

## REGULATING DOMESTIC WORK BY THE INTERNATIONAL LABOUR ORGANIZATION

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### **Abstract:**

*Housework or domestic work is the work performed in the interest for one or more households. Convention No.189/2011 and Recommendation of domestic workers no.201/2011 were adopted in the framework of the 100th session of the International Labour Organization Conference. These regulations provided detailed and constructive orientations on how to regulate a category of workers who need support.*

*This document presents some aspects of domestic workers rights provided by Convention no. 189 and Recommendation No. 201. Thus, we will talk about the rights of domestic workers regarding salary, hours off, social protection, health and safety at work, and what are the measures which should be adopted by states which ratify this Convention.*

**Key words:** International Labour Organization, domestic work , domestic worker, private employment agency

**JEL classification:** K31, K33, K37

### **INTRODUCTION**

The improvement of domestic workers situation was from the beginning, including in the ILO concerns. Thus, in 1948 was adopted a resolution concerning the conditions of employment for domestic workers on internal market, and in 1965, the International Labour Conference adopted a resolution concerning working conditions of domestic workers, in which is recognized the "emergency " to ensure the minimum conditions for workers, which are essential for social justice [1 ].

Domestic work is one of the oldest forms of work, but is considered as an unskilled labour force. This form of employment is not for production, is for offering health care services, besides this is done informally and is outside the law. This kind of work is undervalued, poorly regulated and often overworked, underpaid and unprotected [2]. Often domestic work is associated with family life because it takes place in a private home, the place of residence is the same with the place of work.

The arguments presented above should lead to an awareness of the consequences that can have a irregular decent work. This kind of work exists in most of the countries, but only certain states have adopted a legislation to regulate this category of workers. Being unregulated, this kind of work is considered an informal work. The negative consequences resulting from this informal work are addressed for workers and employers even for the state.

### **DOMESTIC LABOUR LEGISLATION**

In 2008 the Board of Administration of the ILO decided to include on ILO Conference agenda, in 2010, a point of view concerning decent work for domestic workers witch lead with the adoption of a Convention on this issue. ILO Constitution provides two types of procedures used for the adoption of rules of international labor law:

- the procedure of double discussion;
- the procedure of simple discussions.

We need a examination in two successive sessions to adopt rules using the procedure of double discussion. Double discussion procedure requires that the problem to be discussed twice in the Conference before it can be adopted, it allows to governments and social partners to have

enough time to examine carefully various aspects. Regarding the procedure of simple discussion, being a simplified procedure, it can be followed in an emergency case or for other reasons.

After 2010 Conference, the International Labour Office made reports based on conclusions, which were sent to governments for consultation. The responses showed support to implement a project of Convention and Recommendation. Thus, in June 2011, the International Labour Organisation adopted the Domestic work Convention no. 189 and Recommendation no. 201.

The Convention entered into force on September 5, 2013 [3], being ratified today by 12 ILO states member [4]. It represents a major milestone for achieving decent work concerning domestic workers and an important step for the protection and respecting rights of this category of workers.

According to Article 1 of this Convention the term "domestic work" or "housework" means the work performed in the interest for one or more households and the expression "domestic worker" means any person who performs domestic work as a basic work. The person who performs domestic work only occasionally, without making it a profession, it can not be called a "domestic worker".

There are currently at least 53 million domestic workers worldwide, 83 % are women [5], and this number is constantly increasing in developed or in developing countries. In this category of workers the majority are migrants people, and in many developing countries, these kind of workers may be illiterates because many of them did not go to school, doing domestic work from a young age. Demand for this type of work comes from houses with sufficient income to hire a domestic worker.

Convention no.189 aims for a better protect of human rights [6], for domestic workers, respecting and fulfilling workplace of fundamental principles, principles which are set by the International Labour Organization: freedom of association and recognition of the right to participate at collective bargaining, the elimination of all forms of forced or compulsory labour, the abolition of child labor and the elimination of discrimination in employment and occupation [7].

