and the personal point of view (by ensuring that the employee will not leave the job for a certain period of time, the period negotiated in advance and over which the future employee has expressed his agreement of will.)

An agreement is required that respects fundamental rights regarding living conditions and promotion of integration into the labor force, but conditional return to the country of origin after fulfilling its obligations by signing the employment contract. In case of the foreign citizen wishes to work for another employer or return to the country of origin, he/she shall have to perform the work for the benefit of the initial employer for a certain period of time enough to recover the damage related to the costs incurred in order to obtain the residence permit and other expenses incurred in order to sustain him/her.

If we make reference to the wide domain that includes seasonal activity and not only, in which entrepreneurs make a business plan, the labor force being a determining factor, the lack or waiver of fulfillment of obligations assumed at the beginning of the season or in full season by foreign nationals who initially expressed their will by completing the individual employment contract, would seriously harm seasonal activity, both from a material point of view and from an imagistic point of view, for instance the image of hotels, since it can have even drastic outcomes such as bankruptcy.

Conclusions

All the measures taken with a view to remedy the problem of labor instability show that the authorities are receptive to the urgent need of the business environment to go through the employment process of foreigners in a much more smooth manner. The main positive impact for Romanian employers would be the considerable decrease in wage requirements and employment costs, given that many areas face a lack of local workforce.

References

- [1] G.E.O. NO. 194/ 12 DECEMBER 2002
- [2] G.O. NO. 25/ 2014 regarding the employment and secondment of foreigners on the Romanian territory
- [3] G.O. NO. 25/2016 for the modification and completion of some normative acts in the field of foreigners
- [4] Labor Code - Law no. 53/2003, with subsequent amendments.