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SUMMARY OF THE DOCTORAL THESIS THE LEGAL REGIME OF YOUNG PEOPLE AND THE ELDERLY WITHIN THE EMPLOYMENT RELATIONSHIP

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In the current socio-economic context, wherein population aging generates challenges such as pressure on pension and healthcare systems, and the accelerated development of artificial intelligence and information technology leads to task automation, the necessity for reskilling, and the evolution of work modalities involving information technology, young individuals – confronted with difficult labor market access and employment precariousness – and elderly individuals – exposed to the risk of digital exclusion and the devaluation of experience – remain vulnerable groups within the labor market. Moreover, these vulnerable categories are subject to the risk of discrimination in employment relations. Adapting the specificities of employment relations to these realities, including the promotion of lifelong learning, becomes essential for sustainable socio-professional integration.

1. DISCRIMINATION

Ageism and discrimination based on age constitute factors that impede the retention of elderly individuals in the labor market and accentuate the precariousness of young individuals' employment relations. These aspects are also evident in the analyzed national jurisprudence, which reveals that employers, not only within the private sector but also the public sector, impose age limits in recruitment, thereby hindering elderly individuals' access to employment positions, and refuse the promotion of young individuals, invoking stereotypes such as the notion that young individuals will have sufficient opportunities for advancement at a later stage of their careers.

Initially, the principle of non-discrimination on grounds of age emerged from the case law of the ECJ, as a distinct European legislative framework was not yet in place. Consequently, the European Court of Justice played a pivotal role in extending protection against discrimination based on age, although the jurisprudential creation of this principle was contested by both a segment of legal scholarship and member states, such as Denmark, which refused the enforcement of a ECJ ruling

predicated on the existence of this principle[1]. Subsequently, the principle was enshrined in the Charter of Fundamental Rights of the European Union, thereby consolidating the EU's commitment to equality and the protection of vulnerable groups, within the context of population aging and the increasing incidence of discrimination cases.

Due to the universal and evolving nature of age, the prevalence of specific stereotypes, and the more frequent social and legal justifications for differentiated treatment, the prohibition of age discrimination is distinct from other forms of discrimination, often affording a less robust level of protection. Consequently, Directive 2000/78/EC permits a broad spectrum of exceptions to the principle of non-discrimination based on age, including in instances of direct discrimination, whereas such exceptions are not sanctioned for other protected characteristics.

Negative stereotypes pertaining to both young individuals (lack of experience, irresponsibility) and older individuals (diminished productivity, resistance to change) are deeply entrenched socially and structurally, and may subtly influence the perception of legislators and adjudicators, leading to a less stringent application of the principle of non-discrimination based on age.

This observation is corroborated by the jurisprudence of the ECJ, which does not invariably demonstrate a rigorous examination of the legitimate aims invoked and the proportionality of the measure to the pursued aim. The Court considers that member states enjoy a wide margin of appreciation in the domain of the means employed to achieve legitimate objectives concerning the implementation of social and employment policy. By way of illustration, the Court accepts the argument that the distribution of employment opportunities across generations constitutes a legitimate aim, notwithstanding evidence indicating that the number of jobs is not finite, the labor market being flexible and capable of expansion, such that the vacating of a position does not necessarily equate to the possibility of a young worker occupying it. However, this argument holds validity for professional categories wherein a relatively limited number of positions exists. Furthermore, the Court accepts structural stereotypes rooted in institutions, deeming, for example, the automatic termination of the individual employment contract upon reaching the age of 25, for reasons of labor relations flexibilization, as appropriate, as well as upon reaching the standard retirement age, for reasons of intergenerational equity.

[1] Eklund H., Kilpatrick C., 2021. Article 21 EU Charter of Fundamental Rights, EUI AEL, 2021/01, available at researchgate.net/publication, accessed on 28.06.2024. The Danish Supreme Court refused to adhere to the decision pronounced by the ECJ in Case C-68/17 Ajos, arguing that the utilization of unwritten general principles was not foreseeable in relation to the provisions of the Danish Act on Accession to the European Economic Community of 1972.

It is our contention that member states ought to benefit from a wide margin of appreciation in the adoption of labor market employment policy measures, given that they, in relation to the European Court of Justice, are better positioned to comprehend the causes and effects of developments within their national labor markets. Consequently, we posit that the ECJ justifiably does not subject the invoked legitimate aims (such as ensuring the equitable distribution of employment opportunities between generations) to an exceedingly strict scrutiny regarding their substantiation through robust evidentiary means. Moreover, the burden of proof concerning the legitimate aim of a measure such as the termination of employment relations upon reaching the statutory retirement age applicable to all workers within a member state would be excessively onerous. Conversely, in the case of a specific professional category, such as teaching staff, where the number of employment positions is relatively constrained, a more detailed analysis of the necessity to ensure intergenerational balance can be conducted.

1.1 Inadequate Translation of Directive 2000/78/EC into Romanian

The regulation within the directive concerning exceptions to the principle of indirect discrimination is deficient in the Romanian language version. Specifically, it is observed that the translation of Article 2(2)(b)(i) into Romanian, as published in the Special Edition of the Official Journal of the European Union, constitutes a material error that does not, however, impede the uniform interpretation of the directive. The material error consists of the addition of the negation "nu" (not) before the phrase "sunt adecvate" (are appropriate), which leads to the interpretation that indirect discrimination can be justified even when the means employed are not appropriate and necessary.

De lege ferenda, the rectification of this material error is imperative, and Article 2(2)(b)(i) in the Romanian language version of Directive 2000/78/EC should adopt the following formulation: "(...) (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary or (...)".

1.2 Potential Conflict Between the Jurisprudence of the Constitutional Court and European Law

The principle of equality before the law and the principle of non-discrimination based on age are fundamental tenets of European law, possessing superior legal force to the constitutions of the member states of the European Union and requiring application with priority. The jurisprudence of the ECJ establishes the conclusion that the principle of equality can only be ensured through the conferral upon

the disadvantaged category of the same advantages enjoyed by the privileged category, with the system applicable to the members of the favored group remaining the sole valid reference system[2].

Notwithstanding this, within national law, a series of decisions rendered by the Constitutional Court in 2008[3] have engendered confusion among judicial instances and the National Council for Combating Discrimination concerning the possibility of establishing the existence of discrimination and eliminating the effects of age-based discrimination. Thus, in certain cases, it has been considered that the jurisprudence of the Constitutional Court precludes the finding of discrimination. These rulings were subsequently modified by the superior court, which affirmed the possibility of establishing discrimination. We further emphasize that not only the ascertainment of discrimination but also the removal of its effects, through the granting of more favorable rights, is permissible in litigation falling within the scope of Directive 2000/78/EC.

We posit that in litigation falling within the directive's ambit, Government Ordinance no. 137/2000 ought to be interpreted in light of the ECJ's considerations, such that the arguments of the Romanian Constitutional Court – which, moreover, did not pertain to a dispute invoking discrimination prohibited by the directive – should not be taken into account. Furthermore, under the premise that the directive was not correctly transposed into domestic law as a consequence of the interpretation given to the transposition act by the Romanian Constitutional Court, private individuals possess the capacity to invoke against member states rights founded upon European legislation[4], rather than national legislation.

1.3 Compatibility of National Legislation with European Law

National legislation is, in general terms, compatible with European law. Moreover, at a preliminary assessment, it appears to contain provisions more favorable to workers; however, upon more in-depth analysis, this impression is dispelled, as it does not reflect the legislator's intention to establish superior standards, but rather omissions or inadequate transpositions of Directive 2000/78/EC.

1.3.1 Omission to Regulate Exceptions to the Principle of Direct Age Discrimination

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[2] ECJ Judgment of 19 June 2014 in Joined Cases C-501/12-C-506/12, C-540/12 and C-541/12 *Thomas Specht and Others v. Land Berlin and Bundesrepublik Deutschland*, paragraph 95, OJ C 282, 25.8.2014, p. 4–5; ECJ Judgment of 28 January 2015 in Case C-417/13 *ÖBB Personenverkehr AG v. Gotthard Starjakob*, paragraph 49.

[3] Constitutional Court Decision no. 818/2008 regarding the unconstitutionality objection of the provisions of Article 1, Article 2(3) and Article 27 of Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette, Part I, no. 537 of 16 July 2008; Constitutional Court Decision no. 997 of 7 October 2008, published in the Official Gazette, Part I, no. 774 of 18 November 2008.

[4] ECJ Judgment of 19 June 2014 in Joined Cases C-501/12-C-506/12, C-540/12 and C-541/12 *Thomas Specht and Others v. Land Berlin and Bundesrepublik Deutschland*, paragraph 101, OJ C 282, 25.8.2014, p. 4–5.

Article 5 of the Labor Code, as well as Article 2 of Government Ordinance no. 137/2000, in contrast to Article 6 of the directive, do not expressly stipulate that direct age discrimination can be objectively justified if it pursues a legitimate aim and the means employed are proportionate to that aim. Nevertheless, within labor legislation, exceptions to the principle of direct age discrimination are encountered, consistent with those provided for in Article 6 of the directive. By way of example, Article 56 of the Labor Code regulates the automatic termination of the individual employment contract upon the fulfillment of retirement conditions, which constitutes differential treatment directly predicated on age.

