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CRITICISMS REGARDING THE LEGAL STATUS OF WORK GROUPS IN THE NEW PENSION LAW IN ROMANIA

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Abstract: *This paper brings to the fore a more detailed discussion of what work groups are and their implications in establishing the right to a pension for persons who meet the conditions set out in the legal provisions in force at the date on which the right to a pension arises. We consider this topic to be particularly important and topical because in Romania there are many pensioners who receive pensions and who, in many cases, turn to the competent courts, specifically the courts in the district where the pensioners who are plaintiffs are domiciled, in order to have the amounts that the territorial pension houses must pay as pensions correctly determined. Next, we will start with a series of activities that are considered to be in work groups I and II, and we will analyse a series of normative acts that regulate the method of calculating pensions according to work groups based on the date on which the right to a pension arises. We will also analyse some provisions of the new pension law, namely Law No. 360/2023, which concerns the method of granting pensions based on work, which we will also examine through the filter of constitutionality. Through examples from case law, we will highlight whether the courts have correctly determined the pension due to the retired claimants by applying the relevant regulatory provisions.*

Keywords: Pension, Law, Romania.

I. Introductory aspects

In order to better understand how a person's pension is determined without going into too much technical detail, from an analysis of the pension legislation we can see that the contribution period is the period of time during which the pensioner, whether employed or self-employed, etc., paid the contributions due to the public pension system.

When we talk about the contribution period, we mean the contributory period, i.e. those periods for which social security contributions have actually been paid, but also the assimilated periods, i.e. those periods which the law considers to be contribution periods but during which no social security contributions have actually been paid(sick leave, periods of study, etc.). Non-contributory periods are those which, under certain conditions, may be recognised as contribution periods even though no social security contributions were paid during these periods. When we talk about the full contribution period, we are referring to the period of time during which a person worked and paid contributions to the public pension system. This is a particularly important criterion for determining pension entitlement. The sine qua non condition for a person to be eligible for an old-age pension is that they must have completed the full contribution period of 35 years, regardless of whether the applicant is male or female.

The minimum contribution period is the minimum period of time during which the person applying for an old-age pension has paid contributions to the public pension system, which in Romania is 15 years for both men and women.

II. CONSIDERATIONS REGARDING WORK GROUPS

In order to understand which activities belong to work group I or II, we must refer to Order No. 50 of 5 March 1990, as amended and supplemented, to specify the jobs, activities and professional categories with special conditions that fall within work groups I and II for the purpose of retirement, issued by the Ministry of Labour and Social Protection, the Ministry of Health and the National Commission for Labour Protection, which was repealed on 1 April 2001 .

Annex I to this Order specified the jobs, activities and professional categories falling within Group I of work, as established by Article 2 of Decree-Law No 68 of 1990. These include: underground work; the manufacture of silica bricks; the manufacture of ferroalloys; coking; the manufacture of alpha and betanaphthylamine; the sintering sector in steelmaking; grinding, roasting, agglomeration, charging, smelting of ores or lead concentrates; manufacture of ammunition and ammunition components; work in leprosariums; permanent work underwater at overpressure; manufacture of aluminium powder; welding under a microscope in the electronics industry; welding operations in enclosed spaces, etc.

Annex 2 of the above Order contains a list of jobs, activities and professional categories that have been established in accordance with Article 2 of Decree-Law No 68/1990 and are included in Group II work. These include: the manufacture of refractory products and materials; bulk handling of cereals and cement in silos and inside ships; port operations; casting of iron on a belt and in moulds in furnaces; preparation of sands and moulding and core mixtures; thermochemical treatment of steel; repair of lead-acid batteries; manufacture of non-ferrous alloys with less than 50% lead; reduction of dichromate in tanneries; wood distillation; manufacture of activated carbon; manufacture of collector brushes for electric machines; hospitals specialising in contagious diseases; personnel working with sludge or hydrogen sulphide treatments, etc.[1]

III ASPECTS RELATING TO WORK GROUPS WITHIN THE MEANING OF THE PROVISIONS OF LAW NO. 360 OF 29 NOVEMBER 2023 ON THE PUBLIC PENSION SYSTEM

This law expressly repeals Law No. 263/2010 and other previous legal provisions relating to the calculation of pensions and introduces a number of controversial provisions, particularly with regard to pensioners who have worked in work groups I and II.

The new pension calculation formula benefits those pensioners who have worked for more than 25 years.

