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THE RESIDUAL ROLE OF GOOD FAITH IN INDIVIDUAL EMPLOYMENT RELATIONS

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Abstract: *This paper examines the principle of good faith in individual employment law, highlighting the limitations imposed by the specific regulatory framework governing this area. It will be shown that this principle has a more limited scope of application than in civil law. This is due to the fact that, in regulating employment relationships, the legislature has chosen to expressly establish, through legal provisions, certain obligations of the parties, which would otherwise have been assessed through the lens of the principle of good faith. Where a legal provision already imposes a specific obligation, reliance on good faith becomes redundant; in other words, general duties of loyalty, cooperation, or moderation (typically associated with the concept of good faith) are no longer evaluated from the perspective of the parties' moral conduct, as these duties are already directly and explicitly imposed by law.*

Keywords*: good faith; employment; case law; loyalty; labour relation.*

Introduction

Sometimes perceived as synonymous with loyalty, in pre-contractual negotiations and in the performance of a concluded contract, good faith is understood as “honest, loyal and fair conduct” (Nicolae, 2017, p. 254). Indeed, good faith constitutes a general principle of law which permeates both common law and special legislation.

There is, however, a significant limit to the possibility of invoking good faith before the courts: the conduct in question must not have been regulated by law, but must have been left to the court's assessment. It is neither necessary (nor even possible) to invoke good or bad faith when there already exists a legal rule which expressly sets out the party's conduct; just as an abuse of right will not be pleaded where there is, properly speaking, a breach of the law.

I do not manifest good faith when I merely comply with a legal provision, just as I do not manifest bad faith when I breach it. Non-compliance with a legal rule cannot be undertaken in good or bad faith. The expression "the employer has breached his legal obligations in bad faith" is not in fact accurate. The employer might have breached his obligations through ignorance, without intent, without pursuing an unlawful purpose, without seeking to deprive the worker of protection – and this would still be irrelevant, since any breach of legal obligations attracts the same sanction (for instance, the annulment of a decision), regardless of the subjective state of mind of the party bound by law.

Conversely, bad faith may be manifested in the exercise of a right. Article 14 (1) of the Civil Code provides that any natural or legal person must exercise their rights and perform their civil obligations in good faith, in accordance with public order and good morals. Where the law grants a right, but its exercise differs from the legislator's intention and pursues the detriment or harassment of the other party, we are faced with an abuse of right. This, however, presupposes that the law has not expressly determined the circumstances and conditions under which that right must be exercised. I shall provide further examples throughout this paper where, although the employer's intention in taking a decision may be questionable, nullity cannot arise because the legal rules were detailed and clear in regulating that decision, and the employer complied with them.

The way in which a party acts, subjectively speaking, becomes relevant only in the space left open by legal norms. The more detailed the legal provisions, expressly prescribing the conduct to be followed by the

parties, the fewer the situations in which good faith (or rather its absence) may be invoked.

In labour law, good faith constitutes a general principle, expressly laid down in Article 8 (1): "Labour relations are based on the principle of consensualism and of good faith." This principle forms the background against which the parties act during the often lengthy employment relationship. Its practical use, however, will be possible only where the law does not directly sanction a given act, namely where the law is silent or employs general terms whose analysis enables the judge to consider the subjective state of one party when ordering the other, for example, to pay compensation.

On this basis, we shall illustrate below situations in which good faith or bad faith cannot be invoked. Not because they do not exist (of course there is always a subjective way of relating to a given legal obligation), but because they are irrelevant before a court of law. We shall then proceed to illustrate situations where, on the contrary, their invocation is possible and produces legal effects.

