CONFLICT RESOLUTION IN FRENCH WORKING SYSTEM

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The paper aims to capture the characteristics of resolving conflicts at work in the French law system achieving a detailed presentation of the Prud'Hommes Council, which is one of the French courts of resolving such disputes. The organization, jurisdiction, procedure for cutting labor conflicts in the latter are elements which are capable of comprehending a wide sketch of its originality and specificity.

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K4: Legal Procedure, the Legal System, and Illegal Behavior

1. General considerations regarding the plurality of solicitor's offices of competence in the field of the labor law

In the French law system there is a plurality of solicitor's offices regarding the resolving of the work litigation[240]. Despite numerous cases brought before the Council of Prud'Hommes, this court is not by far the only one which intervenes in order to solve the disputes arising within the employment relationship. Thus, administrative judges are often included in the legal order and repressive judges are called to carry out prosecutions concerning these relationships according to the density of criminal coverage of this sector and the place of the criminal charges in the labour code. Moreover, most of the non-repressive jurisdictions outside the Council of the Prud'Hommes have the opportunity to cut labor disputes: courts of first instance, the high court tribunals, the tribunals of commerce, the judges of civil cases who cut each year an abundant solicitor's office giving solutions that contribute to the formation of the jurisprudence in the field of employment relationships.

As it was found in French speciality literature[241], the same problem, for example firing a union delegate, can be subject to the administrative judge who decides on the regularity of the administrative authorization to fire, initiated by the inspector of work and who decides upon that offense, which would have been committed by that employer for the reason that a trade union delegate hasn't been reintegrated after the cancellation of the administrative authorization. The above-mentioned situation may also be addressed to the Council of Prud'Hommes, which decides upon the application for damages and compensation presented by the union delegate who had not been reintegrated in his position after the cancellation of the administrative authorization.

To the extent that the administrative jurisdictions, punitive or social, do not always approach to the issues in the same way and do not always retain identical solutions, difficulties may occur in determnining what an entrepreneur or an employee is entitled to do. On the other hand,

240 Verdier, J-M, Coeuret, A., Souriac, M-A. Droit du travail, 12 éditions, Éditions Dalloz, Paris, 2002, p.561 și urm.
241 Mazeaud, A., Droit du travail, 4 éditions, Librairie générale de Droit et de Jurisprudence, EJA, Montchrestien, 2004, pp.151-152.

another consequence of plurality of the solicitor' s offices regards a technical aspect namely the plaintiff may hesitate in choosing the competent courts to resolve that dispute[242].

2. Le Conseil de Prud'Hommes

This court, with specific tasks in the field of employment relationships, has its origins in the Old Regime, when there was a parity court in Lyon charged to judge disputes between the silk manufacturers and their workers. It was suppressed during the French Revolution, and, after several years of the abolition of them, Napoleon received, during a passage through Lyon, a request for reestablishment of the jurisdiction concerned. After returning to Paris, Napoleon promulgated the Law from March, the 18th 1806 through which a council of prud'hommes was held at Lyon. The formula has been extended since 1809, and the parity mechanism established in 1848. Over time, these councils have undergone numerous reforms, among which the most important was that in 1979, achieved through the Law Boulin, which has made an extension of these councils in the entire French territory,the state taking the responsibility to their operation[243]. In other words, a generalized law Bouli generalized the institution mentioned giving it a monopoly of jurisdiction in a broad field[244].

As noted previously, the institution known as the Council of Prud'hommes does not intervene only concerning the economic activities referred to inthe Decree establishing such bodies. Currently, as a result of territorial generalisation, there is at least one council in each range of the high court tribunal. Each board is basically split into five sections covering all economic activities: industry (workers and employees in industry), trade and services (workers and employees in the trade), agriculture (workers and employees in the agricultural professions referred to in Article . 131-2), different activities (all employees even if employers do not belong to any industry or trade, or agriculture). Each board includes at least eight councilors for a section (ie a total of 32 advisors on all sections or more than 40 if there is a department of agriculture).

