

Personnel acting in the system of social work and legal status of the social worker: ethical and professional issues

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Abstract

In the field of social work activates specialized personnel and personnel with skills and competencies in social work. The exercise of social work as a profession involves two forms: the possibility of an individual employment contract as an employee or the exercise of specific activities independently within individual offices or professional civil society of social work. Also, in practice there are some situations in which private providers of social services are using social workers under volunteer contracts. Identifying all aspects related to exercising the profession of social worker in Romania in terms of legality involves analyzing the provisions of several laws - Law no. 53/2003 (Labor Code) with subsequent amendments, Law no. 466/2004 on the Statute of social worker, Law no. 292/2011 on social work, Law no. 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania, Volunteering Law no. 195/2001, Code of Ethics of the social worker profession no. 1/2007. The author of this article examines the provisions of all these laws to identify professional and ethical rights and obligations incumbent to social workers, the conditions that must be met for the social worker to obtain the certificate of free practice and cases of professional incompatibility.

Keyword: *profession; social worker; ethics; employment contract; social services*

1. Introduction

In the field of social work is working personnel specialized in social work and personnel with different skills and competencies. Training of specialized personnel in social work is done in public and private education institutions, which operate under the law, and in the process of continuous training.

Personnel involved in providing social services operate in accordance with the profession's Statute, the provisions of the Labour Code and other laws, as appropriate.

Social services are provided by social workers and people with skills and competencies in the specific area of intervention. In the process of providing social

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services can be involved, along with specialized staff, family members, other individuals and volunteers, under the law.

Depending on the complexity and type of organization, social services are provided by multidisciplinary teams. Coordination of multidisciplinary teams, as well as activities related to solving the social case is made by case manager or by the case officer.

2. The Romanian legislation governing the social worker profession

Social work profession can be exercised by a person who meets the following conditions laid down by Law no. 466/2004 on the Statute of social worker (art. 7):

a) is a Romanian citizen or a citizen of another State, under the conditions of the law referred to in art. 2 par. 1;

b) has specialized studies in social work, according to art. 2 par. 2;

c) is registered in the National Register of social workers in Romania;

d) is not in one of the cases of incompatibility laid down in law.

As for specialized studies in social work, art. 2 par. 2 of Law no. 466/2004 stipulates that the title of social worker may be owned by:

a) a person who received his graduate degree in a higher education institution specialized in the field, long-term form, 4 years, accredited under the law;

b) a person who holds a diploma of higher education institutions specialized in the field, short-term form, 3 years, accredited under the law;

c) a person who holds a diploma of social worker being equated under the law;

d) a person who holds a diploma of social worker awarded or recognized in one of the Member States of the European Union, one of the states in the European Economic Area or Swiss Confederation. We must emphasize that, besides Romanian citizens, social workers can be the nationals of Member States of the European Union, of the other countries in the European Economic Area and the Swiss Confederation, and also citizens of third countries with which Romania has bilateral reciprocal agreements and residing temporarily or permanently in Romania (art. 2 par. 1 of Law no. 466/2004 on the Statute of social worker).

Regarding incompatibilities provided by art. 14 of Law no. 466/2004, it could not enjoy the status of social worker the person who:

a) is not registered in the National Register of social workers in Romania;

b) has been convicted by a final court decision for deliberately committing a crime in circumstances related to the profession of social worker and has not been rehabilitated;

c) it was applied the additional punishment to forbid the right to practice the profession during the time period defined by final judgment;

d) has the authorization to professional practice temporarily suspended as a disciplinary sanction, during the suspension.

Also art. 15 of Law no. 466/2004 provides that the status of social assistant is incompatible with:

a) conducting any activities which may affect professional dignity;

b) deliberate use of knowledge or professional methods to the detriment of the person or unlawful purpose;

c) membership and promoting the interests of political parties or groups outlawed.

The profession of social work can be exercised independently in terms of free practice, by persons mentioned in art. 7, which obtained the certificate of free practice, or under individual employment contract.