1. Situations in which good faith is irrelevant

Labour law constitutes a field far less suited to the invocation of good faith than civil law. Frequently we encounter situations of manifest bad faith which nonetheless cannot be sanctioned, or of good faith which remains irrelevant within the scope of detailed and explicit labour law provisions (For further developments, Dimitriu, pp. 15–22, in Oprina, 2025). A few examples follow.

a) Probationary period. During or at the end of the probationary period, the individual employment contract may be terminated, by written notification, without notice and without reasons, at the initiative of either party. In practice, however, an employer may propose to a long-standing employee, who could hardly have been dismissed, a promotion – in other words, a modification of the employment contract – which the employee accepts. Article 32 (2) of the Labour Code provides that the employee may be subject to a new probationary

period where he or she begins a new position or occupation with the same employer. This means that in the new position, the employee becomes as vulnerable as a new recruit. His or her contract may thus be terminated in the new probationary period much more easily than it could have been terminated by dismissal from the previously held position.

Did the employer act in bad faith? Probably yes. Can the termination of the contract in the new probationary period be annulled? Probably not.

b) Dismissal. Good faith in dismissal would oblige the employer to seek certain options to avoid it. Yet the legislator tells us precisely what this entails: the proposal to transfer to other vacant posts within the undertaking, compatible with the employee's professional training or, where appropriate, with work capacity established by the occupational health physician. This is expressly provided by Article 64 (1) of the Labour Code for dismissals on grounds of physical and/or psychological incapacity, professional inadequacy, or reinstatement of the employee previously occupying the post. In the absence of this text, the courts would be called upon to analyse, considering the specific circumstances of the case, whether the employer had sought alternatives for amending the employment contract so that dismissal would be ordered as a last resort. But given that Article 64 (1) exists, any further analysis is superfluous. If the employer does not make such a proposal, this does not mean that he has committed an abuse of right; it means that he has directly infringed the legal provisions.

Moreover, it is possible that the employer does not make the proposal to transfer to another vacant post because he believes that the employee would refuse such a proposal, or considers such an offer degrading for the employee. Entirely irrelevant: there is a legal obligation whose non-fulfilment leads to the annulment of the dismissal decision, regardless of the reasons.

Dismissal for reasons unrelated to the employee may be ordered for a genuine and serious cause. In judicial practice, an assessment of the appropriateness of this measure is generally not carried out, only of legality. This constitutes an expression of the reduced scope of the

concept of good faith in labour law; the nullity of such dismissal may be triggered by the absence of a genuine and/or serious cause (i.e. illegality), or by non-compliance with the statutory procedure for dismissal (notice, content of the decision, communication of the decision), but not by the fact that the employer should have organised the undertaking differently to avoid redundancies. If the employer had available vacant posts identical to those abolished, but nevertheless dismissed the employee, the dismissal may be annulled not for failure to comply with a procedural rule (no such obligation exists, as the High Court of Cassation and Justice has held),[1] but because there was no genuine and serious cause (again, illegality, not abuse).

But the bad faith of the employee may likewise be entirely irrelevant where dismissal is prohibited by mandatory provisions.

For example, under Government Emergency Ordinance no. 111/2010 on parental leave and monthly allowance for child-raising, [2] termination of the contract of employment is prohibited during the period in which the employee is receiving the insertion incentive. Breach of this prohibition results in annulment of the dismissal, reinstatement of the employee and the employer being ordered to pay compensation. Yet this sanction applies not only where the employee returns from child-raising leave to the same employer, but also where the employee has taken employment with another employer who had no knowledge that he or she was receiving the insertion incentive.

Recently, an exception of unconstitutionality was raised regarding this provision, on the grounds that imposing an obligation on a professional without creating a mechanism to inform him that such an obligation exists infringes Article 16 (1) of the Constitution. By Decision

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[1] High Court of Cassation and Justice, Panel competent to adjudicate appeals in the interest of the law, Decision no. 6/2011, published in the Official Gazette of Romania, Part I, no. 444 of 24 June 2011.

[2] Published in the Official Gazette of Romania, Part I, no. 830 of 10 December 2010, subsequently amended.