The doctrine highlightes a number of characteristic features of this institution, namely:

- It is composed solely of elected judges, as in the case of the court of commerce. The presidency of a judge is removed and those interested , employers and employees are judged by their fellow, because the law did not progress any suggestion that they be nominated by employers' organizations. Electorate asked to choose counselors is very diverse, workers from the age of 16 years, even the unemployed foreign worker having the right to participate in elections[245]. In order to be elected to the councils a person must be aged 21 years and have French nationality, since it is to judge in the name of "French people". The opportunity to be elected is also granted to the retired for 10 years after their withdrawal from activity. Electoral lists are drawn up taking into account the documents submitted by the Mayor, to the institution. Voting takes place in sections, during work, without attracting the loss of pay, being held in a place located near the workplace, with proportional representation based on the lists of candidates presented, generally by trade union confederations and employees organisations.

Appeals reffering to the electorate to eligibility, and to regularity at receiving the lists of candidates are, according to the law, the competence of the court of first instance (art. L 513-3, 513-11 N and L, R and S of 513-108 C. trav.). Councils are fully renewed from 5 to 5 years. The judge becomes a ' judicial warrant "separately from the political mandate (as in the case of members) or the professional office (as a delegate elected by the personnel)[246].

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242 Călinoiu, C., Jurisdiction labor law. Theoretical and practical aspects, Editura Lumina Lex, Bucharest, 1998, p.57.

243 Leș, I., Comparative judicial systems, Editura All Beck, Bucharest, 2002, p.369.

244 Pélissier, J., Supiot, A., Jeammaud, A., Droit du travail, 22 édition, Éditions Dalloz, Paris, 2004, p.1215.

245 Călinoiu, C., op.cit., p.58.

246 Mazeaud, A., op.cit., p.160.

- Another feature of this organism is its parity character, the council of Prud'hommes being composed of an equal number of employees and employers (Art.L 512-1). This general principle of parity attract the duty of chairing the board alternatively as the obligation to use, in case of vote division, to the presence of a judge of instance who intervenes as a third party and whose vote decides between them (art.513-3). He has also the effect of removing any possibility of resorting to a single judge, including when it is competent to hear the appeals. However, parity is attenuated when the board sends a case to be solved by one or two reporting advisers (art.L 516-2).

They are the expression of a counceling jurisdiction, having the mission to ensure the disputes settling through conciliation (L 511-1). Each section includes an office of conciliation and a conciliation court office (art.511-1) and the attempt of conciliation is the first phase of the Prud'hommes court (not an easy advance). However, the exceptions to this rule are multiplied, while the conciliation has not ceased to be in decline at the beginning of the century, so that the conciliation stage has the main effect, today, for many times, only to extend the duration of trial[247].

- Prud'hommes Advisers have the status of magistrates in order to ensure the administration of justice, and their pay reverts to the state budget since 1979. This regulation resulted in an improvement of the status of advisers, in the plan of their remuneration, of their protection and of their training. (art. L 514-1,2 and 3). The adviser status differs in certain points depending on the college they are part of , of employers or of employees.

Prud'hommes councils are empowered to resolve all individual disputes arising out of the contract of employment whatever the profession of petitioners or the number of requests made. This reglementation excludes the idea of collective conflict from the field of the arbitrary competence of these councils. However, the case the jurisprudence tends to give a broader sense to the notion of individual dispute, it is enough to oppose one employer to more employees taken separately, when they "do not cut pursuing litigation in the field of collective interests." Material competence has a feature of public order, such that any convention which seeks to amend the rules of such competence is void.

In determining the territorial jurisdiction of the Council of prud'hommes more rules are actioning. Thus, the competence belongs to the board in the territorial area where the institution is, where the employee works. If, however, the employee's workplace is not fixed, the power to resolve the dispute belongs to the council in whose territorial range the employee is domiciled. In both situations the worker has the option of announcing the council about the place where the commitment has been contracted or the place where the employer has been established (art.R 517-1). This option is independent of the nature and workplace and exercising is left to the free choice of the employees. Any clause that would waive the rules above is hit by absolute nullity.

According to the French law, in order to determine which activities belong to the competence of the Council of prud'hommes we must take into account the main activity of the entrepreneur in order to determine the competent section (industry, commerce, agriculture, various activities) (article L. 512 -- 2). The employee's profession has no importance. Instead, it will be considered the professional status of employees regarding the staff, who are the only the competence of the sections where they are placed. The staff can submit their dispute with the employer neither before the tribunal of commerce nor before a judge of the court.

