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MINISTRY OF EDUCATION

“TITU MAIORESCU” UNIVERSITY

**“ABUSE OF RIGHTS. IMPACT ON INDIVIDUAL EMPLOYMENT
RELATIONS. SANCTIONS AND EFFECTIVE METHODS FOR RESTORING
LEGAL BALANCE.”**

DOCTORAL THESIS

SUMMARY

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I. INTRODUCTORY CONSIDERATIONS

The present doctoral thesis represents a theoretical and practical scientific research that aims to analyze the imbalance of legal relations generated by the abusive exercise of legal norms with practical application in labor law relations, as well as the existence and/or effectiveness of sanctions and methods aimed at restoring legal balance.

The chosen research topic represented a natural stage in the course of research conducted in the professional field, specifically in the area of abuse of rights in labor relations, but also in the civil process carried out before national and European courts.

Abuse of rights has been and remains a current theoretical and practical research topic that engages a series of legal mechanisms in an attempt to diminish or eliminate its effects. Situated at the immediate boundary of excessive exercise of rights, abuse of rights produces a series of negative consequences for the recipient(s) (whether patrimonial or non-patrimonial), and the efforts of practice and doctrine to identify, propose, and create a normative framework for the application of effective sanctions are notable.

The relevance of the present doctoral thesis topic is closely related to the theoretical and practical importance of issues related to the qualification of the exercise of subjective rights as abuses of rights in the context of labor law relations.

The topicality of the subject is also emphasized by the need to particularize the concept of abuse of rights in this field, given legislative instability, the paradigm shift in labor relations, and the reinterpretation of good faith in the legal conduct of legal subjects. Abuse of rights is a constant presence in legal life, and there is a general tendency towards its use, justifying any type of conduct to the detriment of the right holder's interest. Moral norms are increasingly less perceived as virtues, especially in certain environments.

To identify the damage-generating nature of abuse of rights in labor law relations, the criteria include the subject's exclusive intent to act to the detriment of third parties (the harassment criterion), the contradiction between the subject's behavior and the principle of good faith, as well as the social purpose of the right, among others. The assessment of actions as abuse of rights in courts remains difficult, as these criteria are often abstract and require a complex and multifaceted analysis of the phenomenon in the specific context of labor law relations.

In the absence of a general vision of the essence, distinctive signs, and forms of manifestation

of abuse of rights in this field, a complex and multifaceted examination of this phenomenon and the determination of the content of this concept become necessary. This work aims to investigate abuse of rights both exhaustively, from the perspective of legal nature and sanctions, and in a particularized manner, within the specific framework of individual labor law relations.

The project aims to research abuse of rights as a specific category of private law, with specific references to labor law as a special branch and to civil law as a general branch, thus outlining an image of the phenomenon and its effects, both doctrinally and jurisprudentially. To achieve the proposed goal, the following objectives of the work are appropriate: the historical approach to the origin and evolution of the category of abuse of rights; the presentation of the concept and the establishment of theoretical and practical aspects related to the delimitation of the use of rights, abuse of rights, and abuse of power; the analysis of abuse of rights in individual labor relations; the sanctioning of abuse of rights and legal remedies for restoring legal balance.

The results obtained in this research make a significant contribution to understanding the phenomenon of abuse of rights in the context of individual labor relations, aiming to eliminate unfounded legal clichés—particularly regarding the innocence of employees, as well as the category of rights that can be abusively exercised.

Thus, the scientific novelty of the work derives from the effort to explore the interaction between employee and employer, emphasizing situations in which the protected employee can play the role of the "abuser" of rights, as well as situations in which potestative rights are susceptible to abusive exercise, contrary to the majority doctrinal opinions.

Within the research, the following aspects were carefully analyzed:

- The normative-legal basis was identified for a comprehensive understanding of current legislative regulations regarding abuse of rights in private law.
- Various theoretical approaches to the correlation between objective law and subjective law, the use and abuse of rights, as well as the classification of forms of abuse of rights in the context of labor relations, were analyzed.
- The evolution of the institution of abuse of rights was examined—from its denial to its regulation and use in a wide range of legal situations, including in the case of discretionary rights.
- The theoretical and practical aspects of abuse of rights in individual labor relations were examined.
- Conclusions and recommendations were formulated to improve the fight against abuse of rights in the context of labor relations, emphasizing the need to continue research in this

direction to address current issues encountered in legal practice.

The scientific problem solved consists in the development of tools for identifying and scientifically substantiating the category of abuse of rights from the perspective of individual labor relations and the discretionary rights on which these relations are based, leading to the clarification of its distinctive signs in order to assess the impact of abuse of rights on the exercise of subjective rights.