In the situation where differential treatment directly based on age is not expressly regulated by a legal provision, but is stipulated by the collective labor agreement, the agreement concluded between social partners, the employer's internal regulations, or another act issued by the latter, the question arises as to whether the court can proceed to apply the test established by the ECJ's jurisprudence, or, upon finding that the differential treatment directly based on age is not prescribed by law and that national legislation does not expressly regulate the conditions under which exceptions to the principle of direct age discrimination are permissible, determine that the differential treatment contravenes the prohibition of direct discrimination, rendering it unlawful.

In other words, the national legislator's omission to regulate, as does Article 6 of the directive, the exceptions to the principle of direct age discrimination, raises an issue of interpretation. Consequently, it must be determined whether the Romanian legislator intended to implement Article 8(1) of the directive and to adopt more favorable provisions regarding equal treatment based on age.

We contend that the Romanian legislator's intention was not to regulate the prohibition of age discrimination in a manner more favorable than the directive. In this regard, we point out that the Romanian legislator did not expressly articulate such an intent. Secondly, the Labor Code regulates institutions that constitute exceptions to the principle of direct age discrimination[5], which denotes that the prohibition of direct age discrimination is not absolute, encompassing exceptions. While it is true that analogy is prohibited in the interpretation of law[6], which necessitates the express regulation of exceptions to a rule, the prohibition of age discrimination must be interpreted in accordance with the norms and jurisprudence of the European Union[7]. Thirdly, it must be noted that, in the practice of the courts or in the analysis of petitions invoking direct age discrimination, the judicial instances,

[5] See in this sense Article 56 paragraph (1) letter c) of the Labor Code, which permits the automatic termination of the individual employment contract upon the fulfillment of retirement conditions.
[6] See Article 10 of the Civil Code.
[7] See Article 4 of the Civil Code.

respectively the National Council for Combating Discrimination, apply the test provided by Article 6 of the directive[8].

To avoid any interpretative difficulties, **we consider it necessary to supplement Article 5 of the Labor Code** with paragraph (3)[1], so as to permit, in the case of direct age discrimination, the same exceptions as those provided by the directive, as follows: "(3)[1] Differential treatment on grounds of age shall not constitute discrimination if it is objectively and reasonably justified, within the framework of national law, by a legitimate aim, in particular by legitimate objectives of employment policy, labor market policy and vocational training policy, and if the means of achieving that aim are appropriate and necessary". The same supplementation is also required for Article 2 of Government Ordinance no. 137/2000.

In conclusion, we argue that the national legislature's partial and selective transposition of certain provisions of Directive 2000/78/EC has resulted in an inadequate implementation of its stipulations into the Romanian Labour Code, as well as into Government Ordinance no. 137/2000.

1.3.2. Omission to Regulate the Concurrence Between the Prohibition of Age Discrimination and Other Rights or Freedoms

We observe that national legislation appears significantly more restrictive than European legislation regarding the sphere of rights whose exercise can eliminate the potential discriminatory nature of different treatment based on age. Article 2(5) of Dirctive 2000/78/EC stipulates that the directive is without prejudice to measures necessary for public security, for the maintenance of public order, for the prevention of criminal offences, for the protection of public health and for the protection of the rights and freedoms of others. Consequently, the directive allows for a balancing of the necessity of exercising any right or freedom with the discriminatory effect of the exercise of that right or freedom, unlike Article 2(8) of Government Ordinance no. 137/2000, which refers to three exhaustively listed rights. Furthermore, neither the aforementioned ordinance nor the Labour Code regulates exceptions concerning public security and public order, the prevention of criminal offences, or the protection of public health.

This regulation in domestic law, which may seem restrictive, does not, however, prevent the analysis of potential discriminatory measures resulting from national law by reference to the provisions of Article 2(5) of the Directive. The national provision merely aims to highlight the importance that the Romanian legislator attaches to certain rights such as freedom of expression, and not to limit the scope of rights that can be balanced in the case of discriminatory treatment based on

[8] See in this sense the Decisions of the National Council for Combating Discrimination no. 536/18.10.2023, no. 597/12.08.2020.

age. An argument in this regard is the fact that in national law there are provisions elaborated for the purpose of protecting public health, which regulate different maximum age limits for the exercise of the professions of physician, dentist, or pharmacist, the difference in treatment being based, at least in part, on the objective of protecting patients' health[9].

Given that neither the Labour Code nor Government Ordinance no. 137/2000 regulates the exception provided for in Article 2(5) of the Directive, the conformity of national provisions such as those mentioned above, elaborated for the purpose of protecting public health, with European law, remains to be analyzed in light of the case law of the CJEU[10].

1.3.3 Omission to Regulate Moral Harassment in the Workplace in the Labour Code

In national law, the subject of discrimination is regulated both by the Labour Code and by Government Ordinance no. 137/2000; the regulation in the Labour Code represents special law, applicable to labor relations, while Government Ordinance no. 137/2000 represents general law.

Moral harassment in the workplace is regulated only by Government Ordinance no. 137/2000, and not by the Labour Code. Considering that this form of discrimination is specific to the dynamics of labor relations, and given the need to establish a clear legislative framework in the area of labor relations for preventing and sanctioning this phenomenon, ***de lege ferenda,*** **it would be necessary to regulate moral harassment in the workplace also through the Labour Code**. We also mention that there is no impediment for workers to invoke, in support of their rights, the provisions of Government Ordinance no. 137/2000, which regulates moral harassment in the workplace, in a labor dispute.

2. PROTECTION OF YOUNG WORKERS

2.1 Lack of Correlation Between the Norms of Directive 94/33/EC and the Standards of ILO Convention No. 138/1973

Labour law emerged as a branch of law in an effort to protect children and young people against exploitation through labour during the First Industrial Revolution. The protection of young people was consolidated after World War I through the prioritization of education and the adoption of international conventions. Currently, legislative efforts focus on measures to facilitate the transition of young people into the labour market and to make employment relationships more flexible, with the aim of encouraging employers to recruit this vulnerable category.

Although member states tend to adhere to the minimum level of protection for young people established at international and European levels, our analysis has shown that, in certain situations,

[9] See in this regard Articles 391, 492, 575 of Law no. 95/2006.

[10] See, for example, ECJ Judgment of 12 January 2010, in Case C-341/08 *Domnica Petersen v. Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe.*

even the European Union deviates from the higher standards imposed by international conventions in this field.

An example of this concerns the age at which hazardous or harmful activities can be performed. Thus, Directive 94/33/EC on the protection of young people at work prohibits the performance of work that endangers the development, health, and safety of young people, but Article 7(3) allows for derogations for adolescents aged between 15 and 18 years if there are objective reasons related to their vocational training. Unlike the Directive, Article 3(3) of Convention No. 138/1973 concerning the Minimum Age for Admission to Employment allows derogations from the prohibition of hazardous work for children aged at least 16 years, which is a higher age than that provided by the Directive, but it does not limit the scope of derogations to reasons related to vocational training.

We consider that the Directive is not compatible with the provisions of Convention No. 138/1973, as it exceptionally permits the performance of harmful or dangerous work by children under the age of 16. Even if the performance of such work is limited by the Directive to the field of vocational training, we believe that allowing 15-year-olds to perform hazardous work reduces their protection standards, with the Convention containing more favourable provisions. In this regard, we note that young people are in a process of physical growth and development, and hazardous work can interfere with this normal development, given that young organisms are often more sensitive to the harmful effects of chemicals, radiation, or other dangerous agents encountered in certain workplaces. Furthermore, young people have limited life and professional experience, which makes them less able to identify, assess, and manage risks, and insufficient psychological maturity can affect their ability to strictly comply with safety procedures.

2.2 Legislative Parallelism and Violation of the Principle of Regulatory Uniqueness

Some rights and institutions concerning the protection of young people have dual regulation in national law, through both laws and government decisions. In this regard, we note that Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work has been transposed both through disparate provisions of the Labour Code and through Government Decision no. 600/2007 on the protection of young people at work. Both normative acts regulate the following aspects: the prohibition for young people to perform activities under "harmful, heavy or dangerous" working

conditions[11]; the prohibition of night work[12]; the prohibition of overtime work[13]. Furthermore, both normative acts contain derogatory norms applicable to young people regarding working time[14], daily rest periods[15], and additional annual leave[16].

Government Decision no. 600/2007 on the protection of young people at work regulates aspects concerning working time and rest periods that are not found in the Labour Code. Thus, the daily rest period is 14 consecutive hours for young people who are in compulsory education and perform light work or other "activities suitable to their physical development, aptitudes and knowledge, provided that their health, development and vocational training are not jeopardized thereby"[17]. In addition, the government decision stipulates that the weekly rest period, of 2 consecutive days, generally corresponds to Saturdays and Sundays.

We observe that the two normative acts contain identical provisions in regulating measures for the protection of young people, and Government Decision no. 600/2007 on the protection of young people at work includes additional provisions that are not found in the Labour Code.