The procedure of settling labor disputes by Councils of Prud'hommes is governed by common law rules in matters covered specifically by the new code of Civil Procedure (NCPC), with the exception of special rules contained in art. R and S 516-1 - from the labor code.

The individual employee action against the employer or the employer's against the employee or former employee, is governed by general rules applicable to legal actions: justification of interest,

247 Pélissier, J., Supiot, A., Jeammaud, A., op.cit., p.1220.

respecting certain terms (the prescription of 5 in 5 years of action in payment of the wages), etc..
Despite its patrimonial character, the action brought by the employee before prudommal jurisdiction against the employer or his legal representatives under his contract of employment has solely a personal character, it could not be exercised by representation. In case when several persons submit the action, the judge will give the junction of the case, but the assessment of the application will be made separately in respect of tax calculation resort.
The union's action before the Council of Prud'hommes can take two forms. Thus, when the law allow the union may substitute the employee, but with his consent, if the employee is in a weak position or action occurred following the implementation of a collective agreement. The union exercises in such cases, an individual action for the benefit of the union. It may however take action in its own name and through individual litigation, if the collective interest of the profession makes it necessary (art. L. 411-11).
The council receives a request by the Secretary - Registrar either in writing or orally. The Secretary - Registrar shall convene the defender in front of the office of conciliation and announcrs the complainant. Convening means legal citing in justice.
According to Art. R 516-4 C. trav., Personal presentation of the parties (or a representative of the moral person) before the council represents the rule alongside the mission of the conciliation board and orality of the procedure which is carried out. Exceptions to the rule mentioned, can be admitted only providing the proof of a legitimate interest . Thus, the trustee will be the part prevented to defend by the exceptional reasons.
Assisting the parties through is governed by a special regime, justified by the applicable jurisdiction. Representation by lawyer is not the only way possible. According to art. R 516-5 C. trav. parties may resort to representing the interests of their dispute through temporary or permanent delegates of trade unions, workers and employers. Court of Cassation concludes in this respect in order to ensure the right that any person has as his own problem to be resolved by an independent and impartial tribunal (Article 6 CEDH), a prudommal counselor pursuing a prudommal defense as delegate of his union organization may not engage in this mission of support and representation before the council whose membership he is. He may however call in an employee or an employer from the same industry (the idea of professional solidarity) and in the case of an employer member of his entreprise or an associate.
According to Art. L 511-1 C.trav. attempt of conciliation of the parties represents the first assigned mission given to a prudommal judge. It is an inaugural and compulsory phase of the court and which runs in front of the office of conciliation, it actually playing a double role. On one hand, " it is trying to reconcile the parties"[248]. This prior attempt of conciliation is a substantial element of the procedures, and without it the procedure is hit by absolute nullity. In case when conciliation is achieved, it a report of conciliation will be draft, which has the nature of a genuine contract concluded before the judge, equivalent to a transaction presentation but was reinforced by its binding.
On the other hand, the conciliation office is invested with power to take provisional measures, limiting the listed art. R 516-18 C. trav. Orders issued in these cases are enforceable and likely to appeal.
If the attempt of conciliation of the parties did not work, before the debate in court, is an intermediate stage is regulated, namely the one that involve the research of the facts by a rapporteur counselor. It is an original instruction of the prudommal process covered expressly by art.L516-2 and R 516-21 C.trav. Sending the case to a rapporteur counselor may be decided either by the office of conciliation or by the court, which may designate one or two adviser for this purpose. They have the mission submit the case to the court preceding to investigations.

248 Art. R 516-13 Codé de travail.

Presenting the outcome of their investigations to the council through one or two reports, reporteur counselors propose a solution which, in most cases, the council pleased to validate

Regarding the competent court to settle the case, the so-called general rule of uniqueness of the cour is applied. Thus, all the applications derived from the same contract of employment between the same parties, should be addressed to a single court, under the sanction of inadmissibility of the application. (art.R 516-1). Applying this rule and concerning the employment relationships and prohibiting successive processes between employee and his employer, gave rise to many debates, because in many cases it appears to be too strict and even inappropriate.

