

CONSIDERATIONS REGARDING THE ORDER NO. 192/2013 ISSUED BY NATIONAL AGENCY OF CIVIL SERVANTS

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ABSTRACT: *Decree no. 192/2013 issued by the National Agency of Public Servants establishes the standard form of the necessary certificate for participating in contests/taking exams organized for the occupation of certain public offices, by illegally expanding the field of the employers who are obliged to issue this certificate also to the ones taking part in the private sector.*

KEYWORDS: *seniority, public servants, employees, certificate.*

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Due to the elimination, starting the 2nd of January 2011, from the obvious practical labor relations, of the employment records, for the time period after this date, in order to establish the employment professional transition of the employees – by the means of its approval by the employer, or, as an exception, by the territorial labor inspectorate – the normative acts stipulate the followings:

1. In the case of the employees, including the civil servants:

a) Romanian Labour Code expressly stipulates that:

- “at the request of the employee or former employee, the employer is bound to issue a *document mentioning the activity performed by the employee, working time, salary, length of service, length of employment in profession and specialization* (art. 34 par.5); and

- the employer has the obligation (...) to issue, upon request, all documents attesting the status of the applicant as employee (art.40 par.2, lt. h).

b) *Government Decision no. 500/2011 with regard to the general record of personnel*¹ expressly stipulates the fact that „when the employee or former employee submits a written request, the employer is bound to issue to the employee:

- copies of documents existing in the personal file;

- copies of the pages from the electronic registry containing written documents relating to himself and/or *a document describing the activity performed by the employee, working time, salary, length of service, length of employment in profession and specialization*, as it results from the general record of personnel and from the employee’s personal file, in 15 days calculated from the date the request was submitted” (art. 8 par.3); and

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¹ Published in the Official Monitor, part I, no. 372 from the 27th of May 2011.

- "if, due to objective reasons, the employer is unable to issue the documents provided by par. (3), the employee or former employee can request to the territorial labor inspectorate where his employer operates, to issue a certificate attesting the elements contained in the registry, as they were drafted and sent by the employer. The aforementioned territorial labour inspectorate issues the document through the electronic registry sent by the employer in maximum 15 days from the moment the request was submitted" (art.8 par. 6).

c) *Working proceedings of the territorial labour inspectorate*², in force starting from January 1st, 2010, expressly stipulate the fact that "at the request of the entitled natural persons entitled or their legal representatives, the territorial labor inspectorate issues certificates describing the activity performed, the length of employment in the profession and specialization, as it results from the documents submitted by the employers..." (art. 15 par. 1).

The observations related to these normative acts are the followings:

a) In terms of what it must contain, both the document issued by the employer and the certificate issued by the territorial labour inspectorate, as the legislation requires, must include and, they should also consist, of working time, salary, length of employment in profession and specialization.

b) The territorial labour inspectorate working proceedings targets only the certificates issued by the territorial labour inspectorates only in the exceptional situation provided by Government Decision no. 500/2011, when, due to objective reasons, the employer is unable to issue the document provided by the normative act. In fact, the employers have borrowed themselves the design and content of the certificate and they are using it in practice.

2. In the case of public officers:

a) *Government Decision no. 611/2008 on the approval of regulations for organizing and developing the carriers of civil servants*³ which expressly stipulates the fact that "in view of participating to the contest (...) the candidates submit their files, which shall mandatory contain (...) a copy of the employment record or, if there is necessary, a certificate attesting the length of service and the length in the specialization of studies needed in order to occupy the public office" (art. 49 par. 1, lt. d).

b) *Order no. 192/2013*⁴ issued by the National Agency of Civil Servants (N.A.C.S.) which contains the standard form of the certificate necessary in order to sustain the contests/examinations organized for occupying the public offices, pursuant to which the mandatory elements of the certificate are:

- the identification elements of the employee (name and surname, serial number of the identity card, personal identification number);

- information regarding the individual labour contract or employment relationship with the employer (administrative act for being named in a certain position or individual labour contract for a full time or part time job, concluded for determined or undetermined duration; registration number of the individual labour contract in REVISAL; occupied

² Approved by the means of the State Inspectorate decision (published on the website: www.itmiasi.ro).

³ Published in the Official Monitor, part I, no. 530 from the 14th of July 2008, with subsequent modifications and completions.

⁴ Published in the Official Monitor, part I, no.49 from the 22 of January 2013.

position, profession or activity according to the Classification of Occupations in Romania list);

- the level of education required at the moment in the admission to employment or when the appointment to the public office is made (average or above);
- length of employment in profession and specialization, acquired during the performance period of the individual labour contract or of the labour relationship;
- the changes that occurred during the performance of the individual labour contract or of the labour relationship (regarding their amendment, suspension or termination);
- number of sick leave days and leave without pay;
- potential disciplinary sanctions applied to the employee (meaning that no disciplinary sanctions were imposed to the employee or, if any disciplinary sanctions were imposed, it must specify which one);
- date and signature of the empowered person to represent the employer in any work relationship with third parties.