The theoretical importance and practical applicability of the thesis derive from the results and conclusions obtained during the research of theoretical and practical aspects of the issue of abuse of rights and present a series of solutions with clear theoretical and practical value.

The practical applicability of the research lies in the possibility of applying the results in the activities of legal protection bodies, legislative creation bodies for the improvement of existing legislation, and the forms and methods of combating abuse of rights.

The structure of the work is determined by its content, the purpose, and the objectives of the doctoral thesis investigation and is subordinated to a research logic. The work consists of an introduction, six chapters, general conclusions and recommendations, and a list of bibliographic sources.

II. SCIENTIFIC RESEARCH METHODS

1. Objectives of the Doctoral Thesis

The present doctoral thesis aims to analyze, in a detailed and interdisciplinary manner, the concept of abuse of rights in labor law, investigating its origin, evolution, and contemporary manifestations in labor relations. In the context of socio-economic dynamics and technological advancements, this topic holds particular importance, as the abusive exercise of rights recognized by law, whether by the employer or the employee, can lead to major imbalances in labor relations and affect their stability.

The analysis starts from the foundations of subjective rights and the limits of their exercise, demonstrating that although holders of subjective rights benefit from a broad margin of action, there are limits imposed by good faith, public order, and the purpose for which these rights were granted. Therefore, the thesis seeks to clarify the moment when the exercise of a legally recognized right becomes abusive and to identify objective criteria for distinguishing abuse of rights from the legitimate exercise of legal prerogatives.

A central aspect of the research is the impact of abuse of rights on labor relations, analyzing concrete cases of abuse committed by employers (e.g., abusive dismissals, unilateral modification of the contract, imposition of restrictive clauses) and employees (e.g., abusive use of the right to leave, refusal to fulfill job duties under the pretext of protecting individual rights, abrupt resignation aimed at harming the employer).

Particular attention is given to the methods of sanctioning abuse of rights, namely the legal liability applicable in cases of violations of the norms regarding the correct exercise of rights in labor relations.

The thesis also aims to formulate legislative proposals that would allow better protection of the rights of employees and employers against abuses and provide courts with clear criteria for identifying and sanctioning the abusive exercise of rights.

2. Research Methods Used

To achieve the proposed objectives, scientific research was conducted using several analytical methods designed to ensure a broad and multidimensional understanding of the issue of abuse of rights in labor law.

The **documentation method** was used to analyze applicable legal sources (the Constitution, the

Labor Code, European Union legislation, international conventions applicable to labor relations) and relevant doctrinal works. Additionally, the regulatory framework of other branches of law (civil law, criminal law, administrative law) was examined insofar as they have implications for the sanctioning of abuse of rights in labor law.

The **historical method** was used to analyze the evolution of the concept of abuse of rights and its integration into the legal doctrine of labor relations. The study highlighted how this concept was shaped in different legal systems and how mechanisms for preventing and sanctioning abuses have developed.

It is noteworthy that in historical periods when labor relations were highly asymmetric (e.g., forced labor systems or the rigid labor relations of the 19th century), the concept of abuse of rights was either non-existent or interpreted in a manner favorable to the employer. Subsequently, with the recognition of employees' rights and the consolidation of the principle of their protection, abuse of rights became a crucial issue in jurisprudence.

The **logical method** was applied in analyzing legal arguments, constructing reasoning, and distinguishing abuse of rights from other related legal concepts, such as fraud against the law, mobbing, moral harassment, and unlawful acts. This method allowed for the formulation of objective criteria for identifying situations in which rights are exercised abusively and contrary to their social purpose.

The research was also conducted from an **interdisciplinary perspective**, considering that regulations on abuse of rights in labor law are influenced by provisions from other branches of law, particularly civil law and European law.

The **comparative method** was used for the analysis of comparative law, identifying how different legal systems address the issue of abuse of rights in labor law. In this regard, the jurisprudence of the Court of Justice of the European Union was analyzed concerning the solutions adopted in the matter of abuse of rights.

III. STRUCTURE OF THE THESIS

The thesis begins with an **Introduction** (Introductory Chapter), which presents the purpose and importance of the subject. Abuse of rights is a relatively controversial legal institution, positioned at the intersection of the right holder's freedom to exercise subjective rights and the limits imposed on this exercise in accordance with the principles of legality, good faith, and public order. Framing this issue within labor law raises questions about the balance between the employer's prerogatives and the employee's recognized rights. Since labor relations are characterized by legal subordination, the possible abusive exercise of rights by either party becomes not only a topic of theoretical reflection but also a practical issue with direct implications for social balance and the jurisprudence of national and European courts.