Conducting trial is governed by two principles, namely: the principle orality, which corresponds to requirements of simplicity and speed, each side having the opportunity (but not the obligation) to report and expose the claims and that of the contradictoriality that allows the debate of the issues put in discussion by expressing points of view, even contradictory to them. Evidence regime, exceptions, counterclaim requests are governed by the rules of common law, respectively those of the new code of civil procedure.

The office of the county prudommal court can still seek the reconciliation of parties in the terms of the common and procedural law possible to ascertain their eventul agreement under the same conditions.

The judge settles disputes under the rules of law that are applicable (article 12 NCPC), including the here collective labour conventions respectively customs that are incident to them. The rule prohibiting the founding of the decisio of fairness applies to the council of prud'hommes.

Normally, the verdict is given by the office of the court. Parties shall be convened before by the letter of the Secretary-Registrar. Office of the court is composed of two advisers, of the employers (employer) and two advisors of the employees and the decision will be taken by the of majority vote. If the councilors are in partition, the debate will resume in the office, this time chaired by a judge of the court. This judge of separation should not know the whole dispute, but only on points upon which an agreement could not be achieved. He will confer together with the prudommal judges or possibly himself alone.

The decision is notified by the Office of Registry (article R 516-42), and the notification importance lies in the fact that from that moment the, it runs the period of exercising the ways of appeal. The legal dispositions allow the provisional execution when this is possible (eg in the case of provisional decisions taken by the office of conciliation, etc.).

The prudommal council is integrated in the judiciar body. The appeal against the decision of the council is to call the Social Chamber of the Court of Appeal, composed of career judges. The deadline for exercising the call is one month from notification of the decision. The call is only possible where the objec of the request is over a certain figure, called “the resort level "and it is reviewed annually. If the subject request does not exceed this figure, the board's decision is evident when prudommal council decides ultimately. Judgments on claims with indefinite value (eg. annulment request for a disciplinary sanction) are always likely to appeal.

Generally declaring the appeal suspends the execution of the decision, but, however, there are cases when provisional execution may be ordered. The provisional execution is carried out on the full right regarding the set of emergency measures decided or by the office of conciliation. A long time, the Councils of Prud'hommes were deprived of any jurisdiction to intervene immediately in case of emergency only parties having the opportunity to submit to the great tribunal courts. The decree of September the 12th, 1974 and then the Law 18 of January 1979 required that each council should be provid) of appeal, outer the sections. This structure has the competence to take any measure which does not face any serious challenge or justify the existence of a dispute or to prevent imminent damage. Judge of the records, it may, even in the presence of a serious dispute, to decide any measure of conservation or restoration of a pending case. Thus, it may order the resumption of employment contract, the return of a representative of

staff, a sanctioned employee, a striker or a pregnant woman, fired illegally. The measures which the provided structure can be taken by ordinance no t listed within limits (except for those falling within the jurisdiction of the Bureau of Conciliation), but they always have a provisional character and lack of authority of res judicata.
Order on demand is a procedure that allows the president of a court to order, at a simple request of either party without the knowledge of the other, taking of emergency measures. Court of Cassation decided in this connection that, according to art.182, al.2 of the Code of Civil Procedure, the President of the Great Instance has the jurisdiction over such claims in prudommal problems.

3. Conclusions

Representing one of the most important areas of labor law, labor jurisdiction problem formed the subject of permanent concern. Although there are elements of specificity concerning the terms of states practice, taking into account the traditions of each country, the mechanism of relationships between state, unions and employers' organizations, interest in issues of jurisdiction can be considered an element that characterizes all systems of law.
A foray into comparative law, in this case the French system, the way in which disputes are settled at work is absolutely necessary for the correct understanding and evaluation of the whole system of jurisdiction of labor existing in our country.
The organization and functioning of Councils of Prud'Hommes one of the French courts from the field of labor relationships (along with civil solicitor's office, commercial, criminal and administrative work) may be reference points for Romanian legislator which will certainly have to continue the specialization of labor jurisdiction in the Romanian system.

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