417/2024[1], however, the Constitutional Court rejected the exception, stating that "The challenged provisions are intended to prevent, in such situations, the abusive conduct of certain employers; the legislative solution reflects the legislator's choice concerning the social protection of persons in a particular situation, namely employees who are receiving the insertion incentive." The Court did not, however, explain how the conduct of an employer unaware of the fact that the employee was receiving the insertion incentive could be abusive.

Conversely, in common law the lack of knowledge of another person's right may underpin the invocation of good faith, as in the case of third-party purchasers acting in good faith. I do not wish to force analogies where they do not belong, but abuse can never be unintentional. Moreover, the employer does not have this information because it is not supplied by the employee. If the duty of disclosure is a component element of good faith in pre-contractual relations, then, on the contrary, the employee who fails to inform the employer that he or she is receiving the insertion incentive must be deemed to have acted in bad faith.

Similarly, where the employer orders disciplinary dismissal for unauthorised absence of an employee without knowing that the employee was unfit for work, the dismissal will be annulled even if the employee, in bad faith, failed to inform the employer.

The employee's bad faith is irrelevant. There is an express rule, admitting no exceptions, so the employer will be liable irrespective of fault.

c) Duty of loyalty. The employee's duty of loyalty during the performance of the employment contract is clearly an expression of good faith in its execution. Yet an employee who, for example, competes with his employer by taking employment with a competitor without the employer's knowledge, while the employment relationship is still in

[1] Published in the Official Gazette of Romania, Part I, no. 116 of 10 February 2025

force, does not commit an abuse of right, but directly breaches Article 39 (2)(d) of the Labour Code.

d) Duty of confidentiality. Disclosure of information given in confidence during negotiation of the employment contract or during its performance constitutes, in most cases, a breach of a specific legal obligation, which attracts administrative sanctions irrespective of the good or bad faith of the party disclosing such information.

Thus, the employer is, by law, the debtor of the duty of confidentiality with regard to certain categories of information obtained about employees. Situations include:

– the employer's duty to maintain the confidentiality of employees' personal data, enshrined in Article 40 (2)(i) of the Labour Code and, complementarily, by Regulation (EU) 2016/679 (GDPR);

– Government Decision no. 711/2025 amending and supplementing certain acts in the field of employment,[1] which provides a series of rights for undertakings employing persons unable to obtain work and who are victims of domestic violence protected by a protection order or of trafficking in human beings. Employers engaging such persons are required, inter alia, "to maintain the confidentiality of information concerning the person's status as a victim";

– Government Emergency Ordinance no. 96/2003 on maternity protection at the workplace,[2] Article 8 of which obliges the employer to maintain confidentiality regarding the employee's pregnancy and not to inform other employees except with her written consent and only in the interests of the proper conduct of the work process, if the pregnancy is not visible;

– under Law no. 361/2022 on the protection of whistle-blowers in the public interest,[3] the person designated to handle the report has a duty not

[1] Published in the Official Gazette of Romania, Part I, no. 815 of 5 September 2025.
[2] Published in the Official Gazette of Romania, Part I, no. 750 of 27 October 2003.
[3] Published in the Official Gazette of Romania, Part I, no. 1218 of 19 December 2022.

to disclose the identity of the whistle-blower or information likely to lead to identification;
– the committee for receiving and resolving cases of sexual harassment and moral harassment at the workplace has a duty of confidentiality with regard to harassment cases brought to its attention (Government Decision no. 970/2023 approving the Methodology on preventing and combating sexual harassment and moral harassment at the workplace).[1]

As regards employees, the duty of confidentiality of information obtained in the performance of the employment contract may form the subject of a confidentiality clause. At other times, the law directly provides for such a duty, for example:
– with regard to certain categories of employees, such as home-based workers (Article 110 (3) of the Labour Code) or employees' representatives in consultation or collective bargaining (Article 7 (1) of Law 467/2006 establishing the general framework for informing and consulting employees);[2]
– with regard to certain categories of information, such as salary (Article 163 (1) of the Labour Code).