The main objectives and hypotheses of the thesis start from the premise that abuse of rights can be identified and sanctioned in almost all branches of law. However, the particularities of the employment relationship (with an emphasis on freedom of labor, the principle of subordination, and employee protection) highlight the need for an in-depth analysis. Methodologically, the research combines descriptive and comparative methods, case law studies, and doctrinal analysis to provide a holistic perspective on the concept of abuse of rights.

In **Chapter 1**, the paper introduces the conceptual foundations of abuse of rights, starting from the nature and classification of subjective rights, which are considered the premise for any possible abuse. The subject is addressed through a discussion on subjective rights and objective rights, as well as their interdependence.

Chapter 2 clarifies the notion of abuse of rights in the general doctrinal and legislative context before applying it specifically to labor law. It addresses aspects related to the exercise of rights, the recognition and denial of abuse of rights, distinctions from similar institutions, and the compatibility of potestative rights with the notion of abuse of rights.

In **Chapter 3**, the focus shifts to European Union law, where the concept of abuse of rights has taken shape, particularly through the case law of the Court of Justice of the European Union (CJEU).

Chapter 4 delves into the applicability of the theory of abuse of rights in the individual employment contract, highlighting the specificities of the employment relationship concerning the individual employment contract and the freedom of labor. This chapter extensively analyzes situations where the hypothesis of abuse of rights can be identified as originating from both the employer and the employee—at the conclusion of the employment contract, during its execution, and upon its

termination.

Chapter 5 provides a series of clarifications regarding situations frequently invoked in practice as abuses of rights, which, upon closer examination, do not fall within the rigorous definition of abuse and are thus false hypotheses of abuse of rights.

The final substantive chapter, **Chapter 6**, analyzes legal liability in cases of abuse of rights and the remedies applicable in labor law, addressing the forms and legal nature of liability, the conditions for liability for abuse of rights, as well as alternative remedies and applicable sanctions.

The thesis concludes with a synthetic chapter on **Conclusions and proposals for lege ferenda**, reiterating the need to adapt labor legislation to socio-economic realities and the European Union's requirements concerning employee protection and the free movement of labor.

The following proposals are made:

- The explicit introduction of a definition of abuse of rights in the **Labor Code**, aligned with the definition in the **Civil Code**.
- The amendment of procedural rules so that judges may analyze ex officio the existence of abusive conduct in labor disputes, with the possibility of applying pecuniary sanctions when abuse is evident, as well as the expansion of the **Territorial Labor Inspectorates'** powers in the field of abuse of rights.
- The diversification of sanctions and the emphasis on the possibility of resorting to **immediate remedial measures**(reinstatement, compensation, moral damages).
- The creation of **mechanisms to prevent abusive situations** (e.g., recommendations for transparent employee information, monitoring of dismissal decisions within joint committees, etc.).

The study concludes that **better regulation and awareness** of the concept of abuse of rights in the field of labor relations would strengthen the balance between the employer's legitimate interests (economic efficiency, workplace discipline) and employees' fundamental rights (the right to dignity, security, and stability at work, respect for private life). By integrating principles derived from national and **Court of Justice of the European Union jurisprudence**, as well as existing doctrines, Romanian labor law could better address new socio-economic challenges.

Finally, the paper presents an **extensive bibliography** (domestic and international legal doctrine, national and European case law), which highlights the rigor of the research and anchors the author's arguments in existing scientific analysis. **Annex 1** includes a concrete proposal for the amendment and supplementation of the **Labor Code**, intended to provide a working tool for legislators, practitioners, and researchers interested in developing a legal framework that more

effectively addresses cases of abuse of rights.

From the perspective of originality, the paper offers a **systematic approach** to abuse of rights in labor relations, a field in which the tension between legal subjects with asymmetric powers and interests (employer–employee) necessitates **strict protection standards and a clear legal framework**. The research adds **practical value** by identifying concrete hypotheses in which courts should recognize the existence of abuse of rights, as well as others where its invocation is unfounded.

Thus, the **contribution of the thesis** to scientific knowledge lies in shedding light on an **integrated perspective** on abuse of rights, from its theoretical foundations to concrete solutions for abusive practices encountered in Romanian and European Union jurisprudence.

IV. SUMMARY OF THE THESIS

The paper begins with an introduction aimed at presenting the purpose and importance of research on the abuse of rights in labor relations. This legal topic lies at the intersection between the exercise of the holder's freedom regarding a subjective right and the limits imposed by the normative framework, the principles of legality, good faith, and public order. The abuse of rights constitutes a controversial concept in doctrine, as it involves a situation in which a right recognized by law is exercised in a manner that contradicts its social purpose, causing harm to other legal subjects.