Exercising this liberal profession, understood as a „profession acquired by a person through training in the education system expressed by specialty acquired and which could be exercised freely and independently, by any form of organization (individual or by particular offices)” (Niculeasa 2006: pp. 37-38), can be done in the following ways: by setting up individual offices, associated offices or civil professional companies, under the law. Individual offices and associated offices of social work can engage collaborators. It should be emphasized that the exercise of a liberal profession gives rise to specific legal relations (Ștefănescu 2007: pp. 16-21).

In order to obtain the certificate of free practice, the social worker must meet the following conditions:

a) prove that he practiced social work for at least 5 years before the time of application;

b) not have been found guilty by the National College of Social Workers in investigations regarding the practice of social work;

c) submit to the College the application accompanied by a curriculum vitae, a motivation letter and recommendations from three social workers.

The social worker can operate only after the approval of the application for registration as a member of the National College of Social Workers. Approval of application automatically leads to registration in the National Register of Social Workers from Romania and the issuance of the authorization to practice (art. 8-9 of Decision no. 1/ 30 March 2012 of the National College of Social Workers on the adoption of the Rules of Organization and Operation of the National College of Social Workers).

Law no. 466/2004 on the Statute of social workers provides: ”The social worker shall operate under salary regime or independently with the right of free practice” (art. 5). As for exercising the profession in an employment relationship, conclusion of an individual employment contract involves the birth of a relationship of subordination between the employee and employer (Ștefănescu 2007: pp. 192-193; Țiclea 2008: p. 27; Gidro 2013: pp. 16-17; Belligrădeanu 2013: pp. 42-43; Belu 2005: p. 22; Ciochină-Barbu 2012: p. 9; Cernat 2012: p. 25; Anechitoae 2013: p. 72; Radu 2015: pp. 46-47), and the setting in the job description list of tasks not related to the profession, but to the internal organization of the employer (organization chart).

According to the law, the social worker puts into practice knowledge, norms and values of social work to intervene and assist people and communities, at their request or whenever circumstances require. He actively participates in the development and implementation in the field, of social policies, strategies and action plans at local, national and international levels, promoting social welfare.

Among the activities of the social worker are the following:

a) identifying the segment of the population that is subject to the social work;

- b) identification and evaluation of social and human problems in a particular region, community or village;
- c) development of action plans, programs, measures, activities professionalized and specialized services specific to the field;
- d) raising public awareness and information with regard to social issues;
- e) determining the specific means of access to benefits and social work specialized services based on needs assessment;
- f) developing scientific research programs and training schemes (art. 3 par. 5 of Law no. 466/2004).

Law no. 466/2004 does not specify which of these activities can be performed as an employee and which can be operated independently. Therefore, incomplete or unclear provisions of Law no. 466/2004 on the status of the social workers must be interpreted and supplemented by correlations with other laws. The exercise of the social worker profession in Romania in terms of legality involves analyzing the provisions of several laws - Law no. 53/2003 (Labour Code) with subsequent amendments, Law no. 466/2004 on the Statute of social assistant, Law no. 292/2011 on social work, Law no. 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania, Volunteering Law no. 195/2001, Code of Ethics no. 1/2008 of the social assistant profession.

Law no. 292/2011 on social work regulates the general organization of social services as follows: „Art. 40. - (1) Social services are organized and given to the community. (2) Social services are based on identification and evaluation of social needs of individual, family or group and on developing contingency plans for preventing, combating and addressing situations of difficulty”.

Social service providers may be individuals or legal entities, public or private (Pătrașcu 2014, pp. 176-179).

Public providers of social services are:

- a) specialized structures within / in the subordination of local authorities and executive authorities of the administrative territorial units organized at the level of village, town, city and districts of Bucharest;
- b) the central public administration authorities or other institutions under their supervision or control which tasks are set by law on providing social services for certain categories of beneficiaries;
- c) health units, education units and other public institutions that develop, at community level, integrated social services.

Private providers of social services are:

- a) non-governmental organizations – associations and foundations;
- b) religions recognized by law;
- c) individuals authorized by law;
- d) subsidiaries and branches of international associations and foundations recognized under the law;
- e) economic operators under special conditions prescribed by law.

Law no. 292/2011 on social work stipulates that social service providers ensure basic social services (identification and evaluation of social needs of individual, family or group and developing contingency plans for preventing, combating and addressing situations of difficulty) through the agency of „social

workers employed in their own structures or, failing that, may acquire services provided by social workers registered with individual offices or civil professional companies of social work” (art. 40 par. 3).

