Quantifying Atypical Employment in Romania – The Social Dimension

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Abstract: Official statistics can not always highlight the true scale of atypical work phenomenon in Romania because of the multitude of the non-standard forms of employment and because of the fact that its regulatory and monitoring mechanisms are build in accordance with the typical work model. The purpose of our research is to try to estimate the atypical employment in Romania using a variety statistical data basis.

Keywords: labour market; atypical employment; bogus self-employment

JEL classification: J21, J41

Introduction

In Romania, the atypical forms of employment got little attention from the academic environment because until recently most employment contracts were typical, full-time, of undetermined duration and signed with a single employer.

The changes made in recent years to the legal framework regulating individual and collective labour relations have led to increased forms of atypical employment in our country, particularly in the context of a labour market that was affected by the economic crisis.

The extent to which atypical work is covered by the provisions of the labour law is difficult to quantify both because of the diversity of non-standard forms of work and because of the fact that the common regulatory and monitoring mechanisms are shaped considering
the typical work. For this reason, official statistics cannot always reveal the true scale and characteristics of atypical work phenomenon in Romania.

1. Basic Quantifications and Dimensions

According to the Romanian Labour Inspection subordinated to the Romanian Ministry of Labour, Social protection, Family and Elderly Persons, which maintains the REVISAL national electronic register of the employees, as of the end of 2014 (see the website of the labour inspection at www.inspectiamuncii.ro, annual reports), there were a total of 5,824,582 individual labour contracts registered. This is however not the total number of employees necessarily as some of the employees may have two or even more labour contracts both with their employer as well as with another employer, but it is close to it as the number of those having more than one labour contract is practically marginal (see next section for that). As against 2011, the year when the Labour Code has witnessed quite a profound change especially with regard to the collective bargaining rights (i.e.: mandatory national collective bargaining and national collective agreement have been removed from the text of law), the total number of individual labour contracts has increased by 11%, which proves that a certain upward move has been taking place in the economy since it has managed to extract itself from the claws of the deep recession following the 2008-09 crisis. As against 2010, when the effects of the massive lay-offs that took place during 2009 were still deeply felt on the labour market, the total number of individual labour contracts increased by 34%, making it for a more than clearly positive move.

![Figure 1: Source: Data of the Romanian Labour Inspection (at www.inspectiamuncii.ro) processed by Dr.CatalinGhinararu;](image)

As of the structure by type of contract allowed by the Romanian Labour Code (i.e.: undetermined duration contract which is the rule, determined duration, which is considered the exception inside which here may be full-time or part-time undetermined or determined duration contracts), 91.72% were “typical” or undetermined duration
contracts (2014), with only the rest of 8.3% (482,423, also 2014) being determined duration contracts (which may qualify as “atypical” work arrangements). Inside this broad structure out of the 482,423 determined duration contracts, a total of 132,178 or 27.9% are part-time determined duration contracts with the rest of 72.7% (350,248) being full-time determined duration contracts. As for the undetermined duration contracts, 4,453,810 individual work contracts, or 83.3% of the total are full-time contracts with only the remaining 888,349 or 16.6% being part-time undetermined duration contracts. The conclusion which imposes itself is that due to the peculiar character of the Labour Code which limits the use of determined duration contracts to a certain well specified number of situations and activities the use made by the employers of this type of contractual arrangement is highly limited, mostly counting as work on “projects”. This is also due to the fact that no fiscal and nor social contributions facilities are associated with this type of contractual arrangement.

As against 2011, when a certain relaxation occurred with respect to the determined duration contracts in the sense that the number of such successive contracts an employer may conclude with its employees as well the maximum duration in months have been increased from two to three and respectively from 24 to 36 (in some cases, with proper justification, the completion of a project for example, even exceeding the limit of 36 months is allowed, which means that there is a limited flexibility with regard to duration but NOT with regard to the number of successive contracts), the number of determined duration contracts registered with the Labour Inspection has increased nevertheless by 23% which is quite significant although in absolute numbers this only means 94,924 contracts. As a share of the total number of individual labour contracts registered with the
REVISAL the increase is only from 7.4% (2011) to the current 8.3% (a difference of only 0.9 percentage points) thus showing that the progress is rather limited.