Regarding the applicability of this concept in labor law, the issue becomes particularly relevant since labor relations are characterized by a subordination relationship between employer and employee. This natural power imbalance creates a framework in which the abuse of rights may occur on both the employer's and the employee's side. On the one hand, the employer may abuse its managerial prerogatives by imposing excessive or unreasonable measures that affect the fundamental rights of employees. On the other hand, the employee may also abusively exercise certain rights, such as unjustifiably refusing to perform work tasks or resigning abruptly, which could harm the employer's activity.

The main objective of the research is to identify the limits of exercising rights in labor relations, to clearly define the notion of abuse of rights, and to propose legislative and jurisprudential solutions for preventing and sanctioning this phenomenon. The hypothesis from which this paper starts is that the abuse of rights, although present in all branches of law, takes on distinct particularities in labor law due to the fragile balance between freedom of work, the principle of subordination, and employee protection.

To understand the mechanism through which the abuse of rights may intervene in labor relations, a preliminary analysis of subjective rights and their interaction with objective law is necessary. Subjective rights represent the set of prerogatives recognized for a natural or legal person, while objective law designates the entirety of legal norms that regulate these prerogatives.

The interdependence between these two forms of law is fundamental, as subjective rights cannot be exercised arbitrarily but only within the limits imposed by objective law. This interaction implies that the holder of a right may dispose of it only to the extent that they respect legal order, good faith, and the purpose for which that right was established by law. When these limits are breached, the exercise enters the sphere of the abusive exercise of rights, a phenomenon that requires appropriate

legal sanctions.

From a doctrinal perspective, subjective rights are explained through several fundamental theories. The interest theory asserts that subjective rights exist to protect a legitimate interest of the holder, while the will theory emphasizes that subjective rights are an expression of individual freedom to act. A synthesis theory, the theory of the conjunction between will and interest, argues that subjective rights combine both the dimension of the interest protected by law and the holder's capacity to exercise them.

Beyond these theoretical foundations, the classification of subjective rights is essential for understanding the diversity of forms in which abuse of rights may occur. Thus, there are absolute and relative rights, patrimonial and non-patrimonial rights, public and private rights, as well as certain and uncertain rights. Each of these categories may be affected by the abusive exercise of prerogatives recognized by law, which justifies the necessity of a clear normative framework that distinguishes the legitimate use of rights from their excessive or illicit use.

An important conclusion of this chapter is that the abusive exercise of a subjective right may occur in any legal context, but in labor relations, where the balance between employer and employee is essential, the phenomenon is even more relevant. Under these conditions, the analysis of the concept of abuse of rights must take into account the particularities of the employment relationship and the necessity of ensuring a fair framework for both parties.

Before applying the concept of abuse of rights in the field of labor, it is essential to clarify it from both a doctrinal and legislative perspective. The exercise of a right is not, by definition, legitimate merely because it is recognized by law; on the contrary, when a right is used in an excessive and unreasonable manner or contrary to good faith, it may be considered an abuse.

The analysis of this concept requires a distinction between the normal exercise of a right and its abusive exercise. The mere fact that a person holds a right does not mean that they can exercise it in any circumstances and regardless of its effects on others. The holder of a right must consider the legality of their actions, the principle of good faith, and respect for public order.

From a doctrinal perspective, there are several theories that explain the existence and sanctioning of abuse of rights. The subjective theory considers that abuse of rights occurs when the holder exercises their right with the intent to harm another person. The objective theory, on the other hand, asserts that proving intent is unnecessary; rather, it is sufficient to establish that the right was used in a manner exceeding its normal purpose. Another theory equates abuse of rights with tortious civil liability, considering that the abusive exercise of a right is similar to committing an unlawful act.

Currently, abuse of rights represents a fundamental concept in civil law and has an express

regulation in Romanian legislation, being enshrined in Article 15 of the Civil Code. According to this legal provision, no one may exercise a subjective right in an excessive or unreasonable manner, contrary to good faith, or with the purpose of harming or injuring another person. This legal formulation highlights the essence of abuse of rights, namely the use of a legal prerogative in a way that exceeds its natural limits, thereby transforming an apparently legitimate act into an illicit action from both a legal and moral perspective.

The concept of abuse of rights can be analyzed from multiple perspectives, considering the identification criteria and the necessary conditions for establishing its existence. A primary essential element in qualifying a legal act as abusive is the exercise of a subjective right beyond its internal limits, specifically in an excessive or unreasonable manner. In this regard, the holder of a right recognized by law cannot exercise it without any restriction but must respect the social and legal purpose for which that right was granted. Any abusive exercise that unjustifiably affects the legitimate interests of another person may fall within the scope of abuse of rights.

A second essential criterion is the exercise of the subjective right with the purpose of harming another person. In this hypothesis, the legal subject's intent is not to effectively exercise their right but to cause harm to a third party. For example, in labor relations, an employer who decides to dismiss an employee not based on objective performance criteria but solely to punish them for a legitimate claim they previously made may be considered to have acted in bad faith, abusively exercising their right to dismissal.