The recommendation no. 201 [8], which supplies the Convention provides at point 2 that the states that are members should identify and eliminate any legislative restrictions which regards the rights of domestic workers to create their own organizations or to join in. At international level, trade unions play an important role in the defense of domestic workers.

Each state which ratifies this Convention has the obligation to establish minimum age for this category of workers and to take measures to ensure their participation at education and professional training. In Ghana, for example, the most domestic workers are childrens and in Bangladesh the childrens who lives in the employer's house have endless workdays and they suffer physical and verbal abuses. The recommendation mentioned above also provides some measures to protect young people who have the status of domestic workers: limiting working hours to ensure time for education and training, rest and time needed to talk with family; night work is prohibited; restrictions for demanding physically or psychologically work, and establishing the mechanisms to monitor the conditions of work and life .

According Article 7 of the Convention, states member must take measures to ensure that domestic workers are informed about working conditions and if it is possible the informed should be made with written contracts in accordance with national legislation. In the same way, domestic workers will find out informations like: the name and address of employer, place of work, the date when they will start working, the activity, the payment, the schedule, the annual leave, the period of probation, conditions about cancelling the contract and if is necessary conditions about repatriation [9]. In addition to the list above, it should be added the measures from Article 6 of the Recommendation like: the job description, the leave for illness, any payments if domestic workers deserve them, things about accomodation if it is possible.

An important aspect is that this Convention does not require a written contract to be hired as a domestic workers, the Convention specifies only the ability to conclude a written contract. The employment contract is seen as a clear sign of an employment relationship and therefore is a contract governed by labor laws. Noteworthy is the fact that in many countries, the possibility of concluding an employment relationship it seems to be enough, so the employment contract may be

in a written or verbal form. For example, in Vietnam, Bolivia, Costa Rica the labor law provides that domestic employment contract can be verbal or written [10].

## WORKING CONDITIONS FOR DOMESTIC WORKERS

The states which domestic workers come from should contribute with protection for the rights of these workers by informing them before leaving [11].

Regarding the working conditions of this kind of workers we can observe that both the Convention and Recommendation pays a special attention to payment, to schedule and weekly rest. Domestic workers are free to reach an agreement with their employer about living in his house, and in daily or weekly rest periods not to be forced to stay there. Weekly rest periods must be at least 24 consecutive hours, the day off can be set by agreement of the parties, taking first all the aspects they need like what religion has the worker. Besides the weekly day off, domestic workers have the right to take rest periods during the working day, time that they can use for meal. If the domestic worker lives with his employer, the employer must ensure certain conditions like: a separate room that can be locked; access to sanitation facilities, private or common; enough food.

Regarding the payment, it can be different from one country to another, Article 11 of the Convention says that each state member should take the necessary measures to ensure a minimum wage. The Committee of Experts from ILO Conventions and Recommendations (CEACR) highlights that it is essential to ensure a minimum wage because its purpose is "to help eradicate poverty and ensure a decent standard for this category of workers" [12]. Also on wage determination it must be avoid sex discrimination and it must be a cash payment, directly at regular intervals of time, at least once in a month and exceptionally by bank transfer, postal order or other different ways and only with the workers consent.

There is the possibility to be rewarded for his work with things instead of money, and if they use this kind of payment, the states member should take into consideration the following aspects:

- establishing an overall limit for this kind of payment without lowering the royalties that they deserve and it is necessary for workers and their families;
- calculate the monetary value of payments using objective criteria like market value, cost price or prices fixed by the government;
- limiting this kind of payment with adequate things for personal use like food or accommodation;
- ensuring that when the domestic worker lives with the employer, he can not take the money for accommodation directly from workers payment, unless the worker agree that;
- providing elements necessary for domestic labor like: uniforms, protective equipment. This can not be considered as payment and their cost can not be deducted from the remuneration of domestic worker [13].

An important aspect that has led to many debates, was that about healthy and safety of domestic workers. Almost everywhere in the world, this category of workers was excluded from this area of safety and healthy at the workplace and social protection.