Where the law expressly enshrines the duty of confidentiality regarding a category of information, that duty will no longer be analysed as a component of good faith, but as a directly applicable legal obligation, whose breach attracts sanctions (including administrative sanctions).

e) Unfavourable treatment. An employer acts in bad faith if he applies unfavourable treatment to employees as retaliation for exercising a right. But here too, there is no need to analyse the employer's subjectivity, since Article 5 (6) of the Labour Code expressly provides that any unfavourable treatment of employees or their representatives as a result of requesting or exercising one of the rights provided in Article 39 (1) is prohibited. If there is a causal link between the exercise of the right and

[1] Published in the Official Gazette of Romania, Part I, no. 939 of 17 October 2023.
[2] Published in the Official Gazette of Romania, Part I, no. 1006 of 18 December 2006.

the employer's retaliation, the bad faith with which the employer acted becomes irrelevant, because the law expressly prohibits such conduct.

f) Time limits. Where the legislator has expressly provided for a time limit, it is absolutely presumed to be reasonable; the court could not disregard the statutory provisions in question on the ground that the employer should have waited longer or, conversely, should have acted more quickly, to avoid prejudice to the employee.

g) Statement of reasons for a unilateral decision. The absence of reasons in the dismissal decision does not entail its nullity as a result of the employer's bad faith (as occurs in other legal systems), but directly as an effect of Article 78 in conjunction with Article 76(a) of the Labour Code.

In addition, the 2022[1] amendment of the Labour Code introduced the employer's duty to provide reasons for other decisions taken in relation to the employee. These include, for example, reasons for termination of the contract during the probationary period (we shall not enter into detail here on the fairness of this rule, or whether the legislator indeed intended to impose such an obligation; let us reluctantly admit that it does), reasons for dismissal (redundantly imposed by Article 62 (4) of the Labour Code), or reasons for refusal to transfer the employee to flexible working arrangements. Through this last rule, obliging the employer to provide reasons for a refusal, the scope of the concept of good faith has been further reduced: if the decision was not reasoned or the reasons do not reflect reality (for example, the employer claims that the employee's work cannot be performed remotely when in fact it can), then we are no longer dealing with abuse, but with illegality.

h) Quantum of compensation in the case of dismissal annulled for illegality. In other legal systems, such compensation is assessed by

[1] Law no. 283/2022 amending and supplementing Law no. 53/2003 – the Labour Code, as well as Government Emergency Ordinance no. 57/2019 on the Administrative Code, published in the Official Gazette of Romania, Part I, no. 1013 of 19 October 2022.

reference to the employer's subjective attitude: a procedural mistake is not the same as a discriminatory dismissal. Not so in our legal system. Here compensation is predetermined by law in Article 80 (1) of the Labour Code, being always equal to the indexed, increased and updated salaries and other entitlements the employee would have received. The employer's good or bad faith is irrelevant, as is the employee's attempt to mitigate the loss (for example, by finding another job).

2. Are we bound to good faith when confronted with the bad faith of the other party?

The duty of good faith comes to an end when it meets the bad faith of the other party.

Workers have always developed systems of self-protection, of resistance to the techniques of control implemented by the employer. They did so in the last century as well, through forms of resistance such as manipulating or damaging equipment, using resources and time for their own purposes, coordinated reduction of the pace of work, or informally arranging spaces for socialising in secluded areas, such as toilets or corridors (Kellogg, Valentine, & Christin, 2020, p. 400).

Things are no different today. Although workers are not formally informed how algorithms operate, they do not confine themselves to being passive victims: they learn from daily experience, they communicate, they compare notes on various WhatsApp groups – in order to devise ever more creative strategies to "cheat the app." When the one who controls and assesses you day after day is not a person but an application, workplace behaviour will adapt accordingly. Because workers have the ability to actively shape the outcome of algorithmic computation for their own benefit (Bonini, & Treré, 2004, p. 2).

Indeed, people adapt as well, not only machines.