Finally, another defining element of abuse of rights is its exercise contrary to good faith. Unlike the hypothesis of exercising a right in bad faith—which involves the deliberate intent to cause harm—the exercise of a right contrary to good faith does not necessarily imply the intention to cause harm but may also be based on simple fault, manifested through negligence or a lack of diligence in maintaining the legal balance between parties. This interpretation is extremely important, as it confirms that abuse of rights does not necessarily have to result from a fraudulent or malicious act but can also arise from an imprudent or disproportionate use of a legally recognized right.

Therefore, the current regulation of abuse of rights highlights that this legal concept functions as a limitation on subjective rights to protect equity and social relations. The law is not an instrument for the arbitrary exercise of individual prerogatives but a system of rules that must ensure proportionality, rationality, and respect for the legitimate interests of all parties involved in a legal relationship. Thus, by applying the principle of prohibiting the abuse of rights, situations in which a right is used as a means of oppression or harm are avoided, ensuring a fair and balanced legal framework.

The concept of abuse of rights must be analyzed in relation to other legal institutions that, although seemingly similar, present essential distinguishing characteristics. These distinctions are necessary to clarify how the excessive exercise of a subjective right differs from other forms of abusive or unlawful legal conduct.

A first distinction must be made between abuse of rights and abuse of power. Abuse of rights refers exclusively to situations in which the holder of a subjective right exercises it in a manner that exceeds the reasonable limits imposed by legal order, good faith, and the purpose for which the right was granted. By contrast, abuse of power involves the excessive or discretionary use of a specific competence by a public authority. In this case, the competent authority exceeds its legal attributions or exercises its competences in a manner that contravenes the principles of impartiality and legality. Abuse of power is most commonly encountered in administrative law, whereas abuse of rights appears predominantly in civil and labor relations.

Another relevant distinction is between abuse of rights and fraud against the law. Although both concepts involve a distorted use of legal prerogatives, fraud against the law entails a legal maneuver through which the application of a mandatory norm is avoided, pursuing a result that would otherwise be prohibited by law. In the case of fraud against the law, the legal subject conceals their real intention by using legal mechanisms, thus circumventing the application of a stricter norm. For example, in labor law, an employer who repeatedly renews fixed-term employment contracts to avoid the obligations associated with an indefinite-term contract is guilty of fraud against the law. By contrast, abuse of rights does not necessarily involve circumventing a legal norm but rather a distortion of the purpose for which the right was granted.

Another important aspect is the differentiation between abuse of rights and an illicit legal act. While abuse of rights involves the exercise of a right recognized by law but in an abusive or disproportionate manner, an illicit legal act involves the violation of a right recognized by law and is, by definition, illegal. The latter may take various forms, from tortious acts to contractual breaches. For example, in the case of an employer who dismisses an employee without following legal procedures, the committed act is a direct violation of labor legislation rather than merely an abusive exercise of a right.

A particularly relevant situation in labor relations is the phenomenon of mobbing, which, although it has points in common with abuse of rights, must be analyzed as a distinct phenomenon. Mobbing represents a form of psychological harassment in the workplace, characterized by repeated and systematic actions aimed at intimidating, marginalizing, or eliminating an employee from the work environment. What is specific to this phenomenon is that the individual actions that make up

mobbing are not, in themselves, illegal, but when taken together, they acquire an abusive and persecutory character. For example, repeatedly assigning humiliating tasks, social isolation, or imposing unrealistic execution deadlines can constitute forms of mobbing, even if each of these actions, when analyzed separately, does not appear to violate any express legal norm.

In conclusion, distinguishing abuse of rights from other related concepts is essential for the correct application of legal norms and for determining the liability of legal subjects. Abuse of power remains specific to authority relationships, fraud against the law involves circumventing mandatory norms, an illicit legal act entails a direct violation of objective law, and mobbing is a form of systematic workplace harassment with devastating psychological and professional effects. Clarifying these distinctions allows for the correct identification of each phenomenon and the adoption of appropriate preventive and sanctioning measures within labor legislation and civil law in general.

Potestative rights, also known as discretionary rights, grant the holder the legal power to modify, extinguish, or create a legal situation through a unilateral act, without requiring the consent of another party. Unlike other categories of subjective rights, potestative rights do not involve voluntary interaction between legal subjects but rather an exclusive prerogative of the holder, who acts based on a competence expressly conferred by law. In this sense, potestative rights are not limited by internal factors, as the purpose for which the law recognizes them is to satisfy a material or spiritual interest of the holder, without imposing restrictions regarding the rationale for exercising them.