Regarding the specific risks of young people's work, European law has also been transposed through government decisions, acts with lower legal force than laws[18] . The transposition of European law in this manner is expressly provided for in Article 51(1)(b) of Law no. 319/2006 on health and safety at work. Furthermore, provisions of international law have been transposed through government decisions. In this regard, Government Decision no. 867/2009 on the prohibition of hazardous work

[11] The Labour Code regulates this prohibition in Article 13(5), and Government Decision no. 600/2007 on the protection of young people at work in Article 9(2) and (3).
[12] The Labour Code regulates this prohibition in Article 128, and Government Decision no. 600/2007 on the protection of young people at work in Article 12(2) and (3).
[13] The Labour Code regulates this prohibition in Article 124, and Government Decision no. 600/2007 on the protection of young people at work in Article 11.
[14] The Labour Code regulates a maximum working time of 6 hours per day and 30 hours per week in Article 112(2), and Government Decision no. 600/2007 on the protection of young people at work regulates the same working time in Article 10(1). In addition, Article 10(2) of the mentioned government decision prohibits exceeding the maximum working time in case of holding multiple positions.
[15] The Labour Code regulates the right to a meal break of at least 30 minutes when the working schedule exceeds 4 and a half hours, according to Article 134(2) of the Labour Code. Government Decision no. 600/2007 on the protection of young people at work regulates the same right in Article 13.
[16] Young people benefit from additional annual leave, of at least 3 days, according to Article 147(1) of the Labour Code and Article 15 of Government Decision no. 600/2007 on the protection of young people at work.
[17] According to Article 14 of Government Decision no. 600/2007 on the protection of young people at work: "(2) Between two working days, children employed according to Article 5(2) and (3) shall benefit from a minimum rest period of 14 consecutive hours."
[18] See Government Decision no. 600/2007 on the protection of young people at work; Government Decision no. 1048/2006 on minimum safety and health requirements for the use of personal protective equipment by workers at the workplace, which transposed Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC. Also, see Government Decision no. 1218/2006 on establishing minimum safety and health requirements at work for the protection of workers against risks related to the presence of chemical agents.

for children was adopted based on "the provisions of Article 4(1) of Convention No. 182/1999 - the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted at the 87th Session of the General Conference of the International Labour Organization in Geneva on 17 June 1999, ratified by Law no. 203/2000." This normative act lists the types of hazardous work whose performance is prohibited for children under 18 years of age.

De lege ferenda, it is necessary to amend the Labour Code to integrate all general protection measures provided for by government decisions, which have lower legal force than laws, into this normative act, to avoid legislative parallelism and to comply with the requirement of regulatory uniqueness.

Another case of legislative parallelism is found in the regulation of internships, which is present in both Article 31 of the Labour Code and Law no. 335/2013 on internships for higher education graduates. ***De lege ferenda***, the regulation of internships through the provisions of the Labour Code, in an article referring to the probation period, should be removed.

2.3 Regulation of the Minimum Age for Employment by Normative Acts with Lower Legal Force

As we have shown, the transposition of international and European norms regarding the protection of young people took place in the 2000s through government decisions, legal acts with lower legal force. Consequently, fundamental aspects regarding the protection of young people are not regulated by the Labour Code or by other normative acts of equal hierarchy. An example of this is the minimum age for employment, which, as a rule, cannot be lower than the age at which compulsory education is completed[19].

In Romanian law, both the Constitution of Romania, in Article 49(5), and the Labour Code, in Article 13(3), refer exclusively to the minimum age at which an employment relationship can be concluded, without referring to the condition of completing compulsory general education. We note that Article 49 of the Constitution of Romania, which regulates the right to protection of children and young people, prohibits the use of minors for performing activities that can harm normal development, and, by interpretation, activities that jeopardize education can also be included in the scope of this prohibition.

[19] Convention no. 138/26.06.1973 concerning the Minimum Age for Admission to Employment, adopted by the International Labour Organization, imposes two limits regarding the minimum age of minors who can conclude individual employment contracts: the age of 15 or the age at which the minor completes compulsory education, if this is older than 15 years. At the same time, Directive no. 94/33/EC on the protection of young people at work imposes on the member states of the European Union the obligation to ensure that young people cannot be employed before completing full-time compulsory education, and, in any case, before reaching the age of 15.

The connection between work and the right to education is revealed in national law only by secondary legislation[20], namely by government decisions regulating the protection of young people in employment relationships[21]. Government Decision no. 600/2007 on the protection of young people at work, which transposed Council Directive 94/33/EC of 22 June 1994, in Article 5(1) in conjunction with Article 3(b), prohibits the work of children under 15 years of age, as well as the work of children aged between 15 and 18 who are in compulsory education.

Establishing a minimum age for employment is an essential way to protect young workers; therefore, we consider that the minimum age for employment should be regulated appropriately, by normative acts with higher legal force than government decisions, namely by the Labour Code.

De lege ferenda, Article 13 of the Labour Code, which constitutes the general law on the minimum age for employment, should be amended to reflect the importance of compulsory school education and the connection between it and the possibility of concluding an individual employment contract. Specifically, it is necessary to supplement the provisions of Article 13 of the Labour Code with paragraph (3^1), as follows: "The employment of persons aged between 15 and 18 who are in compulsory education is prohibited, except in cases expressly provided for by law." We note that the prohibition of work by young people who are in compulsory education is not absolute, as both international and European law allow exceptions to this rule, namely they permit light work by young people who are in compulsory education, as long as their attendance is not affected.

Given their particular importance, ***de lege ferenda***, measures for the protection of young people at work should be enshrined in normative acts with higher legal force, such as laws, and not through government decisions.

2.4 Inadequate Transposition of Directive No. 94/33/EC

National law is generally harmonized with the treaties to which Romania is a party and with European law, but we also find errors in the transposition of European law. Thus, Directive no. 94/33/EC has been transposed into national law both through Government Decision no. 600/2007 on the protection of young people at work and through Government Decision no. 75/2015 on the regulation of remunerated activities performed by children in the cultural, artistic, sports, advertising, and modeling fields.

[20] The term "secondary legislation" refers to the fact that government decisions are adopted for the purpose of implementing laws, according to Article 108(2) of the Romanian Constitution.

[21] Government Decision no. 600/2007 on the protection of young people at work, published in the Official Gazette of Romania, Part I, no. 473/13.07.2007; Government Decision no. 867/2009 on the prohibition of dangerous work for children, published in the Official Gazette of Romania, Part I, no. 568/14.08.2009.

Government Decision no. 600/2007 did not adequately transpose the provisions regarding the maximum time for light work, nor the prohibition of dangerous work by children under 15 years of age who perform activities under Government Decision no. 75/2015. Furthermore, Government Decision no. 75/2015 did not adequately transpose the obligation of prior authorization for activities performed by children/young people regulated by this government decision. Moreover, this government decision also contains provisions that diminish the level of protection for children/young people.

2.4.1 Maximum Working Time for Light Work

As we previously stated, the prohibition of work by young people who are in compulsory education is not absolute, as both international and European law allow exceptions to this rule. For example, Article 7, paragraph 2 of Convention No. 138/1973 concerning the Minimum Age for Admission to Employment, allows children aged 15 and over to perform light work. Similarly, Article 4(2)(c) in conjunction with Article 4(3) of Directive No. 94/33/EC allows children aged 13 and over to perform light work, provided that a limited number of hours per week are established and the scope of light work is defined by the national legislator.

The national legislator defined the scope of light work within Government Decision no. 600/2007 on the protection of young people at work, which transposed Council Directive no. 94/33/EC of 22 June 1994; however, the transposition legislation did not incorporate the provisions of the Directive that clearly establish the maximum working time for young people in compulsory education.

The Romanian legislator's omission leads to an inadequate transposition of the Directive, as limiting working time is essential for work to be qualified as light; even work considered light can become harmful if performed for an excessive number of hours.

De lege ferenda, Article 5 of Government Decision no. 600/2007 on the protection of young people at work should be supplemented with a paragraph indicating the limits of working time for light work, respectively for activities that do not jeopardize vocational training, as follows: "Under the conditions of applying Article 5(2) and (3), working time is limited to 2 hours per school day and 12 hours per week for work performed during the school period, outside school hours."

We note that Article 8(1)(b) of the Directive allows for the extension of daily working time up to 8 hours, but not weekly working time, which is limited to 12 hours. Nevertheless, we consider that the limit of 2 hours per school day is consistent with the provisions of the European Social Charter, as interpreted by the European Committee of Social Rights, which stated that a situation where a child who is still subject to compulsory education performs light work for 2 hours on a school day and 12

hours per week during the semester, outside the hours set for school attendance, is in compliance with the requirements of Article 7, paragraph 3 of the Charter[22].

The inadequate transposition of the Directive does not automatically imply a violation of international and European provisions, as national law is to be interpreted in light of international and European provisions. Therefore, the notions of light work and "activities suitable to their physical development, aptitudes and knowledge, provided that their health, development and vocational training are not jeopardized thereby," provided for in Article 5 of Government Decision no. 600/2007, as well as the notion of dangerous work, provided for in Article 2(b) of Government Decision no. 867/2009, are interpreted in accordance with the European Social Charter, as interpreted by the European Committee of Social Rights.