In addition to these provisions, art. 40 par. 4 states: „Where, due to objective reasons, cannot engage social workers or purchase their services, social service providers may employ social workers to carry out activities of identifying and, where appropriate, for the evaluation of the needs of people who calls for social security benefits and social services”.

Law no. 292/2011 does not define the term ”social worker”, but from the interpretation of these provisions we can conclude that they are employees with individual employment contract working in the social field - social work in this case. On the other hand, art. 3 par. 5 of Law no. 466/2004 on the status of social worker shall assign public or private institutions and bodies, empowered by law to conduct social work activities, with the obligation to ensure the realization of these activities by social workers or under their direct supervision. By analyzing the words of the law... may employ social workers ...” it results that ”social workers” are an option available to social services providers, because of the lack of social workers, but only a temporary option ”eventually possible ... until identifying a social assistant” (Voj 2013). We must emphasize that social workers have still low skills and can be used, under the law, only for carrying identification and, where appropriate, assessment of the needs of people applying for benefits for social work and social services, not to pursue the full range of specific skills of social assistants stipulated by art. 46 of Law no. 292/2011: initial evaluation; drafting contingency plan; complex evaluation; developing customized care and assistance plan; implementation of measures under the intervention plan and individualized plan; monitoring and evaluation of service delivery. Moreover, social service providers are unable to obtain accreditation under Government Decision no. 118/2014 approving the Methodological Norms for the application of Law no. 197/2012 on quality assurance in social services only if, in addition to supporting documents required by this act shall deposit with the file the CV of a person with experience / qualification in the management of social services or in the field of social work, and a copy of the individual contract of employment or the contract of providing services concluded with this person (art. 8 par. 6 of Government Decision no. 118/2014 approving the Methodological Norms for the application of Law no. 197/2012 on quality assurance in social services).

Social work benefits and social services meet a wide variety (Buzducea 2005: pp. 60-67; Pătrașcu 2014: pp. 171-176; Radu 2009: pp. 139-141), the provision of social services with the following mandatory steps (art. 46 of Law no. 292/2011):

- a) initial evaluation;
- b) drafting contingency plan;
- c) complex evaluation;
- d) developing customized care and assistance plan;
- e) implementation of measures under the intervention plan and individualized plan;
- f) monitoring and evaluation of service delivery.

According to art. 47 of Law no. 292/2011, the initial evaluation and intervention plan are made by the social worker or, failing that, by personnel with competencies in social work within the public service of social work subordinated to local public administration's authorities. Also art. 122 part. 1 features that "identifying and evaluation of social needs of individual, family or group and developing contingency plans for preventing, combating and addressing situations of difficulty is achieved, under the conditions of special laws, by social assistants", according to their functions stipulated by the statute of social assistant and internal regulations of employers or job description. Therefore, Law no. 292/2011, the framework law on social work, together with Law no. 466/2004 on the Statute of social assistant recognize the social assistants' professional status, establishing their roles, identifying professional and ethical rights and obligations incumbent on them, the conditions that must be met by social workers to obtain the certificate of free practice, cases of professional incompatibility. Incidentally, Law no. 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania states at art. 2 par. 1 that „regulated professional activity is an activity whose access or exercise in Romania is subject, directly or indirectly, in accordance with Romanian law, to the possession of a document showing the level of training”.

Another important provision of the Law no. 292/2011 on social work is that of art. 125: "(1)Personnel employed in social services and public services of social work are contractual personnel. (2)Notwithstanding the provisions of par. 1, "persons responsible for the management of public services of social work and personnel involved in carrying out and developing strategies and annual action plans, in collection and database management, in contracting social services, in management of human resources, economic and financial activities and legal advice can be employed as civil servants" under Law no. 188/1999 on the Statute of civil servants, republished, with subsequent amendments". Therefore, we can say that the legislator established, on this way, the rule of employing personnel in social services and in public services of social work with individual employment contract and the exception - employment as civil servants, with all features resulting from establishing a service relation (Ștefănescu 2007: pp. 21-27).

