SUMMARY

2013/30 Before which court(s) must a union bring a collective claim? (RO)

<p>Romanian law allows employees to bring a claim against their employer in the court of the employees’ place of residence or work. Until recently, some courts held that, where a trade union brings a claim on behalf of several members, it must do so in the courts where each of those members resides or works. Other courts allowed a trade union in such a situation to proceed before one single court, namely that of the union’s own registered office. The Supreme Court has ruled in favour of the latter doctrine.</p>

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Facts

In order to ensure consistent interpretation and application of the law by all courts, the General Prosecutor in Civil Matters in the Supreme Court ('High Court of Cassation and Justice') asked the Supreme Court to rule on a question of law which has been applied in different ways by the courts. In relation to which court has jurisdiction in actions brought by a trade union on behalf of its members, some courts have said that the competent court is the one where the plaintiff (employee) re-sides, while others have held that the competent court

is the one where the trade union is registered.

The right of a trade union to take court action on behalf of its members was formerly regulated by Trade Union Act No. 54/2003 and is currently regulated by the Act on Social Dialogue No. 62/2011, which stipulates in Article 28(2) that "trade unions shall be entitled to take actions under the law, including actions in courts on behalf of their members, under a written mandate from the members". Neither the former nor the current law is clear on which court has jurisdiction when such action is taken.

By the Romanian Labour Code, claims on labour law issues must be filed before the courts that are competent, based on the place of residence or registered office of the claimant. Thereby it differs, in favour of the plaintiff (usually the employee), both from the system of Regulation 44/2001 ('Brussels I') and from the general rules of Romanian civil procedure, which stipulate that the competent courts are those of the place of residence or the registered office of the defendant. Alternatively, an employment-related claim may be filed, according to the Act on Social Dialogue, before the court which is competent, based on the workplace of the claimant (i.e. the employee), but this is rarely done.

Some courts hold that the registered address of the trade union must be taken into account when determining which court has competence, including cases where some members of the trade union reside within the area of competence of one court, whilst others reside within another. Other courts hold that where a trade union participates in a court case, it does so in its capacity as representative of its members, on behalf and in the name of the relevant individual. In the view of these courts, the legal provisions concerning jurisdiction in such cases refer to the members of the trade union and holders of the rights claimed, not to their representative. Therefore, the competent court is the court where the employee resides, and not the court with jurisdiction where the trade union has its registered address.

The response to this question is of practical relevance. According to the first opinion (i.e. where the competent court is the one with jurisdiction over the trade union's address), the employer need defend itself before one court only. Pursuant to the second opinion, the claim could be split into many proceedings before different courts in different counties, depending on the addresses of the plaintiffs. This would generate considerably higher costs, because if many employees make claims, there would be a large number of actions for the employer to defend

. In addition, every county has its own tribunal and it is common for employees to work in a different county than the one where they live. This might entail different courts deciding on the same claim, as it would be brought by a number of different employees in different places.

This could result in the courts making different decisions on identical circumstances and evidence.

Judgment

At the request of the Court of Appeal in Brasov, the General Prosecutor in Civil Matters filed before the Supreme Court an "appeal in the name of the law" in order to obtain a determination about jurisdiction in such matters. According to the explanatory statement of the Advocate- General, the first interpretation (i.e. that the trade union's address should determine which court the matter was allocated to) is consistent with the text, sense and scope of the law.

The Supreme Court ruled on 21 January 2013, holding that henceforth Article 28(2) of the Act on Social Dialogue should be interpreted to the effect that the competent court for labour law claims filed by a trade union in the name and on behalf of its members shall be the court in whose territorial competence the headquarters of the trade union is located.

This decision became mandatory on all the courts after being published in the Official Gazette.

Commentary

The "appeal in the name of the law" was aimed, on the one hand, at unburdening the courts and on the other at ensuring identical decisions on identical facts.

In our opinion, this joint jurisdiction serves both the interests of employers and employees and will ensure situations where different employees obtain different rulings in different counties are avoid-ed.

This rule has been applied only since the date of publication in the Official Gazette. Claims filed up to that moment and allocated according to claimants' addresses will remain before the courts allocated. However, it may be that claims filed before several courts as a result of previous practice may be merged upon the parties' request.

It should be noted that it is relatively rare in Romania for trade unions to bring proceedings on be-half of their members. Employees usually turn to a lawyer to file a collective complaint on their be-half.

Subject: Unions, applicable law

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