The legal observations with regard to the aforementioned normative acts are the followings:

a) With regard to the elements that the certificate must contain, there is only partial conformity, due to the fact that this should target exclusively, pursuant to the Government Decision no. 611/2008, the length of employment and, if necessary, the specialization of studies needed in order to occupy the public office; however, the standard form adopted by the dispositions of Order no. 192/2013 of N.A.C.S., refers, in addition, also to the changes occurred during the performance of the individual employment contract or employment relationship, number of sick leave days and leave without pay and, possible disciplinary sanctions imposed to the employee. In other words, the Order, unduly add to the requirements established by Government Decision no. 611/2008.

b) Due to the fact that the elements contained in the certificate also targets labour relationships established by the conclusion of an individual employment contract the hypotheses targeted by the N.A.C.S. Order (the standard paper for the necessary certificate in order to participate in contests/examinations organized for occupying the public offices) is also extended upon the employers from the private sector. However, Law no. 24/2000, with regard to the Regulations for legislative technique necessary for drafting the normative acts⁵ expressly provides, in art. 77 and 78 the fact that “orders have a normative nature, instructions and other similar acts issued by the ministry officials and other bodies of central public administration or autonomous administrative authorities are issued based only on and complying with the law, Government Decisions and Ordinances” and that, these “must be limited strictly to the framework established by the acts, which were also the basis for their performance and they cannot contain solutions contrary to their provisions”. Moreover, provisions of art. 22, par. 1, from Law no. 188/1999 with regard to the Civil Servant Status⁶, refer exclusively to the public institution or authority and not to the employers from the private sector.

⁵ Republished in the Official Monitor, part I, no. 260 from the 21st of April 2010. Pursuant to this legal text N.A.C.S. also has among its powers to develop and approve the drafts for normative acts with regard to the public office and civil servants. As a consequence, the regulations issued by N.A.C.S. shall target the status of civil servants and shall not regard the status of employees from the private sector.

⁶ Republished in the Official Monitor, part I, no. 365 from the 29th of May 2007, with subsequent modifications and completions.

Thus, it results that N.A.C.S., breaching, issued an Order which – with regard to those who shall participate in the contest/examination in order to occupy a public position – establishes the obligation for all categories of employers from the public or private service, to issue the standard form for the certificate. Furthermore, outside this aspect which obviously is unaccepted, such certificate adds to what was already regulated through the Romanian Labour Code and the Government Ordinance no. 500/2011, stipulating mandatory elements, also the information referring to possible disciplinary sanctions imposed to the employee. Under both aspects this kind of legislative solution is inadmissible due to the fact that cannot be targeted the employees from the private sector and, even if this could be possible, it cannot be achieved by the means of an order of N.A.C.S. President, that changes the provisions adopted by Law (precisely by the Romanian Labour Code – Law no.53/2003).

3. To the above mentioned rules, it should be stated that as principle, all the normative acts referring to the certificates which are to be issued for the employees or civil servants as the case may be, are incomplete due to the fact that:

- in the case of employees there is no information contained, referring to possible disciplinary sanctions imposed by the employer; and
- for both categories, there is no information contained referring to possible debts which the employee may owe to its employer (such as patrimonial liability, possible payment undertaking, imputation order or fact-finding and damage assessment report or even final and binding court decisions in this respect).

4. With regard to the practice requirements, we believe that *lex ferenda* should impose the amendment of provisions for the Romanian Labour Code and Government Ordinance no. 500/2011, meaning that, between the elements of the document issued by the employer we should find possible sanctions applied to the employee and possible debts owed to its employer⁷. In the case of public officers, the amendment of Law no. 188/1999 is also imposed, establishing a general regulation which shall refer to the obligation of the public institution or authority to issue a certificate for the benefit of its civil servants, and to its content (similar to the provisions of Law nr. 53/2003 – Labour Code).

On this base, the view upon the certificates attesting the labour history of the employee should be unified, while later on the standard form in the case of the employees shall be presented as an appendix to the Government Ordinance no. 500/2011 and in the case of civil servants, N.A.C.S. should issue a certificate form valid exclusively for the public institution or authority and, in the same time, to take into account not just the organizing contests/examinations for occupying the public offices.

⁷ We mention that as regards the certification of the contribution to State budget for the social security Rules of Application for Law no. 263/2010 containing the standard forms that shall be used by the employers.