If there are organizations representing for domestic workers, those must consult with states member and employers' organizations, to take certain measures like: workers protection by eliminating dangerous jobs and promote the safety and healthy in the domestic workplace; providing a system of inspection [14], as effective and accessible mechanisms for domestic worker complaints; develop training programs for safety and healthy at work.

An important role in social protection is the country from which the domestic worker comes, some countries negotiate with bilateral agreements the terms of social protection. The states member should take appropriate measures to ensure that domestic workers have favorable conditions in terms with social protection, including maternity. Sometimes, pregnancy often leads to redundancy and frequently this situation occurs at domestic workers compare to other employees.

As we said above, this domestic work is associated with family life, but sometimes it involves certain risks, meaning that some workers say that they have some shortcomings, such as lack of natural light because their work is inside the house.

Consulting the tripartite bodies, states, employers organizations and domestic workers organizations, should lead to the establishment of policies and programs:

- To encourage the development of skills and qualifications domestic workers, including literacy classes in order to enhance their professional development;
- To solve the needs of work-life balance;
- To take into account the concerns and rights of domestic workers in efforts to reconcile work and family responsibilities [15].

A particular attention is given to the fight against forced labor among migrant domestic workers. These workers are particularly exposed to discrimination, exploitation and abuse, without being able to speak of forced labor. Often verbal abuse, insults about nationality or race, religion, was said by domestic workers. There are also various forms of physical violence used in the presence of other people in order to humiliate the domestic worker [16]. Therefore, there are required monitoring visits and labor inspection to verify compliance the rights of these workers and application of the legislation but the main obstacle is the access into employer's home.

An important role in the labor market for domestic workers play private employment agencies. They can act as intermediaries to facilitate the meeting between labor supply and demand in a country or between countries. This facility if is managed correctly, can provide the best quality and can prevent abusive practices [17]. Therefore, the Convention no.189 forces states member:

- to determine the conditions which govern the operation of private recruitment agencies and placement of domestic workers;
- to take all the necessary measures to provide adequate protection and prevent abuses against domestic workers recruited;
- if domestic workers are recruited from another country, to conclude a bilateral agreement, regional or multilateral agreements to prevent abuses in the recruitment, placement and employment;
- to take measures to ensure that fees charged by these private agencies are not from domestic workers' remuneration [18].

In case the contract comes to an end because of the employer, exceptions is the serious misconduct of a domestic workers who leaves with the employer, shall be given a reasonable period of notice to allow to search for another job and accommodation. For example, in Senegal the Decree no.974 provides that domestic workers are entitled to receive two hours off per day during working hours to look for another job.

Regarding ending a contract of domestic workers, Convention No. 158 of 1982 establishes the following principles: there must be reasonable grounds for ending a contract, possibility for workers to defend themselves, the right to get a notice and the right to appeal to a competent organs. The development of such international instruments provide an opportunity for the International Labour Organisation, to provide normative orientations in order to promote and respect fundamental rights at work for domestic workers.

Even is a member of the International Labour Organisation, Romania has not ratified this Convention so far. In a document issued by the Ministry of Labour, Family and Social Affairs it's said the fact that, in the present context of Romania labour market is not justified the ratification of Convention no.189. It also requires an analysis of the situation and nature of persons who exercise their domestic activities within private households, to establish an effective method of regulation for these workers, as well an institutional mechanism for integrated control, the subject been the private property. Looking at this document, we can see that the ratification of this Convention may be a medium-term objective for Romania.

But even the European Union Council Decision 51/2014, urges Member States to ratify the Convention, and by ratifying countries are committed to ensuring fair conditions for domestic workers, thereby protecting their rights to work and preventing abuse, violence and child labor in this sector.

Law no.53/2003 [19] provides in article 105 the work at home which should not be confused with domestic work. According to Aligned 1 "there are considered employees which work at home, the employees who solve at their home all the duties of the office job that they have".