[1] Order No. 50 of 5 March 1990, as amended and supplemented, specifying the jobs, activities and professional categories with special conditions that fall within groups I and II of work for the purpose of retirement, issued by the Ministry of Labour and Social Protection, the Ministry of Health and the National Commission for Labour Protection.

Their pensions will be significantly increased and they will benefit from stability points.

The stability points will be 0.50 points/year for the years between 26 and 30 of employment inclusive; 0.75 points/year for the years between 31 and 35 inclusive, and 1 point/year for persons who have worked for more than 35 years, as provided for in Article 85(3) of Law No 360/2023. The controversy begins with Article 15 of Law No 360/2023, which provides in paragraph (1) that additional periods, i.e. contribution periods under special conditions, shall be granted.

The controversy begins with Article 15 of Law 360/2023, which in paragraph (1) provides that additional periods, i.e. contribution periods under normal conditions, shall be granted for those periods which constitute contribution periods completed in jobs under special conditions or in special circumstances.

The amount of these periods is 4 months for each year worked in jobs under special conditions and 6 months for each year worked in jobs under exceptional conditions.The additional periods to the length of service that were granted on the basis of the legal provisions prior to 1 April 2001 for periods completed in work groups I and/or II shall constitute contribution periods under normal working conditions, as provided for in paragraph (2) of Article 15 of Law 360/2023.

The additional period granted for periods of contribution completed under special and/or exceptional working conditions after 1 April 2001 shall constitute a period of contribution under normal working conditions, as provided for in Article 15(3) of Law No 360/2023.

The Bistrița-Năsăud Court, invested with a dispute concerning Article 15 of Law No. 360/2023, ruled that the additional periods referred to in Article 15 of Law No. 360/2023 must be considered contributory periods and that pensioners who had these periods must benefit from the pension increase.

Thus, by its decision of 29 April 2025, the Bistrița-Năsăud Tribunal decided to refer the matter to the High Court of Cassation and Justice-Panel for the resolution of certain questions of law in order to clarifywhether the provisions of Article 15(2) and (3) of Law No 360/2023 should be interpreted as meaning that the additional periods of service granted under the legislation prior to 1 April 2001 for periods completed in Group I and/or IIand the additional period granted for periods of contribution completed under special and/or exceptional working conditions after 1 April 2001, as provided for in Article 15(2) and (3) of Law 360/2023, constitute contributory periods, within the meaning of the provisions of Article 3(r) of the same legislative act, which must be taken into account when granting stability points in accordance with the provisions of Article 85(3) of the law or, on the contrary, represent non-contributory contribution periods.[2]

With regard to the above aspects, we also believe that the periods provided for in Article 15, paragraphs (2) and (3) of Law 360/2023 should be considered contributory periods and, consequently, the pensions of these categories of beneficiaries should be calculated/recalculated correctly in order to increase them, because jobs in groups I and II involve work in areas and places where conditions are more difficult and the people who work

[2] Anonymised conclusion of the Bistrița-Năsăud Tribunal dated 29 April 2025, consulted on: https://www.scj.ro/cms/0/publicmedia/getincludedfile?id=26014 on 25 July 2025.

there, for example as locomotive mechanics, in mines, etc., are exposed to greater risks and the working conditions in those places/areas of activity are much more difficult.

With regard to jobs in special conditions, we give as examples pathological anatomy and autopsy services in hospitals; pathological anatomy and autopsy in forensic medicine institutions; teaching anatomy, histology, pathological anatomy and cell biology in universities, in accordance with Article 27(3) of Law 360/2023. If we consider jobs in special conditions, as defined by the new regulations, we can mention: research, exploration, exploitation or processing of nuclear raw materials in zones I and II, as well as in zones III and IV, in accordance with Article 27(3) of Law 360/2023.

If we consider jobs in special conditions, as defined by the new regulation, we mention: research, exploration, exploitation or processing of nuclear raw materials in radiation zones I and II; civil aviation for certain categories of flight personnel; artistic activity carried out in certain professions, etc., as provided for in Article 28(1) of Law 360/2023.

The standard retirement age is 65 for both men and women. The minimum contribution period is 15 years and the full contribution period is 35 years, according to Article 47, paragraphs (1), (2) and (3) of the same law. Article 83 of the same law shows how the pension is calculated, i.e. by multiplying the total number of points earned by the insured person by the reference point value.

Article 83 of the same law shows how the pension is calculated, i.e. by multiplying the total number of points earned by the insured person by the reference point value. The reference point represents the ratio between the value of the pension point on the date of the law's entry into force and the average level of contribution periods, i.e. level 25 according to Article 84, paragraph (1) of the same law.