According to the data of the National Institute of Statistics NIS\(^3\) which through its LFS records number of individuals as against the ‘number of individual labour contracts” recorded by the Labour Inspection through its REVISAL system, the number of part time workers, distinct therefore from employees per se, would be as of 2014 of 859932 (this means workers working less than 40 hours per week). This would make for a share of the total employment of 9.9% (2014).

Finally administrative data of the Labour Inspection show that the total number of part-time individual labour contracts, that is the sum of determined duration and undetermined duration part-time individual labour contracts is of 1,020,527, or as a share of the total number of contracts 17.53%.

As for the daily labourers which since the adoption of a specific law in 2011, have their own special status, the administrative statistics of the Labour Inspection gives a figure of 12,651,047 entries into the national register of the daily labourers with 4,615,335 of these entries or 36.4% of the total being taken by agriculture which thus emerges as the sector of the national economy that made the largest use of the act thus also marking a significant progress in tackling widespread undeclared work. As against 2011, when the law has been adopted and first applied the number of entries has risen almost six times

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\(^3\) Data are taken from the TEMPO-ONLINE data base of the National Institute of Statistics, available at www.insse.ro , via subscription;
(from something more than 2 million entries to the current more than 12 million). Even back then, agriculture was the single most important user of this facility.

This brings us the most important type of “atypical work” in Romania, which makes practically for the distinctive feature of the Romanian labour market in the EU, i.e.: self employment in agriculture in small household production for their own final consumption farms (the so-called subsistence and semi subsistence farms). All in all and in accordance with NIS data as published in the Romanian Statistical Yearbook (2013 data) make for 1.3 million (53.3% of total employment in agriculture which at 2.5 million makes still for a staggering 29% of total employment, also 2014 data, NIS). To this we have to add the around 990 thousand contributing family workers, 45% of which are women, and which together make for 92.9% of the total employment in Romania’s agriculture or more than 2.3 million individuals. They have no labour contract, are covered by no statutory minimum salary legislation, have no coverage with respect to collective bargaining and are by law no obliged to contribute to any of the three major public social insurance schemes (i.e.: pensions, unemployment health). Their contribution may be however voluntary. They form the bulk of those daily labourers in agriculture as they complement thus their meagre monetary incomes. They make for the largest part of the working poor in Romania.

Adding together the figures above and taking into account the fact that other types of atypical work are not accepted or not known by the Romanian law or are negligible in terms of numbers (e.g.: “members of the clergy” as mentioned in the annex 1 of the ELLN report) as well as that most of the daily labourers (for which we may only approximate the number as what we do have is “number of entries” into their system of registration) we would come to a total of around 3 million persons (including the 2.3 million self-employed in agriculture and contributing family workers which make for Romania’s most important “atypical” form of employment, although without any contract per se thus however not making it undeclared and, from here-on, the specificity of it) or as a share of total employment 35%. Taking however out the “atypical’ employment in agriculture we would talk about roughly 0.8-0.9 million employees making thus around 9% of total employment and roughly 15% of the total number of salaried employees. Taking an even more restricted measure and referring just at the determined duration contract, which is the closest thing Romania has to “atypical” contracts, it would come down to no more than 480 thousand employees or 8.4% of their total number and as a share of total employment standing at 8.5 million (NIS figures, 2013), 5.6%.

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4 Aggregation of the figures belongs to the author. The author is aware however that this is just a „rough” exercise and that due to the many differences in the „substance” of the indicators further work has to be done so as to obtain a truly „consistent” aggregation of atypical work in Romania and its overall dimensions;

5 Mistakenly referred in the ANNEX as „clerical staff”, clarification however via explanatory text; It has to mentioned however that in terms of their employment status there is no difference as against „regular” or typical employees (same taxes, same social contributions, same labour contract, etc);
2. Cumulating the Jobs and Contracts, the Secondary Activity Regimes