## CONCLUSIONS

Even if international labor conventions and recommendations apply to all workers, including domestic workers, the International Labour Organisation found necessary to adopt a convention which establish that domestic workers enjoy all fundamental rights at work just like any other employees.

As it was demonstrated, the needs and interests of domestic workers rarely appear in public and debates. This is the reason for the International Labour Organisation has expanded his activity to improve the visibility of domestic labor. That for, ILO adopted in 2011 Convention no.189 and Recommendation no.201, international legal instruments which follow the compliance of fundamental principles and rights at work for domestic workers.

The domestic workers' rights to which are refer those two instruments are: freedom of association, equality of opportunity and treatment, payment, weekly days off, social protection. But several times domestic workers do not know their rights and sometimes when they do know them and they claim them, their workplace is threatened. Thus, domestic work remains an undervalued workplace and poorly regulated.

From this study you can take the conclusion that the situation of domestic workers can be improved only if there are taken necessary measures for the implementation and enforcement of this category of workers. Using international instruments and mechanisms the domestic workers life can be significantly changed.

In this sense, the states member should cooperate at a regionally and internationally level in order to strengthen the protection of domestic workers and to support each other in the implementation of the Convention no.189 provisions for social and economic development and also programs for poverty eradication.

Even is a useful international regulation for eliminate the abuse of persons who perform a domestic work, the Convention no.189 is ratified so far by 12 countries. For certain reasons, for Romania the ratification of this Convention represents a medium-term objective.

## ENDNOTES

1. *Revista Română de Dreptul Muncii nr.7/2010, p. 205;*
2. *Revista Română de Dreptul Muncii nr.7/2010, p. 199;*
3. [www.ilo.org.com](http://www.ilo.org.com);
4. *Statele care au ratificat, până în prezent, Convenția nr.189 sunt: Bolivia, Costa Rica, Ecuador, Germania, Guyana, Italia, Mauritius, Nicaragua, Paraguay, Philippines, South Africa și Uruguay;*
5. [www.ilo.org/global/topics/domestic-workers/lang--en/index.htm](http://www.ilo.org/global/topics/domestic-workers/lang--en/index.htm);
6. *Alexandru Țiclea, Reglementări ale Organizației Internaționale a Muncii privind personalul casnic, în Revista Română de Dreptul Muncii nr.4/2012, p.11;*
7. *Articolul 3 din Convenția nr.189;*
8. *Recomandarea nr.201;*
9. *Articolul 7 din Convenția nr.189;*
10. *Revista Română de Dreptul Muncii nr.7/2010, p. 216;*
11. *Revista Română de Dreptul Muncii nr.6/2011, p. 251;*
12. *Revista Română de Dreptul Muncii nr.7/2010, p. 218;*
13. *Paragraful 14 din Recomandarea nr.201;*
14. *Paragraful 19 din Recomandarea nr.201;*
15. *Revista Română de Dreptul Muncii nr.6/2011, p. 251;*
16. *Revista Română de Dreptul Muncii nr.7/2010, p. 202;*
17. *Alexandru Țiclea, Reglementări ale Organizației Internaționale a Muncii privind personalul casnic, în Revista Română de Dreptul Muncii nr.4/2012, p.14;*
18. *Articolul 15 al. 2 din Convenția nr.189;*
19. *Modificată și completată prin Legea nr.40/2011.*

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3. Legea 53/2003, modificată și completată prin Legea nr.40/2011;
4. Recomandarea nr.201/2011 a Organizației Internaționale a Muncii;
5. Revista Română de Dreptul Muncii nr.7/2010;
6. Revista Română de Dreptul Muncii nr.6/2011;
7. Revista Română de Dreptul Muncii nr.4/2012;
8. <http://bcrw.barnard.edu/wp-content/nfs/reports/NFS5-Valuing-Domestic-Work.pdf>;
9. <http://www.ilo.org.com>;
10. [www.legislatiamuncii.manager.ro](http://www.legislatiamuncii.manager.ro);
11. [www.mmuncii.ro](http://www.mmuncii.ro);