2.4.2 Prohibition of Dangerous Work by Children Under 15 Years of Age Who Perform Activities Under Government Decision No. 75/2015

It has been stated in doctrine[23] that although, overall, Directive 94/33/EC was correctly transposed into Romanian legislation, the definitions concerning protected persons were not correctly transposed, and this inconsistency affects the proper transposition of the Directive. Thus, the norms for the protection of children, respectively young people under 15 years of age, are not applicable in the case of civil contracts concluded according to Government Decision no. 75/2015. Although this irregularity was signaled approximately 15 years ago, the legislator has not proceeded to remedy it.

The prohibition of dangerous work provided for in Article 7 of the Directive is applicable to young people, who, according to the Directive, are persons under 18 years of age. The prohibition of dangerous work provided for in Article 9 of Government Decision no. 600/2007 is applicable to young people, who are defined by Article 3(a) as persons aged between 15 and 18 years. Therefore, according to national law, young people under 15 years of age are not protected by the prohibition of their performing dangerous work provided for in Article 9 of Government Decision no. 600/2007.

In Romanian law, it is not permitted to carry out employment relationships based on an individual employment contract for persons under 15 years of age, so the non-prohibition of dangerous work by persons under 15 years of age is not relevant in the field of individual employment contracts.

[22] See in this regard, European Committee of Social Rights, *Conclusions 2019, Romania*, available on the website rm.coe.int/rapport-rou-en/16809cfbde, accessed on 17.07.2023.

[23] Dima L., 2011. The protection of working young people – transposition and implementation of Directive 1994/33/EC in Romanian legislation, *Annals of the University of Bucharest* – Law, 2011 – Part IV, available on the website drept.unibuc.ro, accessed on 06.03.2025.

Nevertheless, national law allows remunerated activities performed by children/young people under 15 years of age in the cultural, artistic, sports, advertising, and modeling fields[24], based on civil contracts, according to Government Decision no. 75/2015 on the regulation of remunerated activities performed by children in the cultural, artistic, sports, advertising, and modeling fields. This normative act, in Article 4(a), prohibits the performance of dangerous work, according to current legislation. In Annex 1, which indicates the content of the information note provided for in Article 7, reference is made to the risk assessment involved in carrying out the activity, referring only to the provisions of Government Decision no. 867/2009 on the prohibition of dangerous work for children, and not to the provisions of Government Decision no. 600/2007. Furthermore, Article 2 of Government Decision no. 600/2007 states that the provisions of this normative act apply to young people who have concluded individual employment contracts; therefore, young people who perform work based on civil contracts, who are nevertheless protected by the Directive, are not included in the scope of the national government decision.

Consequently, the method of regulation does not result in the application of the prohibitions provided by the Directive, taken over by Government Decision no. 600/2007, also in the case of activities performed under Government Decision no. 75/2015. In conclusion, in accordance with the opinion expressed in doctrine, the Directive has not been correctly transposed into national law. The legislator's omission to include children performing activities under Government Decision no. 75/2015 in the scope of Government Decision no. 600/2007 can be remedied by interpreting Article 4(a) of Government Decision no. 75/2015 in accordance with European law.

De lege ferenda, it is necessary to take over the definitions from the Directive into Government Decision no. 600/2007 and to include the activities provided for in Government Decision no. 75/2015 in its scope.

2.4.3 Obligation of Prior Authorization for Children/Young People to Carry Out Activities Provided for in Government Decision No. 75/2015

Apart from individual employment contracts, young people can carry out work based on other civil contracts, such as those provided for by Government Decision no. 75/2015[25], a normative act that regulates remunerated activities performed by children/young people, including those under 15 years

[24] See Government Decision no. 75/2015 on the regulation of remunerated activities performed by children in the cultural, artistic, sports, advertising, and modeling fields.

[25] Government Decision no. 75/2015 on the regulation of remunerated activities performed by children in the cultural, artistic, sports, advertising, and modeling fields, published in the Official Gazette, Part I no. 115 of 13 February 2015.

of age, in the cultural, artistic, sports, advertising, and modeling fields[26]. This normative act represents a transposition into national legislation of the provisions of Article 5 of Directive No. 94/33/EC on the protection of young people at work, which indicates extrinsic conditions for the valid conclusion of the civil contract, namely obtaining a prior authorization, as well as conditions regarding the activities performed by children.

Unlike European law, which requires prior authorization by the competent authority in each individual case, national law does not impose such a condition. It is true that national legislation provides for the obligation of prior notification to the public social assistance service before performing the activity, but we consider that the notification provided for in Article 7 of Government Decision no. 75/2015 does not have the same meaning and purpose as the authorization provided for in Article 5, paragraph 1 of Council Directive No. 94/33/EC. In this regard, we note that the notification is made before the child actually starts performing the activity, but after the service contract has been concluded. This aspect results from Annex II of the government decision, which indicates the form of the notification, according to which the notification must indicate the amount of money representing the child's remuneration, which, as a rule, results from the content of the contract. The notification provided for in Article 7 does not imply the existence of an agreement from the public social assistance service, which must be communicated to the parents/legal representative of the child/child or the organizer, within a certain period, but rather serves to create a record of children who perform activities in the cultural, artistic, sports, advertising, and modeling fields.

Given the discrepancies mentioned, we consider that Article 5(1) of Council Directive No. 94/33/EC is not adequately transposed into national legislation. ***De lege ferenda***, the obligation of prior notification, provided for in Article 1 of Government Decision no. 75/2015, should be replaced with the obligation to obtain a prior authorization from the public social assistance service. Furthermore, according to the Directive, the national legislator has the obligation to regulate the prior authorization procedure.

In Government Decision no. 75/2015, we also find regulatory gaps. Regarding the assurance of compulsory education attendance, Government Decision no. 75/2015 distinguishes between situations where cultural or similar activities are performed for a maximum duration of 30 days and situations where they are performed for a duration longer than 30 days outside the child's domicile. The obligation to ensure education is not regulated in situations where the cultural or similar activity is

[26] See Government Decision no. 75/2015 on the regulation of remunerated activities performed by children in the cultural, artistic, sports, advertising, and modeling fields.

carried out in the child's domicile for a period longer than 30 days. This omission should not produce effects that disadvantage children, as the legal provisions are to be interpreted in a way that produces effects and in relation to the purpose for which they were enacted. Consequently, even when the child carries out cultural or similar activities in the domicile for a period longer than 30 days, the educational institution in which the child is enrolled has the obligation to draw up a recovery program for the courses the child missed or for which they need additional didactic support due to performing the activity.

De lege ferenda, for reasons of clarity, Article 12 of Government Decision 75/2015 should be amended as follows: "(1) Ensuring the education or vocational training of the child, during the period in which they perform an activity in the fields provided for in Article 1, shall be carried out as follows: a) in the pre-university educational institution in which the child is enrolled; b) in a pre-university educational institution in the county where the activity takes place, if the duration of the activity is longer than 30 calendar days and takes place in a different locality than the child's domicile."

Furthermore, in Government Decision no. 75/2015, we also find provisions that impede effective verification by authorities of compliance with child protection norms. Thus, according to Article 11 of the government decision, at the county or sector level, a team coordinated by the general directorate of social assistance and child protection has the obligation to carry out visits to the place where the child performs the activity, to verify the conditions under which the activity is carried out. The visit plan is drawn up after the general directorate of social assistance and child protection is sent the centralization of activities performed by children, a centralization that is transmitted by the public social assistance service in the first 15 days of the quarter following the one in which the activities are carried out, according to Article 10 of Government Decision no. 75/2015. Therefore, visiting places where cultural or similar activities are carried out is possible only when the activities are carried out for a long period, even longer than 3 months; activities that are exhausted within the 3-month period preceding the one in which the directorate plans the visits cannot be effectively controlled.

In conclusion, we consider that the method of regulating control intended to verify compliance with child rights is flawed, as the purpose pursued by the law through such regulation cannot be achieved when cultural or similar activities are not carried out for relatively long periods. *De lege ferenda*, the provisions regarding the centralization of cultural or similar activities and the quarterly communication of this centralization should be removed from the normative act and replaced with provisions regulating a form of centralization that can be instantly accessed by authorities with control attributes.

2.5 Non-Fulfillment of the Legislator's Obligation to Consistently Amend Normative Acts

Often, there is a lack of concern on the part of the national legislator for the consistent amendment of normative acts concerning the protection of young people, which are not correlated with new regulations, leading to inconsistencies and difficulties in applying the law. The legislator's obligation in this regard is provided for in Article 67 of Law no. 24/2000.

2.5.1 Lack of Correlation Between the Provisions of Law No. 76/2002 and Law No. 198/2023

To stimulate the employment of graduates, Article 80 of the law provides employers with the right to a financial incentive. According to Article 82 of Law no. 76/2002, education graduates are persons who have obtained a diploma or an equivalent act of graduation from gymnasium, high school, post-secondary, special, vocational, or higher education. We note that, currently, according to Law no. 198/2023 on pre-university education, the form of vocational education has been replaced by technological education in a dual system.