The national regulatory regime allows, in accordance with the Labour Code, an employee to cumulate any type of contracts, be they “typical” (regular, undetermined duration, full time contracts) or “atypical”. In accordance with the same body of legislation (i.e.; the Labour Code, Law no.53/2003) an employee may have as many contracts as deemed necessary with one employer or with a multiple of employers provided of course that all other legal provisions, are observed, including the one relating to the working time, legal holidays, resting time between working days as well as weekly resting time (48 consecutive hours). With regard to that there is no longer any limitation. Administrative data as provided by the Labour Inspection which maintains the REVISAL electronic register of the employees do not provide such data as they their focus is on the number of contracts and not the number of individuals. However, the LFS run by the National Institute of Statistics give us a pretty accurate measure by recording the number of individuals with a “secondary activity” which generally means a second job, a second contract be it with the same employer or with a different employer than the one with which the first job is held. According to the most recent data provided by the TEMPO-online database available at www.insse.ro (the official ON-LINE data base accessible on the official website of the National Institute of Statistics of Romania), the total number of such persons was of 165504 (2014). There is a drop of almost 30% as against 2011, the year when the Labour Code has been modified eliminating a previous constraint that limited the number of contracts with one and the same employer at two, which may be explained only by the effects of the crisis and the subsequent recession which have thus reduced opportunities for a secondary activity both with the same employer as well as with a different one(s). The reduction is even sharper when compared to the last year before the crisis (2008) the drop as against the level of this year being of 45%. As against
the year when the Labour Code has been adopted thus replacing the old Labour Code inherited from the communist period and which was practically no longer in use except for minor parts (practically labour legislation had been replaced during the period in question, with the exception of collective bargaining, with civil law) the drop is of 51.6%. As against the first year for which data are available which is 1996, practically the “golden age” of the so-called “civil conventions” the reduction in persons with a secondary activity is a staggering 73% (!).

This shows that the cause of the reduction for the whole of the period of almost 20 years is a gradual tightening of the labour legislation especially as with the adoption of the new Labour Code in 2003 and its subsequent amendments which have made it less and less possible for individuals to engage in such activities and more and more costly for employers to resort to them. The elimination of the “civil conventions” from the labour legislation with the adoption of the labour code in 2003 has practically closed the door for what was a cheap form of employment that brought benefits to employers in terms of reduced labour costs as well as to employees in terms of additional income. It was nevertheless also a form of contribution if not tax evasion and thus practically a form of undeclared or rather under declared work. Nonetheless it also serves to illustrate the fact that the Labour Code increased the rigidity of the Romanian Labour Market and that practically the whole of the 13 years following 1990 were an “exceptional” period of highly law labour relations which must have played a role (still poorly studied) in the shielding of the adverse social and economic effects of the plan to market transition. The current number of persons with a secondary activity (i.e.: read job or contract) make for only 2.8% of the total number of registered labour contracts. As a share of the total employment the percentage is only a tiny fraction, 1.9%. As a share of the total number of salaried employees as recorded by the LFS their share is 2.8%. This serves to show that the overwhelming majority of salaried of dependent employees in Romania have only one
labour contract. The ones having more than that are the exception and not the rule, thus again pointing to a rigidity of the labour legislation as well as to its rather more than prescriptive character.

3. Bogus Self-Employment

There is no such definition and per se there is no such phenomenon in Romania. Due to the highly restrictive character of the labour code, even the use of determined duration contracts or of the part-time contracts is rather limited. Also in the case of civil contracts due to the restrictions to their use, their numbers is now very low. Therefore hardly one may talk of “bogus self-employment” as existing legislation does not permit it. It may be however that some of the “licensed individuals” (persoană fizică autorizată-RO) may, but only to a certain limited extent be counted as “bogus self employment” although in this case one cannot talk about employment as this is not covered in anyway by the labour law. It is therefore a form of service provision. There are scanty any more systematic studies to date on the phenomenon. The National Labour Research Institute is currently developing a research that aims precisely at the study of the atypical working arrangements on the Romanian labour market. It will also include a field investigation which may shed new light on the phenomenon. The study is financed from the national research programme and will take place throughout 2016-17. A recent study on this has appeared under the aegis of the Swiss-Romanian Cooperation programme on which we will talk some more in the coming paragraphs.

Another form of “bogus self-employment’ is the one related to individuals employed under authorship contracts a form that is frequent in mass media as well as in advertising, show business, translations etc. This is truly precarious and those so-called ‘self employed’ workers were practically having no social security coverage until Jan.1st of 2016 when the payment of social security contribution (i.e.: contribution to the public pension scheme) became mandatory in their case also.