Another controversy generated by the new pension law concerns the practical application of Article 85, paragraphs (3) and (6) of Law No. 360/2010. These provisions state: "(3) For the contributory period exceeding 25 contributory years, a number of stability points shall be awarded as follows:

a) 0.50 points for each year completed over 25 years;

b) 0.75 points for each year completed over 30 years;

c) one point for each year completed over 35 years.

Paragraph (6) provides: "(6) The provisions of paragraphs (3)-(5) shall not apply to periods in which the public pension or, as the case may be, the service pension granted under special laws is cumulated with income insured under the law."

We consider that the biggest problem with these legal provisions is that if it is interpreted that stability points are only granted to certain categories of persons, namely those who have completed a contributory period exceeding 25 years, for the periods during which they actually worked and contributed financially to the social security budget before their retirement date, excluding categories of persons who have completed contributory periods after their retirement date in the event that they have combined their pension with their salary, as well as excluding persons who have completed contribution periods relating to the period during which they received a disability pension and excluding persons who have completed contribution periods relating to special or exceptional working conditions or contribution periods assimilated to special or exceptional working conditions, namely in group I or group II of work in the period prior to 1 April 2001, contravenes the Romanian Constitution. We

consider that this violates Article (15), paragraph (2) of the Romanian Constitution, i.e. the principle of non-retroactivity of civil law.

Only criminal and contravention law, which is more favourable, is retroactive, while the provisions of civil law apply from the date of entry into force for the future.

We also consider that the provisions of Article 16(1) of the Romanian Constitution are being violated because certain categories of pensioners are being discriminated against, given that all categories must be treated equally and granted their rights.

We also consider that Article 22(1) of the Romanian Constitution, namely the right to life, to physical and mental integrity, for the categories of pensioners to whom the criticisable legal provisions do not apply, because these pensioners also have the right to obtain the medicines necessary to treat the conditions from which they suffer and to undergo certain medical procedures, which are often costly and for which their pensions are insufficient in most cases.

The legal provisions of Article 85, paragraphs (3) and (6) of Law No. 360/2023 also violate Article 44, paragraphs (1) and (2) of the Constitution, which concern the right to property, because as long as social benefits also have a patrimonial character, they constitute in some cases a right to property within the meaning of Article 1 of Additional Protocol No. 1 to the European Convention on Human Rights for beneficiary pensioners. The extensive case law of the ECHR is also in line with this.

We consider that the provisions of Article 47(2) of the Romanian Constitution, which concern, among other things, the right to a pension, are not being respected, because certain categories of pensioners are excluded from receiving a pension in an unjustified, unfounded and legally unsubstantiated manner. We consider that it is necessary to recognise the periods of service corresponding to the conditions (group) of work as periods of contributory service for which stability points are awarded.

We consider that it is necessary to recognise as contributory periods for which stability points are awarded the periods of service corresponding to the conditions (group) of work and the periods corresponding to the assimilated service, as we are dealing with acquired rights that must be realised through the granting of stability points for these periods.

Since the stability points corresponding to the above periods are not granted, we are faced with a flagrant violation of the provisions of Article 15(2) of the Romanian Constitution, i.e. the principle of non-retroactivity of the law, because there is a change in the legal regime of the working conditions under which the pensioner agreed to carry out his or her activity. of the Romanian Constitution, i.e. the principle of non-retroactivity of the law, because there is a change in the legal regime of the working conditions under which the pensioner agreed to work during his working life, a legal regime that was valid when they obtained the right to receive a pension and which did not contain a legal provision allowing the legislator to retroactively modify this legal regime provided for by civil law, including the financial consequences established by previous laws.

We cannot accept as fair and in line with the values and principles of a democratic state that a pension law should negatively alter pension rights previously established by law, based on the *tempus regit actum* principle. This principle does not allow for the adoption of

subsequent legislation that diminishes pension rights by establishing a different method of calculation that is disadvantageous compared to the existing law.

We can look at the issue of the effects of the new pension law on the legal effects of the period of service in the work groups regulated by the previous legislation from another point of view, namely *the theory of acquired rights*.

The origin of the theory of acquired rights lies in classical civil law and in the principles developed in the 19th century by the French legal school, in particular by Charles de Montesquieu and later by Jean-Étienne-Marie Portalis, one of the drafters of the French Civil Code of 1804.