Therefore, the phrase "vocational education" in Article 82 has been replaced by the phrase "technological education in a dual system," this modification representing an implicit legislative event, according to Article 67 of Law no. 24/2000[27]. ***De lege ferenda***, it is necessary to amend the provisions of Article 82 of Law no. 76/2002 so that it refers to the forms of education currently regulated by law, namely Law no. 198/2023 on pre-university education[28].

We also note that the methodological norms for the application of Law no. 76/2002 are not correlated with those of this law, so the two normative acts contain conflicting regulations regarding the rights of young people.

To benefit from measures promoting labor market participation, young people at risk of social marginalization must conclude a solidarity contract. The methodological norms for the application of the law[29], unlike Article 93² of the law, limit the duration for which the solidarity contract can be concluded. Thus, according to the law, the solidarity contract can be concluded for a maximum period of 3 years and a minimum of 1 year. For example, according to the law, for a young person at risk of marginalization aged 26, the contract can be concluded for a period of 3 years, so that it produces effects until the age of 29. In contrast, according to Article 60¹ of the methodological norms for the application of the law, the solidarity contract must be concluded for a period that does not exceed the

[27] Law no. 24/2000 on legislative technical norms for the elaboration of normative acts, published in the Official Gazette, Part I, no. 260 of 21 April 2010.

[28] The text should be amended as follows: "For the purposes of this law, a graduate of an educational institution means a person who has obtained a diploma or a study certificate, under the conditions of the law, from a gymnasium, pre-university technological dual system, special, high school, post-secondary or higher education institution, state or private, authorized or accredited under the conditions of the law."

[29] Methodological norm for the application of Law no. 76/2002 on the unemployment insurance system and stimulating employment from 20.02.2002, an integral part of Government Decision no. 174/2002.

date on which the young person turns 26. From this rule, the methodological norms provide an exception for young people aged between 25 and 26, who can conclude the solidarity contract for a fixed period of 1 year, thus exceeding the age of 26. Therefore, according to the law, the solidarity contract can produce effects, in the case of a 25-year-old, until the age of 29, and according to the methodological norms, until a maximum of 27 years.

Given that the legislator's aim is to support a well-defined age category, namely young people aged between 16 and 26, and the provisions of Article 93²(2) allow the effects of the solidarity contract to produce effects until the age of 29, and considering that the methodological norms are consistent with the stated aim but conflict with the provisions of Article 93²(2), ***de lege ferenda***, it is necessary to amend Article 93²(2) of the law so that its meaning corresponds to the legislator's aim as well as the methodological norms, as follows: "(2) The solidarity contract provided for in paragraph (1) shall be concluded between the territorial employment agency and the young person for a duration of at least one year and a maximum of 3 years, without its duration exceeding the date on which the young person turns 26. Exceptionally, in the case of young people who have reached the age of 25 but have not reached the age of 26, the solidarity contract shall be concluded for a period of one year."

2.5.2 Lack of Correlation of Provisions Regarding Intern Remuneration

According to Article 8(2) of the Internship Law, the intern's allowance represents at least half of the gross national minimum basic salary guaranteed in payment. On the other hand, the intern carries out an employment relationship not based on an individual employment contract, so, according to Article 278(3) of the Labour Code, their allowance cannot be less than the gross national minimum hourly basic salary or the allowance established by the collective labor agreement concluded at the level of the host organization.

We believe that there has been no amendment, neither express nor implicit, of the provisions of Article 8(2) of the Internship Law, by the entry into force of the provisions of Article 278(3) of the Labour Code, for the reasons we will present below. Law no. 176/2018 is special in relation to the Labour Code, and, as such, is derogatory from the general law, as results from Article 15 of Law no. 24/2000 on legislative technical norms for the elaboration of normative acts. Therefore, according to Article 67(3) of Law no. 24/2000, Article 8(2) concerning internships cannot be amended by the general law, represented by the Labour Code, unless this is expressly provided for in the normative act. We observe that Law no. 283/2024, which amended the Labour Code and introduced Article 278(3), does not expressly provide that contrary provisions in special laws are amended or repealed.

Nor does the Labour Code contain such provisions[30]. Consequently, there has been no implicit amendment or repeal of the provisions of Article 8(2) of the Internship Law.

Under these conditions, there are two contradictory provisions regulating intern remuneration. Although it is evident that through the regulation in Article 278(3) of the Labour Code the legislator aimed to standardize the right to minimum remuneration for all workers, including interns, applying the interpretation rule *specialia generalibus derogant*, we could conclude that Article 278(3) of the Labour Code produces effects only in the case of employment relationships regulated by special laws that do not expressly provide for the amount of salary or allowance, thus not in the case of intern relationships.

Nevertheless, even if the provisions of Article 8(2) of Law no. 176/2018 have not been implicitly amended and should be applied preferentially, as a special law, we consider that they must be disregarded, according to Article 20 of the Romanian Constitution. This is because the provisions contravene Article 7 of the International Covenant on Economic, Social and Cultural Rights, which stipulates the right to fair wages and equal remuneration for work of equal value, ensuring a decent living for the worker and their family. The interpretation of the provisions of Article 7 of the Covenant was carried out in the section on the intern's right to remuneration equal to the gross national minimum wage guaranteed in payment, to which we refer. Ensuring a decent living can only be achieved by granting the gross national minimum wage guaranteed in payment, this also being the purpose of supplementing the Labour Code with Article 278(3). Consequently, following the removal of the provisions of Article 8(2) of Law no. 176/2018 from application, the provisions of Article 278(3) of the Labour Code become applicable.

We emphasize that non-compliance with Article 278(3) of the Labour Code constitutes a contravention, according to Article 260(1)(a^1) of the Labour Code. In a conflict between a provision in general law and one in special law, coupled with a specific sanction in general law for non-compliance with that provision, the recipient of the special law would be in an unacceptable uncertainty regarding the conduct to be followed and the applicable sanctioning regime, which undermines the principle of legal certainty and the predictability of the law.

To eliminate any difficulties in interpreting the law, ***de lege ferenda***, it is necessary to amend Article 8(2) of Law no. 176/2018 to regulate the intern's right to a minimum remuneration equal to the gross

[30] We note that Article 281 of the Labour Code contains an express provision regarding the repeal of certain normative acts, which is however not relevant with regard to Law no. 167/2017 on internships.

national minimum wage or the allowance established by the collective labor agreement concluded at the level of the host organization.

3. PROTECTION OF OLDER WORKERS

The growing phenomenon of an aging population has sparked discussions and actions aimed at protecting older individuals, not only in employment relationships but across all aspects of social life. On April 3, 2025, the UN Human Rights Council initiated an intergovernmental process to draft a legally binding international human rights treaty focused on the protection of older persons[31].

The protection of older workers manifests through a variety of legal mechanisms, often involving differentiated treatment compared to younger workers. These differences are shaped by the specific socio-economic, demographic, and cultural context of each state. A comparative analysis of how various states approach the protection of older workers reveals a wide range of legislative approaches and policies, highlighting the complexity and importance of adapting the legal framework to each nation's particular realities.

Such measures include salary increases based on seniority, considering seniority in promotion procedures, using seniority as a criterion for establishing priority in dismissals, considering seniority for determining severance pay, granting additional days of annual leave or notice period, and reducing working hours. These differences in treatment have been analyzed from the perspective of discrimination, sometimes leading to the conclusion that the principle of non-discrimination on the grounds of age has been violated[32]. We emphasize, however, that in countries with an aging workforce, maintaining seniority-related benefits can increase wage costs and affect the employability of older workers.

At the European Union level, the phenomenon of population aging has created a need to keep older people in the labour market for as long as possible. The main instrument for achieving this goal is the increase in standard retirement ages and the equalization of these ages for women and men.

Another instrument for keeping older people in the labour market is allowing them to combine their pension with their salary. In 2023, Romania ranked last in terms of people combining their pension with their salary, and through Article 46(2) of Law no. 360/2023, it prohibited the combination of pension and salary for certain categories of workers. We consider these provisions to be unconstitutional, for the reasons we will present below.

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[31] Information available on hrw.org, accessed on April 7, 2025.

[32] The Dutch Commission for Equal Treatment considered that the employer's policy of gradually reducing working hours and granting additional leave days for workers aged 57 or older lacked objective justification.

3.1 Compatibility of the Prohibition of Combining Pension with Salary, as Provided by Article 46(2), with Constitutional Provisions

We believe that the prohibition in Article 46(2) of Law no. 360/2023 unduly limits the right to an old-age pension. The Constitutional Court has ruled that the purpose of prohibiting the combination of pension with salary-related rights must fall within the scope of the purposes enumerated in Article 53 of the Constitution[33]. Although we can consider the measure to pursue a legitimate aim, the condition provided by Article 53(2) of the Romanian Constitution, namely the non-discriminatory application of the measure, is not met. The Constitutional Court has ruled that the prohibition of combining pension with salary should not affect only certain socio-professional categories without reasonably justified reasons for the difference in treatment[34].

After fulfilling the retirement conditions, pensioners have two ways to remain active in the labour market: either they extend their employment relationships with the employer's annual consent, or they conclude a new employment relationship after the previous one ceases by operation of law, as a result of fulfilling the retirement conditions. The prohibition of combining provided by Article 46(2) is not applicable to workers who use the second method indicated.