One could make an estimate basing on the number of the so-called “persoană fizică autorizată” (licensed professional/licensed individual professional) but it would be difficult to ascribe a share of those being actually “dependent” on a certain employer (a form that would mirror the Italian case of the “indipendente-dipendente”, or the “independent-dependent” worker) and thus being in a sort of “bogus self employment” state. Therefore we would refrain from making any more precise, numerically substantiated estimate here, although we would dare to say that it may be that in between one third and one half of those working in this form (a grand total of 281031 as of 2015) could be classified as such. It has to be said however that the statute of these persons can hardly be considered as precarious as in most of the instances they are also involved in salaried employment. Therefore this is for them rather a form of “secondary activity” or “complementary

\[7\] The study is directed by the undersigned Dr. Catalin Ghinararu and is financed from the funds of the National Research, Development and Innovation Plan (PNCDI-Planul National de Cercetare Dezvoltare și Inovare, Program NUCLEU 2016-18) of the National Authority for Scientific Research and Innovation of the Romanian Government (ANCSI);

\[8\] This is an own estimate of the author; It should be taken however with reservations as the difficulty in estimating the scale of this phenomenon is more than considerable;
activity”. This speaks however rather significantly on the level of incomes a person may derive from on job in Romania, providing also an explanation for the high number of working hours recorded per worker. In a nutshell, one would not be able, for the time being at least, to give any accurate estimate of the phenomenon for Romania.

An explorative study undertaken by the sociologist Stefan Guga and recently presented to the public under the aegis of the Swiss Romanian Cooperation Programme draws the attention to the situation of several categories of what may be labelled as “bogus self employed”, e.g.: the literary translators as well as persons working under so-called authorship right contracts, which are nevertheless not acknowledged per se “labour contracts” but which according to the Fiscal Code (2016, 2015 amendments in force as of Jan.1st 2016 will have to pay mandatory contributions to the state (public) pension fund (i.e.; also known as “social security contribution”) while being still exempted from contributions to the public health insurance scheme as well as from the one to the unemployment insurance scheme. This type of what could be called “bogus self employment” is especially widespread amongst mass media professionals, journalists, translators and interpreters and others such categories although effective statistics are still rather incongruous. The study makes it clear that since the beginning of the crisis there is a marked increase in the resort of employers to whatever the Romanian law allows as “atypical work contracts”. However the study fails to reveal what would be the actual “advantages” or “disadvantages” that both the employer as well as the employee would draw from this resort given the prescriptive character of the Romanian labour law. The only clear case is the one of the “persoană fizică autorizată” (licensed professional/licensed individual professional) where it is clear that advantages can be drawn only by very few well placed workers, the others being placed at the mercy of their employers; same goes for persons employed under authorship contracts.

Conclusion

The concluding remarks of our study are given below.

✓ What actually would count in Romania as atypical work is concentrated in the so-called part time work as well as in the determined duration contracts these being the solo types that are allowed by the Romanian legislation and which may be concluded anyway only for a certain very well specified in the Labour Code (law no.53/2003 with subsequent amendments) types of activities. Therefore the margin of manoeuvre of any employer and of any employee is to this avail highly limited by the existing legislation. A possible explanation of the limited number of such contracts is lack of fiscal or social contribution facilities associated with this type of contractual arrangements.

✓ The most important type of “atypical work” in Romania, which makes our country different from the other EU countries, is self employment in agriculture, in small

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9Stefan Guga: „Munca Atipica in Romania de la izbucnirea crizei. O perspectiva de ansamblu”/ „Atypical Work in Romania since the beginning of the crisis; An overall perspective”, the Swiss Romanian Cooperation Programme, NEXT PUBLISHING, Bucharest-RO, 2016.
household production farms, the so-called subsistence and semi subsistence farms. To this are added the contributing family workers.

✓ The overwhelming majority of salaried employees in Romania have only one labour contract and the ones having more than that are the exception, not the rule. This comes to demonstrate again the rigidity of the Romanian labour legislation.

✓ In Romania there is no definition of bogus self-employment and the existing legislation does not permit it. However, a form of this is “licensed individual” (“persoană fizică autorizată”) and the one related to the individuals that are employed under authorship contracts (in mass media, advertising, translations, etc.)

Knowing the true extent of the phenomenon of atypical work one can achieve an adequate protection of such workers, under a suitable regulatory framework and on the basis of an effective social dialogue.

References