In doctrine, it has been argued that, precisely due to the lack of internal limits, potestative rights would be conceptually incompatible with the notion of abuse of rights. This theory is based on the premise that abuse of rights involves excessive exercise or deviation of a right from its social purpose; however, in the case of potestative rights, such control cannot be applied, as their exercise is defined exclusively by compliance with the external conditions established by legal norms. According to this perspective, the exercise of a potestative right is valid as long as its conditions of existence are met, and any assessment of the legality of such a right should be limited to verifying compliance with the normative provisions regulating it, without examining the holder's intent or purpose.

Another doctrinal approach suggests that good faith is a fundamental condition for the valid exercise of a right, including potestative rights. In this view, the absence of good faith would lead to the sanctioning of the exercise of potestative rights by declaring the resulting legal act null. However, this theory raises conceptual issues, as if good faith were considered a preexisting and absolute condition for exercising a potestative right, this would imply an indirect restriction of the holder's prerogative, transforming it into a competence subject to permanent judicial scrutiny. This perspective would result in an artificial limitation of legal freedom, which could affect the principle of security in

private law relationships.

Critically analyzed, the theory of incompatibility between potestative rights and abuse of rights undermines the stability of legal relationships by attempting to create an artificial distinction between different categories of subjective rights. Good faith is a general principle of law and operates with a relative presumption in all legal relationships, regardless of the nature of the exercised right. In this logic, considering good faith as a distinct condition applicable exclusively to potestative rights and not to other subjective rights would invalidate the principle of good faith as a generally applicable norm in private law.

A practical consequence of this theory would be the restriction of free access to justice by creating a false inadmissibility of claims seeking recognition of abuse of rights in the case of potestative rights. This would mean that persons affected by a potential abuse in the exercise of such a right would not have judicial control mechanisms available, being prevented from demonstrating the disproportionate or unreasonable nature of the potestative right's exercise by its holder.

In relation to the current regulation of abuse of rights, judicial analysis of how a potestative right has been exercised should be permitted, particularly to verify whether the holder's intent and actions were reasonable and whether they were conducted in accordance with the principle of good faith. This approach would allow courts to assess whether the holder of a potestative right caused harm through excessive exercise or contrary to its legitimate purpose, thereby providing adequate protection to affected parties. In conclusion, interpreting potestative rights beyond any control regarding good faith would not only create a legal protection void but would also contradict the general principles of civil law, which require that any right be exercised in accordance with equity and the requirements of legal order.

In European Union law, the concept of abuse of rights has been clearly defined, particularly through case law (CJEU). A primary aspect analyzed is how the CJEU has enshrined the fundamental principle of prohibiting abuse of rights, emphasizing that rights provided by Union legislation cannot be used in a manner that contravenes the spirit and objectives of European Union treaties or directives. This interpretation provides a legal framework for preventing and sanctioning situations in which legal provisions are abusively used under the pretext of exercising a right formally recognized by community legislation.

A significant portion is dedicated to analyzing CJEU case law, with a focus on landmark cases such as *Van Binsbergen*, *Hannover*, *Diamantis*, *Emsland-Stärke*, *Eichsfelder*, and *Halifax*. These cases have contributed to clarifying the criteria for identifying abuse of rights in various fields, including fundamental freedoms of movement, customs and tax policies, as well as other essential

aspects of Union law. Based on this case law, a two-step test has been consolidated by the CJEU to determine the existence of abuse of rights. The first step involves identifying an objective element, demonstrating that the invoked situation does not correspond to the purpose pursued by the applicable community norm. The second step consists of identifying a subjective element, which reflects the legal norm beneficiary's intent to obtain an unjustified advantage contrary to the regulatory objective.

The application of the concept of abuse of rights, from the perspective of European Union law, also applies in the field of labor law. Its interpretation is analyzed in relation to regulations concerning fixed-term employment contracts, the principle of non-discrimination, and the phenomenon known as bogus self-employment (false self-employment). Thus, the Court of Justice has confirmed that, in EU labor law, mere formal compliance with a community provision does not exclude the existence of abuse if its application contravenes its social purpose and the fundamental principles protecting employees. This perspective reflects the European Court's concern with ensuring a balance between the exercise of rights recognized by EU legislation and preventing their use in a way that undermines the objectives of labor legislation and the real protection of workers.

In labor relations, abuse of rights must be analyzed in light of the general principles of law as well as the particularities of labor as a legally regulated activity. The abusive exercise of a right can take multiple forms, whether it involves moral harassment, the abusive sanctioning of an employee, the abusive use of leave entitlements, the unjustified refusal to perform work, or other behaviors that contradict the purpose of the employment relationship. Such an approach not only allows for the clear identification of cases of abuse but also for the proposal of effective prevention and sanctioning mechanisms.