We believe that this difference in treatment cannot be objectively justified for workers performing activities in the private sector, being paid from private funds. Thus, the continuation of employment relationships in either of the two ways implies the employer's consent, with the distinction that consent is manifested either through an addendum or through a new individual employment contract. It is true that concluding a new individual employment contract involves negotiating all contractual clauses, while the addendum only modifies the contract duration, with the other clauses remaining unchanged. This aspect, however, does not reveal an essential difference between the two categories of workers, capable of justifying different treatment regarding the payment of social security benefits. In this regard, we mention that there is no impediment to concluding a new individual employment contract

[33] The purposes provided for in Article 53 of Law no. 360/2023 concern: "the defence of national security, public order, public health or morals, citizens' rights and freedoms; the conduct of criminal investigation; the prevention of the consequences of a natural calamity, a disaster or a particularly serious accident."

[34] Decision no. 375 of July 6, 2005, published in the Official Gazette of Romania, Part I, no. 591 of July 8, 2005. By this decision, the Constitutional Court found the unconstitutionality of the prohibition of combining service pension with remuneration in the field of justice, considering it discriminatory. The grounds of the decision stated the following: "But Article 81(8) of Law no. 303/2004 also contains discrimination among magistrates in the categories it nominates. Thus, in the application of the legal text, judges and prosecutors benefiting from a service pension who carry out any other professional activity, for example, the activity of a lawyer, notary, teacher, diplomat, can combine the service pension with the income obtained from this activity. In contrast, judges and prosecutors benefiting from a service pension who, after retirement, would be called upon to perform the function of judge or prosecutor for some time, would not have the right to combine the service pension with the allowance granted for the activity performed. No constitutional provision prevents the legislator from abolishing the combination of pension with salary, provided that such a measure applies equally to all citizens, and any differences in treatment between various professional categories have a lawful reason".

between the same parties, under the exact same conditions, including for a fixed term of one year, according to Article 83(g) of the Labour Code.

Moreover, in the case of workers not paid from public funds, the measure is not capable of ensuring the purpose of relieving the social insurance budget, as they always have the possibility of concluding not an addendum, but a new individual employment contract under identical or similar conditions.

Regarding workers paid from public funds, the continuation of employment relationships with the employer's annual consent is not similar to concluding a new employment relationship, as in the latter situation the worker can occupy a vacant position only if they pass an examination or competition, according to Article 31(1) of Law no. 153/2017 on the remuneration of personnel paid from public funds. Therefore, we can consider that the two categories are not in similar situations, there being a difference consisting in professional competence attested by passing the examination or competition. In national legislation, we find situations where high professional competence represents a criterion for differentiating between workers whose individual employment contract ceases or does not cease by operation of law. An example in this regard, concerning the category of doctors, is represented by Article 391 of Law no. 95/2006 on health sector reform. The difference in treatment is based on the exceptional professional competence of the workers, on the fact that they possess superior knowledge and professional experience, whose valorization is beneficial both for society in general and for younger workers to whom the possessed knowledge is transmitted.

Consequently, we consider that we cannot retain the discriminatory nature of the provisions of Article 46(2) in relation to workers paid from public funds.

A second discriminatory difference in treatment results from Article 19 of the law's implementing rules, according to which the prohibition of combining pension with salary does not apply to persons who meet the retirement conditions as a result of reducing the standard retirement age. Thus, persons who retire at an age reduced compared to the standard retirement age can combine pension rights with salary-related rights, while older persons who retire upon reaching the standard age do not have this right. We believe that there is no objective justification for the difference in treatment between the two categories of pensioners.

Given these considerations, since Article 46(2) of Law no. 360/2023 on the public pension system is discriminatory, ***de lege ferenda***, its repeal is necessary.

3.2 Professional Training and Enhanced Occupational Safety

Continuing professional training is a means of extending active working life; however, studies show that employers do not consider this measure profitable for older workers, so young people

benefit from professional training much more often than older people. Professional training is perceived as a long-term investment, which in the case of older workers might not pay off.

The European Commission adopted the Action Plan on the European Pillar of Social Rights[35], one of its objectives being to achieve an adult participation rate in vocational training programs of at least 60%. To achieve this objective, Romania has committed to reaching an annual participation rate of 17.4% for adults in vocational training programs, this percentage being the lowest among those established at the level of other European states.

Although aging is accompanied by physical and cognitive changes, we believe that legislation should not provide different professional training rules for older people, but rather the employer should consider good practices to adapt professional training to the particular needs of all employees, including older employees. As we pointed out in the chapter on discrimination, establishing specific rules for older people for professional training could reinforce negative stereotypes about them and could lead to discrimination. Furthermore, the existence of different professional programs for older workers, which may be perceived as less demanding, can affect older workers' chances of promotion or employment. However, we believe that employers should be obliged to detail, in the collective labour agreement or internal regulations, mandatory principles or good practices for the professional training of older people[36].

Thus, ***de lege ferenda***, Article 242 of the Labour Code can be supplemented as follows: "The internal regulations shall contain at least the following categories of provisions: (...) rules and good practices applicable to the professional training of older workers."

Regarding occupational health and safety, similar to European legislation, national law does not stipulate the existence of specific risks for older workers. Risk factors such as decreased mobility, strength, dexterity, diminished circulatory and respiratory system functions, as well as balance, decreased vision and hearing, reduced information processing speed, and reaction speed contribute to increasing this risk, as well as the severity of the injury degree[37]. Article 7(3)(d) of the law provides for the employer's obligation to adapt work to the individual, to reduce its effects on health. Similar

[35] The Action Plan on the European Pillar of Social Rights is available on the website op.europa.eu, accessed on March 29, 2025.

[36] We note that Article 17(3) of Government Ordinance no. 129/2000 provides for the obligation of vocational training providers to adapt training programs to ensure non-discriminatory access for persons with special needs, but older people are not considered persons with special needs. This category only includes persons with disabilities, according to Article 8 of the Methodological Norms for the Application of Government Ordinance no. 129/2000 on adult vocational training from May 8, 2003.

[37] Kowalski-Trakofler K., Steiner L., Schwerha D., 2005. Safety considerations for the aging workforce. Safety Science 2005;43: 779–793.

provisions are found in Article 177(2)(d) of the Labour Code. Therefore, the employer has the obligation to adapt working conditions to the health status of older workers. Furthermore, Article 8 of Government Decision no. 355/2007 on the health surveillance of workers stipulates that older people over 60 years of age benefit from special health surveillance, which consists of a medical examination performed by the occupational health physician, to determine fitness for work.

4. TERMINATION OF EMPLOYMENT BY OPERATION OF LAW UPON FULFILLING PENSION CONDITIONS

The termination of employment due to age is a well-established institution in European countries' legal systems. This institution is considered a protective measure for workers when viewed from a lifelong career perspective[38]. Thus, with job stability throughout life, workers desire a predictable end to their professional careers, with their earned income replaced by an adequate pension income. In European law, the termination of an individual employment contract upon fulfilling pension conditions falls within the scope of Directive 2000/78/EC, being classified as dismissal in the autonomous sense provided by Article 6(1)(a), as it affects the duration of employment relationships, the exercise of professional activity, and participation in active life[39].

Not infrequently, older workers have perceived the termination of individual employment contracts due to age as a form of age discrimination, arguments that have resonated in the jurisprudence of the Court of Justice of the European Union, as evidenced by the detailed analysis of cases presented in the chapter dedicated to discrimination issues. However, national and European jurisprudence reflects a tendency to preserve this institution.

The United Kingdom has repealed this institution. As a result of the repeal, employers sought alternative ways to terminate older workers' individual employment contracts, such as concluding fixed-term contracts or imposing stricter performance evaluation criteria. Nevertheless, the legislative amendment achieved its intended purpose, leading to older workers remaining in the labour market after reaching the standard retirement age. In France, the peculiarities of the termination of employment by operation of law reflect the policy of keeping older people in the labour market; thus, termination occurs not at the date of fulfilling pension conditions, but at a certain age, higher than the standard retirement age (70 years in France).

In contrast to these developments, current Romanian legislation has maintained the institution of termination of individual employment contracts by operation of law upon fulfilling pension

[38] Vickers L., 2018. Comparative Discrimination Law, *Age as a protected ground*. Brill, 2018, p. 24.

[39] ECJ Judgment in Case C-411/05 Felix Palacios de la Villa, paragraph 46. The CJEU jurisprudence on age discrimination as a result of the termination of an individual employment contract by operation of law is presented in Chapter III of the work.

conditions, although the provisions of Article 56 of the Labour Code have been successively amended to allow workers in general, and women in particular, to remain in the labour market for as long as possible.

However, the amendments were not carried out in compliance with legislative drafting rules.

4.1 Lack of Correlation with Social Security Legislation Provisions

Article 56(1)(c) of the Labour Code represents the general law regarding the termination of employment relationships by operation of law, upon fulfilling the conditions for obtaining an old-age pension[40]. In addition to this termination case, Article 56(1)(c) regulates the termination of the individual employment contract by operation of law in the case of invalidity pension of the third degree or the issuance of the decision regarding working capacity in the case of invalidity of the first or second degree, as well as in the case of fulfilling the conditions for obtaining varieties of the old-age pension: early retirement pension, partial early retirement pension, and old-age pension with a reduction of the standard retirement age.