This is how the notion of "algo-activism" has arisen. "Algo-activism" refers to practices whereby workers, users or activists seek to undermine, manipulate or circumvent algorithmic systems which

influence their work, visibility or access to resources. Such actions may include:

a) Manipulating algorithms. Workers may strategically accept or refuse assignments in order to influence algorithmic scores or to obtain more advantageous tasks. For example, some Uber drivers use GPS bots from the dark web to simulate the vehicle's movement, misleading the system with false data that appears to reflect real travel (Lacková, 2022, p. 88). Remote workers may use key-press software to appear to be working.
b) Forming online communities. Often, workers organise themselves in forums or groups to share information about how algorithms work and to coordinate collective actions. The solidarity once thought lost re-emerges in a form of social action having nothing in common with traditional strikes or picketing, yet born of the same sense of frustration. These are the so-called "social alliances" between workers, organised around the need to understand how best to resist the work of algorithms in order to improve their lives or working conditions (Bonini, & Trere, 2024, p. 57).

c) Developing their own tools. In some cases, workers may create or use applications giving them more control over their interaction with platforms. And the struggle against the algorithm sometimes employs other algorithms – applications specifically designed to mislead the monitoring applications initially used in the workplace. "Training" the algorithm has become one of the preoccupations of all social media users, with or without content.

These forms of resistance and sabotage reflect an attempt to regain autonomy and control in an increasingly automated and opaque working environment. But do they constitute manifestations of employees' bad faith?

In most cases, workers do not perceive their actions as disloyal or in bad faith, since they are not directed against a person but against an automated system or a machine. From a moral perspective, workers regard such subversive practices as reactive and justified in the face of algorithms being used in a non-transparent and/or dishonest manner.

Resistance forms part of the digital ecosystem[1]. Resistance to algorithmic management does not mean resistance to technology; workers develop new ways of bypassing algorithms not because they fail to understand the technology, but because they understand it too well. Without any formal information as to how the system functions or the reasons why, for example, they are penalised for certain conduct, they learn from their own and others' experience what the "bugs" of the application are, its limits and the triggers of certain reactions.

Moreover, when – through formal or informal means – workers become aware of the criteria applied, there is a risk that they will concentrate their efforts solely on meeting those criteria underlying the assessment, disregarding other aspects of the job description which cannot be assessed in that way. Employees might focus only on the behaviours or skills evaluated positively in the system, ignoring other important aspects of their role. This may lead to distortion of assessment and to the promotion of certain behaviours or skills to the detriment of others, thereby affecting the fairness and effectiveness of evaluation.

The existence of these tools of "struggle" against algorithms and of human resistance against artificial intelligence does not in any way rebalance the relationship of forces. We are faced with a profoundly unbalanced relationship in which the small "victories" of workers who succeed in outwitting the system are always marginal.

In conclusion, I would rather say that algo-activism is not a manifestation of bad faith. In the absence of legal prohibitions, employees' conduct is nothing more than a reaction; only once the use of algorithms is regulated and the employer obliged to inform workers of the use of artificial intelligence in employment relations will employees' reactive conduct be capable of attracting legal liability. Until then,

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[1] But it should be noted that the existence of these tools of "struggle" against algorithms and of human resistance against artificial intelligence does not in any way rebalance the relationship of forces. We are faced with a profoundly unbalanced relationship in which the small "victories" of workers who succeed in outwitting the system are always purely marginal.

employees' duty of good faith cannot be assumed against the background of the employer's bad faith. The law cannot require unilateral loyalty.

3. What remains? Situations in which good faith may be invoked in individual employment relations

Good faith forms the silent backdrop against which employment relations unfold. Its enshrinement as a principle in Article 8 of the Labour Code is intended to give it value in the legislative silences, where there are no imperative prescriptions of conduct. Article 8 of the Labour Code must be read through the lens of Article 14 (1) of the Civil Code, according to which "any natural or legal person must exercise their rights and perform their civil obligations in good faith, in accordance with public order and good morals".