The application of the concept of abuse of rights in the field of labor raises numerous theoretical and practical issues, given the particularities of this legal relationship, which is defined by the subordination relationship between employer and employee. The exercise of rights in this context cannot be absolute, as a balance between the prerogatives of each party is necessary. Thus, any excess in the exercise of a right can create a significant imbalance and affect the stability of labor relations.

The field of labor law is one in which abuse of rights can occur on both the employer's and the employee's side. From the employer's perspective, there can be numerous manifestations of abuse of rights, such as abusive dismissal, the unilateral modification of the individual employment contract, the imposition of restrictive clauses in employment contracts, or the use of disciplinary sanctions to discourage employees from exercising their legal rights. On the other hand, the employee may also abusively exercise their rights, such as unjustified use of leave entitlements, refusal to perform work tasks, filing unfounded claims or demands, or even abrupt resignation with the intent to harm the

employer.

Within the framework of the individual employment contract, freedom of work is a fundamental principle enshrined in the Constitution as well as in national and international legislation. However, this freedom is not absolute but must be balanced against the employer's right to organize and manage economic activity efficiently. Thus, if an employer abusively exercises their right to determine working conditions by imposing unreasonable rules or sanctioning employees without clear justification, they may be found guilty of abuse of rights.

One of the most common cases of abuse of rights in labor law is the abuse of rights concerning the termination of the employment contract. Employers may use various means to circumvent the legal provisions regarding employee protection, such as abusive dismissal under the pretext of job elimination, the use of the probationary period as a mechanism for easily removing employees without complying with dismissal procedures, or the abusive exercise of the right to notice.

The amendments made to the Labor Code in 2006 introduced increased flexibility regarding job eliminations, removing the exhaustive list of reasons that could justify a dismissal for causes unrelated to the employee. This legislative change expanded the employer's possibilities to restructure activities; however, at the same time, it created a framework conducive to abuse. The practical difficulty in identifying such abuses lies in analyzing the real and serious nature of the reason invoked by the employer. If it is proven that the reason for dismissal lacks an objective basis, the situation either constitutes an abuse of rights or a case of illegality. Thus, judicial review is limited to aspects of legality, without the possibility of intervening in the employer's discretionary decision.

On the other hand, employees may also abuse their rights upon termination of the contract, such as by resigning abruptly with the intent to cause harm to the employer or by abusively using reinstatement mechanisms to obtain undue advantages.

Another sensitive area where abuse of rights is frequently encountered is the abusive exercise of rights during the execution of the employment contract. The employer may use its managerial prerogatives in a way that exceeds reasonable limits, such as abusive delegation or secondment, unilateral modification of the workplace or work schedule, the imposition of unreasonable working conditions, or the abusive restriction of access to leave and benefits. At the same time, the employee may also excessively exercise their rights, such as by abusively requesting salary or promotion advantages, unjustifiably refusing to perform work, using strikes as a means of pressure for personal purposes, or abusively exercising the right to leave.

A distinct category of abuse of rights in labor law is moral harassment in the workplace, which may be manifested through repeated behaviors intended to intimidate, humiliate, or psychologically

affect an employee. The employer may abuse its right to control and discipline in order to harass an employee, either directly or through hierarchical superiors. Likewise, an employee may also abusively exercise certain rights to destabilize the activity of colleagues or the employer, creating a hostile work environment.

In addition to situations where abuse of rights is evident and can be sanctioned, there are also cases where the exercise of a right is perceived as abusive, even though, in reality, it does not meet the specific criteria for abuse of rights. These situations generate confusion and may lead to the incorrect application of sanctions.

One of the most common false hypotheses of abuse of rights is represented by the employer's exercise of the right to impose disciplinary sanctions on the employee. In many cases, employees challenge disciplinary sanctions, invoking the existence of an abuse of rights, even when the measure is not, in reality, excessive or unjustified. If the sanction is applied in accordance with legal provisions and is proportional to the committed act, it cannot be considered that the employer has committed an abuse of rights.

Another false hypothesis of abuse of rights may be the termination of the employment contract during the probationary period. Some employees consider that terminating the employment relationship during this period constitutes an abuse by the employer; however, labor legislation explicitly provides that contract termination during the probationary period may occur without justification, precisely to allow the employer to evaluate the employee's competencies. If the contract termination is carried out in good faith and without the intent to harm the employee, it cannot be considered an abuse of rights.

Additionally, the employee's use of paid leave is sometimes perceived as an abuse of rights, particularly in cases where the employee requests leave during a critical period for the employer's activity. In reality, the right to leave is fundamental and recognized by legislation, and an unjustified refusal to grant leave may constitute a violation of the employee's rights.