Law no. 360/2023 on the public pension system, currently in force, no longer regulates the partial early retirement pension. With the entry into force of Law no. 360/2023, the Romanian legislator did not amend the provisions of the Labour Code accordingly. ***De lege ferenda***, it is necessary to amend Article 56(1)(c) of the Labour Code by removing the reference to the partial early retirement pension.

Article 56(1)(c) of the Labour Code refers to the termination of the individual employment contract by operation of law, but the termination occurs *ope legis* only upon fulfilling the conditions for minimum contribution period and standard retirement age. In the case of early retirement or retirement with a reduction in the retirement age, for example, the termination of the individual employment contract does not occur *ope legis*, as it involves the manifestation of the pension beneficiary's will, the moment of retirement depending on their will. This is supported by the considerations of Decision no. 840/2018 of the Constitutional Court.

We observe that the provision in Article 56(1)(c) of the Labour Code regarding the termination of the individual employment contract at the date of communication of the pension decision does not meet the conditions of clarity. Firstly, it does not indicate the beneficiary of the communication. To identify the beneficiary of the communication, the provisions of Article 93 of Law no. 360/2023 are relevant, which stipulate the pension house's obligation to inform the employer that a pension decision

[40] According to Article 46(1) of Law no. 360/2023 on the public pension system: "(1) The old-age pension is due to persons who cumulatively fulfill, at the date of retirement, the conditions regarding the standard retirement age and the minimum contribution period provided in Annex no. 5."

has been issued for their worker. Therefore, the employer is not communicated the pension decision itself, as such a communication could even potentially violate the right to personal data protection.

To ensure the security of legal transactions and avoid uncertainty regarding the moment of termination of employment relationships, the notion of the date of communication of the pension decision, provided by Article 56(1)(c) of the Labour Code, must be interpreted broadly. Thus, the date of communication of the pension decision should be understood as the moment when the employer was informed by the pension house, through the notification provided by Article 93(7) of Law no. 360/2023, that a decision establishing pension rights has been issued for their worker. We believe that the date of communication of the decision can also be the date on which the worker informs the employer of the issuance of the pension decision, if this precedes the information provided by the pension house. ***De lege ferenda***, it is necessary to amend Article 56(1)(c) by replacing the phrase "date of communication of the pension decision" with "date of informing the employer about the issuance of the pension decision."

4.2 The Right of Women to Continue Employment Relationships Until Reaching the Standard Retirement Age for Men

We note that Article 56(1)(c) of the Labour Code regulates four cases of termination of employment relationships by operation of law, including the one applicable exclusively to female workers, namely the termination of the individual employment contract by operation of law upon reaching the age of 65, which represents the standard retirement age for men, not for women. We note that, currently, the standard retirement ages provided for women are lower than 65 years, a situation that is expected to change in 2035.

The termination of the contract upon reaching the age of 65 represents an exception to the rule of termination of the contract by operation of law upon the cumulative fulfillment of conditions regarding the standard retirement age and the minimum contribution period. Therefore, ***de lege ferenda***, it is opportune to regulate the rule and the exception separately, not under the same letter of paragraph (1) of Article 56.

The continuation of employment relationships until the age of 65 is subject to certain formalities, namely informing the employer in writing, 30 days prior to fulfilling the conditions for the termination of the individual employment contract by operation of law, about the willingness to continue employment relationships until the age of 65. Considering the purpose of keeping older people in the labour market for as long as possible and avoiding potential disputes regarding the date of notification, ***de lege ferenda***, the legislator could regulate the employer's obligation to ask the employee, within

30 days prior to the termination of employment by operation of law, to express her option to continue or not continue employment relationships until the age of 65.

It should be noted that, if the employee opts to continue employment relationships until the age of 65, she is not entitled to an old-age pension before this date. This conclusion results from the considerations of Decision no. 387/2018 of the Constitutional Court. Therefore, the continuation of employment relationships until the age of 65 leads to the implicit modification of the old-age pension conditions, in the sense that the right to receive an old-age pension arises upon reaching the standard retirement age provided for men, which is 65 years. Consequently, ***de lege ferenda***, it is necessary to amend Article 91 of Law no. 360/2023, to regulate the exception regarding the pension payment date upon reaching the age of 65, for women who opt to continue employment relationships until this date[41].

In the absence of legislative intervention, the modification of the conditions for granting the old-age pension, in the exceptional situation provided by Article 56(1)(c) of the Labour Code, results from the considerations of the Constitutional Court's decision, which could lead to issues in the clarity and predictability of the norm and, possibly, disputes based either on a grammatical interpretation or a systematic interpretation of the provisions of Law no. 360/2023 on the public pension system.

4.3 Violation of Regulatory Uniqueness and Legislative Parallelism Regarding the Continuation of Employment Relationships

Article 46(2) of Law no. 360/2023 contains regulations regarding the conduct of employment relationships, modifying the 3-year period for which employment relationships could be extended, provided by Article 56(4) of the Labour Code. Thus, according to Article 46(2), employment relationships can be extended until the age of 70, i.e., for a period of 5 years after the date of fulfilling pension conditions. Including these regulations in a normative act concerning pensions, rather than in a normative act that legislates employment relationships, violates the provisions of Article 14(1) on regulatory uniqueness in the matter, from Law no. 24/2000 on legislative technical norms for the elaboration of normative acts. Furthermore, the opinion of the Legislative Council regarding the draft

[41] ***De lege ferenda***, it is necessary to amend Article 91 of Law no. 360/2023 as follows: "(2) By way of derogation from the provisions of Law no. 287/2009 on the Civil Code, republished, with subsequent amendments and completions, regarding the statute of limitations, in the public pension system, pensions are paid from the date of granting inscribed in the decision issued by the territorial pension house, with the exception of the early retirement pension, which is paid from the date of termination of the insured status, in the case of persons falling into one of the situations provided for in Article 6(1)(a), (b) and (d). (2) Exceptionally, the old-age pension is paid from the date of termination of the insured status, in the case of women falling into the situation provided for in Article 56(1)(c) second sentence."

law on the public pension system[42] also emphasizes the necessity of regulating aspects concerning employment relationships in a normative act addressing these relationships.

In connection with the two legal texts, namely Article 46(2) and Article 56(4) of the Labour Code, we observe the following: a) they identically regulate two conditions for the continuation of employment relationships: the existence of the parties' agreement for the continuation of employment relationships and the annual renewal of this agreement; b) they regulate differently the age up to which employment relationships can continue; c) Article 56(4) additionally contains procedural rules regarding the deadline for submitting the extension request.

Article 46(2) of Law no. 360/2023 operates a partial modification, not a repeal, of Article 56(4) of the Labour Code, the modification strictly concerning the age up to which the individual employment contract can be extended, as results from the application of Article 64(5), corroborated with Article 67(1) of Law no. 24/2000.

Therefore, aspects concerning the continuation of employment relationships are regulated, in parallel, both by Article 56 of the Labour Code and by Article 46(2) of Law no. 360/2023. As previously stated, for reasons of unconstitutionality, the repeal of Article 46(2) would be necessary. ***De lege ferenda***, it is necessary to expressly amend Article 56(4) of the Labour Code, to expressly indicate the age of 70 up to which employment relationships can continue.

4.4 Deficient Regulation of the Procedure for Continuing Employment Relationships

After fulfilling the pension conditions, with the parties' agreement, the individual employment contract can be continued through annual extension, according to Article 56(4) of the Labour Code. The text refers to annual extension without explaining the method of extension. For this reason, there is uncertainty regarding the method of termination of the individual employment contract upon the expiration of the extension period.

Thus, one opinion holds that, after the expiration of the extension period, the individual employment contract terminates by operation of law, based on Article 56(1)(c) of the Labour Code.

In our opinion, the individual employment contract terminates by operation of law, as a result of the expiration of the fixed one-year period, based on Article 56(1)(i) of the Labour Code. This opinion is based on the fact that, following the extension of the individual employment contract for a period of one year, the contract's duration changes from indefinite to fixed-term. Furthermore, other normative acts expressly provide that the contract's duration, after extension, is fixed-term. For example, Article 219(2) of Law no. 199/2023 on higher education stipulates that the activity of

[42] Opinion of the Legislative Council regarding the draft law on the public pension system, available on the website cdep.ro/proiecte/2023/700/20/7/cl727.pdf, accessed on March 23, 2025.

teaching or research staff can continue after retirement, based on a fixed-term contract of one year, which can be extended annually, without an age limit.