The theory was based on the idea of legal certainty and the principle of non-retroactivity of the law, according to which the law cannot suppress the legal effects produced under a previous law. Thus, a right that has been legally established and exercised becomes "acquired" and cannot be annulled by new rules.

At the international level, this concept was taken up and consolidated by the European Convention on Human Rights (ECHR) in Article 1 of Protocol No. 1, which guarantees "the right to respect for property". Although the text apparently refers to material property, the European Court of Human Rights has interpreted the term *"property"* in a broad sense, including legally acquired patrimonial rights: the right to a pension, salary, social benefits, compensation or other economic benefits.

In the case law of the ECHR, cases such as *Buchen v. the Czech Republic* (2002), *Stec and Others v. the United Kingdom* (2006) and *Kopecký v. Slovakia* (2004) have reinforced the idea that rights recognised by law or by a final decision constitute protected property. Thus, an already established pension right or a legally granted allowance cannot be withdrawn retroactively, as this would violate the principle of legal certainty and the protection of legitimate expectations.

The Court also distinguished between an acquired right, which is certain and current, and a legitimate expectation, which is a hope based on a solid legal basis. Both can be protected, but to different degrees. On the other hand, a mere future hope, without a concrete legal basis, does not fall within the scope of protection offered by the Convention.

Therefore, the theory of acquired rights, born out of reasons of fairness and legal stability, has evolved from the classic principle of non-retroactivity of the law to a modern guarantee of respect for acquired property rights. In the interpretation of the ECHR, it is not limited to real estate, but extends to all certain economic rights, such as pensions, salaries and social benefits, thus becoming an essential component of the protection of human rights and the European rule of law.

In summary, we consider that the innovative legal provisions establishing pension rights, which were introduced by Law No. 360/2023, should have been and should be applied only to persons who become entitled to pension rights after the entry into force of this law.

IV. Conclusions

A number of conclusions can be drawn from the content of this paper. Thus, in order for a person to be entitled to a pension, they must meet several conditions, namely be at least 65 years of age, have been employed under an individual/collective employment contract, collaboration contract or any other legal form, and have paid their social security contributions

on time. The contribution period must also be fulfilled, i.e. a minimum of 15 years and a maximum of 35 years, as stipulated by Law 360/2023. In previous regulations, the provisions were somewhat similar, but for certain categories of persons, the contribution period was 20 years (work group I) or 25 years (work group II).

On the other hand, we can also see that the work groups were specifically established by the legislator through normative acts such as: Law No. 3/1977; Decree-Law No. 68 of 1990; Order No. 50 of 5 March 1990, with subsequent amendments and additions, specifying the jobs, activities and professional categories with special conditions that fall within work groups I and II for the purpose of retirement, issued by the Ministry of Labour and Social Protection, the Ministry of Health and the National Commission for Labour Protection, which was repealed on 1 April 2001. Decision No. 9/2016 of the ICCJ established the method of calculating the pension for pensioners who worked in groups I and II.

Another conclusion we can draw is that the applicable law is the one in force on the date of entitlement to a pension with regard to the method of determining the amount of the pension. We consider that the legislator does not have the right to intervene retroactively in the matter of pensions, i.e. if the right to a pension has been established on the basis of legal provisions, it is not possible for Law No. 263/2010, Law No. 360/2023 or other similar normative acts to diminish the pensioner's rights previously established. We consider that if the new legal provisions contain provisions that would lead to an increase in the pension already being paid to persons who have previously retired, there is nothing to prevent these legal texts from being applied in the future and pensions from being increased.

We also conclude that, as the High Court of Cassation and Justice has pointed out, the full contribution period to be taken into account in order to determine the average annual score for persons whose pension rights were opened between 1 July 1977 and 31 March 2001 and whoworked in special categories of employment is that regulated by Article 14 of Law No 3/1977 on state social insurance pensions and social assistance.

Even many courts, in their decisions on specific cases, have ruled that if a person's old-age pension rights were acquired under Law No 3/1977, the subsequent recalculation of the pension carried out in accordance with the provisions of Law 19/2000, even until the date of application of Government Emergency Ordinance No. 4/2005, had to take into account the full contribution period and the retirement ages established by the normative act on the basis of which the retirement was made.

If we consider the new pension regulations, especially those in Law No. 360/2023, in addition to rewarding those who had more years of , during which they worked and contributed to the social security system, i.e. they have paid social security contributions in the sense that they are awarded more stability points and, implicitly, a higher pension, it is unfair to other pensioners whose rights were established by previous regulations and who worked in groups I and II, under special or exceptional conditions.

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