In cases where an abusive exercise of a right is established, it is necessary to apply sanctioning and remedial mechanisms to restore legal balance. In labor law, liability for abuse of rights can take several forms, including civil, disciplinary, or even criminal liability, depending on the severity of the committed act.

One of the most effective sanctions applicable in cases of abuse of rights is the annulment of abusive legal acts, such as unjustified dismissal decisions, disciplinary sanctions imposed in bad faith, or abusive contractual clauses. Additionally, if an employee has suffered harm due to an abuse of rights, the employer may be required to pay material and moral damages intended to compensate for

the negative effects of the abusive action.

In labor relations, alternative dispute resolution mechanisms, such as mediation and conciliation, also play an important role. These mechanisms allow for the amicable resolution of situations where abuse of rights has been invoked, without the need for court intervention.

The analysis conducted in this study highlights that abuse of rights in labor relations represents a current legal issue with significant implications for the balance between the interests of employers and employees. The study has demonstrated that the exercise of a subjective right, although legally recognized, cannot be absolute but must respect the principles of good faith, public order, and the purpose for which the right was established. In the absence of these limitations, there is a risk that a legitimate right may be transformed into an instrument of oppression or harm to others, which constitutes the essence of abuse of rights.

In labor relations, abuse of rights can manifest on both the employer's and the employee's side. From the employer's perspective, the main forms of abuse include abusive dismissal, the use of disciplinary sanctions for punitive purposes, the imposition of restrictive contractual clauses, or the unilateral modification of the individual employment contract. On the other hand, employees can also abuse their rights through the excessive and unjustified use of leave, refusal to fulfill work duties, abusive claims in court, or sudden resignation with the intent to harm the employer.

Therefore, a clearer regulation of the concept of abuse of rights in labor legislation is necessary to establish objective criteria for its identification and sanctioning. In this regard, it is proposed to introduce an explicit definition of abuse of rights in the Labor Code, so that both employers and employees are aware of the limits of exercising their rights. At present, the Labor Code does not contain a clear regulation of this concept, leading to inconsistent judicial practice and difficulties in concretely establishing cases of abuse.

The proposed *lege ferenda* reforms in the field of labor law aim to strengthen legal mechanisms for preventing and sanctioning abuse of rights, both by supplementing the existing normative framework and by developing appropriate institutional practices. A key proposed amendment is introducing the possibility for courts to analyze *ex officio* the existence of abusive conduct in labor disputes, allowing judges to proactively determine the abusive nature of an action without requiring an explicit request from the parties involved.

Similarly, it would be useful to develop judicial guidelines or methodological norms to help clearly differentiate between the legitimate exercise of a right and its abusive exercise.

Additionally, it is proposed to diversify the sanctions applicable in cases of abuse of rights so that they do not consist solely of financial liability but also include disciplinary sanctions, including

the restriction of certain rights for those who have exercised them abusively. For example, in the case of employees who have repeatedly misused leave, the employer could be entitled to establish stricter criteria for granting leave. Similarly, in cases where employers have committed abusive dismissals, sanctions could include the obligation to reinstate the employee or provide additional compensation.

Another proposed reform direction could involve strengthening labor inspection and its role in preventing abuse of rights. Currently, the Labor Inspectorate has general responsibilities in verifying compliance with labor legislation, but there is no clear mechanism to identify and sanction cases of abuse of rights. The creation of specialized structures within the Labor Inspectorate to investigate cases of abuse of rights and apply appropriate sanctions would be beneficial.

In conclusion, combating abuse of rights in labor relations requires a multidimensional approach that includes both legislative and institutional measures. Introducing a clear definition of abuse of rights in the Labor Code, establishing objective criteria for its identification and sanctioning, diversifying sanctions, and strengthening prevention and conciliation mechanisms are essential to ensure a fair balance between the rights and obligations of employers and employees. Implementing these measures could reduce the number of labor disputes caused by abuse and ensure a more equitable application of legal norms in labor law.

General Conclusion:

This summary has highlighted the main aspects of a doctoral thesis that aims to provide a comprehensive view of the phenomenon of abuse of rights, both from the perspective of general legal theory and its concrete application in labor relations and European Union law. With a well-defined structure, starting from the foundation of subjective rights and extending to the sanctions applicable in cases of abuse, the study seeks to demonstrate that maintaining social balance and the fair exercise of legally recognized rights require careful consideration of the limits and manner in which rights are exercised, particularly in a sensitive area such as labor law.

By formulating conclusions and *lege ferenda* proposals, the necessity of extending and refining legal regulations is affirmed so that the legal system can effectively sanction abuses while equally protecting the rights and freedoms of all subjects involved.