A few examples follow:

a) Exercise of certain discretionary rights. A number of rights are potestative; their exercise is left to the holder's discretion. This does not render them unsusceptible to abuse; on the contrary: the wider the margin of freedom in their exercise, the greater the possibility of overstepping the limits of good faith. As regards the employer, we have in mind:

– the right to recall the employee from annual leave for urgent interests requiring the employee's presence at the workplace (Article 151 (2) of the Labour Code). Even if the employer covers the expenses of the employee and the employee's family necessary for returning to work, the employer may not abuse this right, and the urgency of the interests prompting recall may be examined by the court through the principle of proportionality, by reference to the good or bad faith underlying the recall decision;

– the right to send the employee on business travel/secondment (Article 42 (1) of the Labour Code). The employee's place of work may be modified temporarily, unilaterally. However, the purpose pursued by the employer in ordering such a measure must relate solely to the undertaking and the conduct of activities within it; the employer may not pursue vexatious aims, such as removing the employee from the family

environment. Such action would constitute an abuse of right and, in certain circumstances, moral harassment;
– the right to set performance objectives, under Article 40 (1)(f) of the Labour Code. Deliberately setting unrealistic objectives so that they cannot be achieved constitutes conduct marked by bad faith;
– the right not to disclose certain sensitive information concerning the undertaking's economic situation (Article 40 (2)(d) of the Labour Code). This right is regulated against the background of the duty to communicate periodically the undertaking's economic and financial situation; the provision constitutes an exception to that duty. The sensitive nature of the information for which disclosure is refused may be challenged in court; as there are no legally established benchmarks here, the employer's good faith in determining this set of information may be taken into account;
– the right to schedule annual leave. Although, under Article 148 (1) of the Labour Code, the scheduling of annual leave is a managerial prerogative of the employer, requiring only consultation of the trade union or employees' representatives for collective schedules, and consultation of the employee for individual schedules, the employer may not abuse this right by scheduling the employee in a given period against the employee's will, for vexatious purposes unrelated to objective production interests, etc.

As regards the employee, bad faith may be manifested in the exercise of rights such as:
– the right to resign. Resignation is an expression of the constitutional right to work, in its negative dimension: the right not to work, to cease work at any time. However, if the purpose pursued by the employee in exercising this unilateral right, enshrined in Article 81, is to prejudice the employer—for example, by choosing the timing of cessation so as to produce maximal harm—one may speak of an abuse of right. The consequence could not, of course, consist in annulling the resignation and compelling the employee to continue to work, but could consist in compensation;
– the right to take annual leave. An employee who refuses to take annual

leave for the purpose of obtaining monetary compensation for untaken leave upon the future termination of the individual employment contract commits an abuse of right. Moreover, in Case C-619/16 Kreuziger, the Court of Justice of the European Union held that Article 7 of Directive 2003/88/EC must be interpreted as permitting the extinction of the right to paid annual leave and of the right to the corresponding allowance where the employee did not request leave before termination of the employment relationship, provided the employer effectively enabled the employee to exercise that right and duly informed the employee of the consequences of failing to use it.

b) Failure to provide information relevant to the conclusion of the individual employment contract (other than that for which there is a statutory duty of disclosure). Good faith requires the employer to communicate information beyond that expressly provided by law, such as informing the candidate of the employer's current or imminent insolvency, or informing the candidate about how artificial intelligence is to be used in the performance of the employment relationship.
As regards the confidentiality of these obligations, as shown above, the concept of good faith is not relevant where the duty of confidentiality is laid down by law, nor is it relevant where it stems from a confidentiality agreement between the parties. But beyond these, where there is neither an explicit statutory duty nor a contractual duty assumed, disclosure of information concerning the other contracting party constitutes a breach of the general principle of good faith.

c) Reinstatement. An employee reinstated by the court following the annulment of a dismissal decision cannot rely on the absence of an express invitation from the employer to appear at work, the absence of a reinstatement decision, the employer's failure to amend the organisational chart, the employer's failure to pay court-ordered compensation, etc., in order to justify the employee's own passivity in complying with the judgment and in performing the obligations arising under the individual employment contract reactivated by that judgment.