Art. 122 part. 2 of Law no. 466/2004 provides that "local government authorities employ social workers or contract their services" to perform activities of identification and evaluation of social needs of individual, family or group and making contingency plans, "respecting a ratio of one social worker for no more than 300 beneficiaries”.

From the provisions of H.G. no. 118/2014 approving the Methodological Norms for the application of Law no. 197/2012 on quality assurance in social services it results that social service providers may enter either in an "individual employment contract or in a contract of providing services" with „people with experience/ qualification in the management of social services or in social work field”. In addition to social workers - that is the rule - and social employees – that is the exception, Law no. 292/2011 on social work provides that in the process of providing social services can be involved volunteers which, for the work done, enjoy certain facilities. It is certainly an option that social service providers use, on the one hand, because this reduces costs with employees' salaries and, secondly,

because if using volunteers can benefit from facilities for accessing funds from state budget, local budgets or international funds (art. 123 par. 1 and 2). To avoid however situations when a social service provider should avoid entering into contractual relationships (work or service providing) with a social worker, preferring instead to enter into a voluntary agreement with a person holding the competencies provided by law in order to be included in the proposed team to provide social services at the time of accreditation, the Volunteering Law no. 195/2001 expressly provides in art. 6 par. 1: "It is forbidden to conclude a voluntary agreement in order to avoid the conclusion of an individual employment contract or, where appropriate, a civil contract of providing services or other type of civil onerous contract for making the same benefits". On the other hand, the Code of Ethics of social workers provides in art. 13: "For social work services provided in the, contractual relationship established with the recipient of it, "the social worker whatever form of practicing the profession, is receiving a salary or a fee negotiated freely with beneficiaries" of the services rendered or with the providers of social work services or with another employer entity in which they operate, where appropriate and in art. 20 par. 1: „The social worker will provide social work services to beneficiaries only in the context of contractual professional relations and of informed consent of the recipient, as appropriate”.

In social work field are also active "formal and informal caregivers". Care services for dependents or other persons who require personal care at home – people with disabilities, the elderly – services involving assistance in carrying out instrumental activities of daily living are awarded by informal caregivers and volunteers and only in their absence by formal caregivers (art. 52 par. 6 of Law no. 292/2011 on social work). Provisions of Law no. 292/2011 on social work show that formal caregiver is the qualified person, professionally certified, who provides personal care or help to perform basic and instrumental activities of daily life by the person who lost operational autonomy [art. 6 letter s)]; and informal caregiver is unqualified person, family member, relative or any other person who provides personal care or help to perform basic and instrumental activities of daily life by the person who lost operational autonomy [art. 6 letter ș)]. Art. 87 of Law no. 292/2011 provides, for example, that a person with severe disability, depending on the nature of disability and the specific of care needs, can be assisted and cared for at home by a family member employed as a formal caregiver, as provided by law, with the result that employment is reflected in the conclusion of an individual labor contract.

According to art. 124 of Law no. 292/2011 on social work, the personnel working in social work shall:

- a) operate in accordance with law;
- b) ensure confidentiality of information obtained in the exercise of the profession;
- c) respect the privacy of beneficiaries;
- d) respect the freedom of the beneficiary to choose social services and social service providers;
- e) respect professional ethics;
- f) actively involve the beneficiaries of social services and, where appropriate, their families in decision making and the provision of social services;

g) respect the dignity and uniqueness of the individual.

Regarding the rights of personnel working in social work field, whether it is employed by an individual labour contract, will have all the specific rights of employees (Radu 2008: pp. 173-174), as provided by Law no. 53/2003 (Labour Code). Some categories of personnel working in the public system of social work can benefit from allowances added to base salary, depending on the specific conditions of activity performing. Categories of staff and the conditions for granting allowances are established by Government Decision.

Central and local public administration authorities, as well as public and private providers of social services have an obligation to promote, facilitate and provide to their employees programs of professional perfecting and specific training programs (art. 126 of Law no. 292/2011 on social work).

The remuneration of employees of the public system of social work is made according to the Law no. 284/2010 regarding the unitary remuneration of personnel paid from public funds, as amended.

Personnel involved in providing social services have, under the conditions of law, disciplinary, patrimonial, administrative or penal liability.

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