Another argument is represented by the meaning of the phrase "the date of cumulative fulfillment of the standard age conditions and the minimum contribution period for retirement," which must be interpreted as establishing a unique point in time; if we were to consider that the date of fulfilling the standard retirement age condition is also a later date than the actual date of reaching this age, we would distort the meaning of the notion of standard retirement age, as provided by the pension law. Furthermore, the characteristic of a unique point in time for the date of termination of the individual employment contract due to age also results from Swedish jurisprudence. Thus, in the Keolis case[43], the employer terminated the individual employment contracts of bus driver employees when they reached the age of 67, and subsequently re-employed them based on fixed-term individual employment contracts until they reached the age of 70. The court analyzed the employer's refusal to continue the employment relationship after reaching the age of 70 as discriminatory treatment on the grounds of age, holding that allowing the termination of the individual employment contract at the age of 67 represents an exception that is applicable only when the employee has reached 67, and not thereafter.

In conclusion, following the extension, the individual employment contract terminates by operation of law upon reaching its term, the expiration of the term being essential to the contract's termination. We cannot accept that the employer ascertains, for example, the termination of the individual employment contract by operation of law before this term, considering, for example, that even between the date of fulfilling the conditions for retirement and the expiration of the one-year term, the conditions for applying Article 56(1)(c) of the Labour Code would be met.

Furthermore, it cannot be accepted that a postponement of the date of fulfilling the pension conditions occurred, because this would have to be expressly regulated, given that such a measure could also have consequences regarding the accrual of pension rights. ***De lege ferenda***, to avoid interpretation difficulties, it is necessary to amend Article 56(4) of the Labour Code to indicate that the duration of the individual employment contract changes from indefinite to fixed-term.

We note that through Decision no. 759/2017 of the Constitutional Court[44], the exception of unconstitutionality of Article 56(1)(c), second sentence, first hypothesis, of the Labour Code was

[43] See the judgment rendered by the Labour Court on 16.09.2015, in case "2015 no 51, the Equality Ombudsman v. Keolis AB."

[44] Decision no. 759/2017 regarding the admission of the exception of unconstitutionality of the provisions of Article 56(1)(c) second sentence, first hypothesis, of Law no. 53/2003 - Labour Code, published in the Official Gazette, Part I, no. 108 of February 5, 2018. By this decision, the Court ruled as follows: "Admits the exception of unconstitutionality

admitted. Thus, the Court found that the measure of terminating the individual employment contract at the date of communication of the third-degree invalidity pension decision is unjustified, even in the case of full-time contracts, because it infringes upon the parties' freedom to renegotiate the contract and excludes, for third-degree invalids, facilities such as transfer to part-time work or increasing working time, which are available to other employees. More recently, in its session of April 8, 2025, the Constitutional Court reiterated this solution[45], again admitting an exception of unconstitutionality regarding this text and observing that, although declared unconstitutional, these provisions had been continuously incorporated into the content of Article 56, disregarding the principle of the binding effects of the Constitutional Court's decisions.

De lege ferenda, it is necessary to amend Article 56(1)(c) of the Labour Code, by eliminating the clause according to which the individual employment contract terminates by operation of law at the date of communication of the pension decision in the case of third-degree invalidity pension.

Based on the above, Article 56 of the Labour Code can be amended as follows: (1) An existing individual employment contract shall terminate by operation of law: (...) c) at the date of cumulative fulfillment of the standard age and minimum contribution period conditions for retirement, at the date of communication of the pension decision in the case of early retirement pension, old-age pension with a reduction of the standard retirement age; at the date of communication of the medical decision on working capacity in the case of invalidity of the first or second degree; (...) (3^1) By way of derogation from the provisions of paragraph (1)(c), for the female employee who opts in writing for the continuation of the individual employment contract, within 30 calendar days prior to fulfilling the standard age and minimum contribution period conditions for retirement, the individual employment contract shall terminate by operation of law at the age of 65. (4) Based on a request submitted 30 days before the date of cumulative fulfillment of the standard age and minimum contribution period conditions for retirement, employment relationships may continue, with the agreement of the parties,

raised by Felicia Oanea in File no. 27.722/3/2014 (old no. 3.680/2016) of the Bucharest Court of Appeal - 7th Section for labour disputes and social insurance and by Veronica Doboş in File no. 7.802/99/2015 of the Iaşi Court of Appeal - Section labour disputes and social insurance and finds that the provisions of Article 56(1)(c) second sentence, first hypothesis, of Law no. 53/2003 - Labour Code are unconstitutional."

[45] See the press release of the Constitutional Court, dated April 8, 2025, available on the website ccr.ro, accessed on May 13, 2025. The press release stated the following: "Admitted the exception of unconstitutionality and found that the provisions of Article 56(1)(c) second sentence, first hypothesis, of Law no. 53/2003 on the Labour Code, in the wording subsequent to Government Emergency Ordinance no. 96/2018, and the provisions of Article 56(1)(c) second sentence, first hypothesis, of Law no. 53/2003, in the wording subsequent to Law no. 93/2019 are unconstitutional. In essence, the Court found that, contrary to the constitutional provisions of Article 147(1), (2) and (4), regarding the binding effects of the Constitutional Court's decisions, through the amendments brought by Article IV(1) of Government Emergency Ordinance no. 96/2018, approved with amendments and completions by Law no. 93/2019, the legislative solution declared unconstitutional by Decision no. 759 of November 23, 2017 was subsequently adopted, in the content of Article 56(1)(c) second sentence, first hypothesis, thus perpetuating the previously established unconstitutional effects."

until the worker reaches the age of 70, based on an annual addendum, which modifies the duration of the contract from indefinite to fixed-term. (...)

4.5 Incompatibility of Derogatory Provisions Regarding the Termination of Individual Employment Contracts with the Principle of Non-Discrimination

Derogatory provisions from the general law provisions of the Labour Code concern specific professional categories, and establishing different rules for them is not only accepted but also considered appropriate for regulating the termination of employment relationships based on the characteristics of a profession or a workplace. However, under certain conditions, derogatory provisions are incompatible with the principle of non-discrimination on the grounds of age.

Such an exception is found in the case of teaching and research staff in university education, who, according to Article 219(1) of Law no. 199/2023 on higher education, retire upon reaching the age of 65. We observe that both general law provisions and those in special laws condition the termination of employment relationships by operation of law on a right to pension. Given that the legislator has not indicated the reason why the conditions for the termination of employment relationships for teaching and research staff should differ from those applicable under general law, i.e., according to the specific provisions for other determined professional categories, and these reasons are not evident in the context of national law, we conclude that there is no reasonable justification for the different treatment instituted by Article 219(1) of Law no. 199/2023. ***De lege ferenda***, it is necessary to amend Article 219(1) of Law no. 199/2023 to condition the termination of the employment relationship by operation of law on the existence of a right to pension[46].

Regarding sex discrimination, we observe that there are normative acts[47] that provide for the termination of employment relationships by operation of law upon reaching the standard retirement age, which differs for women and men, but do not expressly provide for the right of female workers to continue employment relationships until reaching the standard retirement age provided for men, namely 65 years. The Romanian legislator does not have a unified vision regarding the termination of individual employment contracts for women and men, maintaining, probably unintentionally, through

[46] Article 219(1) of Law no. 199/2023 can be amended as follows: "(1) Teaching and research staff shall retire upon reaching the age of 65. At the request of the teaching staff, the status of tenured employee may be maintained until the end of the academic year in which they reach retirement age. (2) Exceptionally, if at the age of 65 the condition of the minimum contribution period for acquiring the right to an old-age pension is not met, teaching and research staff shall retire at the date of fulfilling the condition regarding the minimum contribution period. At the request of the teaching staff, the status of tenured employee may be maintained until the end of the academic year in which the condition regarding the minimum contribution period is met."

[47] Law no. 183/2024 does not regulate the possibility for female scientific researchers who obtained a "good" or lower rating in the last evaluation to continue employment relationships until the age of 65, their individual employment contract terminating by operation of law upon fulfilling pension conditions, i.e., the standard retirement age which is lower for women than for men.

faulty regulation, the difference in treatment between men and women. These omissions in legislation can, however, be remedied by interpreting the legislation in accordance with European Union law, namely by supplementing them with general law. In conclusion, the derogatory provisions analyzed are not discriminatory on the grounds of sex. Nevertheless, ***de lege ferenda***, Article 30 of Law no. 183/2024 on the status of research, development, and innovation personnel should be supplemented with provisions similar to those in the Labour Code, which allow women to continue employment relationships until the age of 65[48].

The integration of young people into the labour market is often marked by challenges such as a lack of relevant experience, a gap between graduates' skills and employers' requirements, and vulnerability to precarious forms of employment. Measures for the integration of young people at risk of social marginalization are not very effective; in 2024, they facilitated the employment of 210 such young people. Furthermore, research suggests low efficiency of contracts with a vocational training component in terms of the sustainable integration of young people into the labour market, as these are frequently used to access cheap labor without ensuring real professional insertion.

Keeping older people in the Romanian labour market is affected by significant challenges, including age discrimination and the lack of continuous professional training, which have consistently led to Romania ranking among the last in the European Union regarding the employment rate of older workers.

[48] Article 30 of Law no. 183/2024 can be supplemented with paragraph (1^1) as follows: "The individual employment contract shall terminate by operation of law, exceptionally, for the female employee who has not obtained a 'very good' rating in the last evaluation, who opts in writing for the continuation of the individual employment contract, within 30 calendar days prior to fulfilling the standard age and minimum contribution period conditions for retirement, at the age of 65."