Moreover, under Article 435 of the Civil Procedure Code, a court judgment is binding on the parties; it cannot bind only the employer while the employee bears no obligation, despite having expressly sought reinstatement/restoration of the parties to the situation prior to the dismissal decision (Summary of the meeting of the presidents of the labour and social security law divisions, 2022).

In other words, the conduct of an employee who does not report to work despite being aware of the reinstatement judgment is marked by bad faith, and the employee's absences may be deemed unauthorised.

d) Disciplinary investigation. One example is the time-limit within which the employee must be summoned to the disciplinary investigation, which Article 251 (2) of the Labour Code does not specify. This has sometimes allowed courts to annul disciplinary sanctions on the ground that, the employee having been summoned on short notice, there was insufficient time to prepare a defence. This is an application of the principle of good faith and its converse, namely the possibility of invoking the employer's bad faith for failing to afford the employee adequate time. Had the law provided an express time-limit, such an assessment would not have been possible.

e) Collective redundancies. Article 69 (1) of the Labour Code provides that where the employer intends to effect collective redundancies, it must initiate, in good time and for the purpose of reaching an agreement, consultations with the trade union or, as the case may be, with employees' representatives, under the conditions laid down by law. The use of the expression "in good time" permits an assessment of the good faith with which the employer commenced consultations.

f) Moral damages. The employer's bad faith is particularly relevant in determining the quantum of moral damages where the employer has caused the employee non-pecuniary harm. The court will assess the amount of compensation by reference to the gravity of the employer's conduct, the intensity and duration of the adverse consequences for the

employee, the context of the employment relationship and the specific vulnerability of the person harmed. In this way, proof of bad faith may justify higher compensation, proportionate to the actual harm suffered.

Conclusions

The analysis carried out has shown that, although enshrined as a general principle of law and expressly mentioned in Article 8 of the Labour Code, good faith has a far narrower scope of application in employment relations than in common law. This is explained by the legislator's choice to regulate in detail the obligations of the parties, thereby reducing to a minimum the margin of appreciation left to the courts regarding the subjective conduct of the employer or the employee. Thus, in many situations – dismissal, probationary period, the duty of loyalty, confidentiality, unfavourable treatment or the determination of compensation – good or bad faith becomes irrelevant, since the legal effects are determined directly by statute. Breach of the rule attracts the sanction provided, irrespective of the party's intention or motivation.

There are, however, situations in which good faith retains its relevance: the exercise of potestative rights by the employer (recall from leave, secondment, setting performance objectives, scheduling leave), the exercise of rights by the employee (resignation, taking annual leave), the pre-contractual duty of disclosure, compliance with a reinstatement order, the conduct of disciplinary investigations or consultations in the case of collective redundancies. In these instances, the absence of precise statutory benchmarks requires the court to assess the parties' conduct through the prism of good faith, and the absence of such good faith may give rise to sanctions or compensation.

Special attention should be paid to situations in which the employer resorts to algorithmic control. In such a context, employees' reactions – sometimes characterised as "algo-activism" – cannot be considered manifestations of bad faith in the absence of clear regulation of the use of algorithms and of the employer's duty to inform workers. The law cannot demand unilateral loyalty, and employees' reactive conduct cannot be

legally sanctioned so long as the rules of transparency and information are not observed by the employer.

In conclusion, the role of good faith in labour law is residual: it operates only in the silences of the law, where the conduct of the parties is not expressly regulated. The more labour legislation develops and becomes detailed, the smaller the scope of the principle of good faith. Yet these "islands" of applicability remain essential, as they temper discretionary conduct and ensure balance between the parties in situations where the law is silent or couched in general terms.

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