

Main Modifications of Law No. 263/2010 on the Universal Pension System

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Abstract: One of the phenomena with a direct effect on the social insurance system is the decrease in the number of employees, from 8.1 in 1990 to 4.5 million at present. This is mainly due to emigration and black work. Although the active population is 10.5 million, only 4.5 mentioned above have pension insurance, which will generate long-term problems. Over 25-35 years, those working illegally or do not work at all (significant number) will reach retirement age without being insured and will burden the social welfare system, requiring public money guaranteed minimum income or other support social. At that time, the working-age population (which pays these costs through taxes and contributions to insurance funds) will be less numerous, which will lead to a significant increase in taxes. If internally this trend can be countered by creating conditions for securing private pensions, raising the retirement age, discouraging early retirement and encouraging labor regime of part and policies targeted by age and by raising the employment rate of the population (in particular, the population aged over 45 and females), the issue of emigration needs to be treated differently.

Keywords: social insurance; pensions; contribution period

Ratio of the "Romanian citizens productive contributors to the state budget and social funds" and the beneficiaries of these funds decreases continuously with decreasing number of entries in the labor market and increasing number of pensioners. This trend is caused by external migration high among of working-age adults, and the increase in life expectancy makes the number of retired people rising, so if we currently have three socially secured adults in four pensioners, this ratio will be much higher than the 30- 35 years, leading to a collapse of the pension system.

The still low capacity of the economy and society to generate adequate employment and remuneration encourages labor exodus, especially of the skilled and highly

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skilled. Statistics show that there are currently 2 million Romanians working abroad, but the phenomenon of emigration is not exactly quantified. As the economy develops and will require more labor - and given that those working today will not begin to return to Romania - Romania will change gradually and in a country of immigration. From the source or transit country, Romania will become a destination for the citizens of the eastern countries, including Central Asia, who will seek better working conditions and wages than in the country of origin.

The first steps towards understanding this trend are the improvement of the external migration record system and the real assessment of the migrant population; restructuring of the workforce; investment in labor force; analysis of the volume and structure of employment, both at national and regional level; developing policies aimed at age and professional categories.

It is extremely important to develop a medium and long-term strategy on immigration, an imminent social process and with major consequences in the medium and long term. The experience of EU countries is very significant for what will follow in Romania.

Over time, the Pension Act has undergone numerous changes. Through point 3 of art. XVIII of GEO no. 117 / 23.12.2010 for amending and completing the Law no. 571/2003 on the Fiscal Code and the regulation of certain financial and fiscal measures was abrogated point VI para. (1) of art. 6 of the Law no. 263/2010, in the sense that in the public pension system, on the basis of a social insurance contract, lawyers, notaries, clerical staff and the assimilated to cults recognized by law, not integrated in the public system, as well as any person wishing to ensure, respectively, to supplement their insured income.

The pension law was updated several times during the year 2013. Thus, one of the most important changes is that the disability pension is granted irrespective of the traineeship, in all cases where the beneficiary was classified as disability (art. 73 of Law 263/2010 was amended by point 2 of Article I of Law No 37/2013.

The Law on Pensions was also amended by Law 380/2013, published in the Official Gazette, Part I, no. 842 of December 30, 2013. The regulations, in force since January 2, 2014, state that persons who have worked in Group I before 1 April 2001 will be placed under special conditions.

This law sought to eliminate inequities that led to discrimination between people in identical situations from the point of view of carrying out the activities that were

included in the first and second groups of work with regard to access to the old-age pension, by reducing the standard retirement age, but also by adding additional points taken into account in determining the average annual score.

This means that they will benefit from a three-year reduction in retirement age for every seven years working in this group.

Under the legislation prior to April 1, 2001, in the field of pensions and state social insurance, the management of the companies together with the free trade unions in the companies, taking into account the particular working conditions in which their employees worked, nominated both the workplaces who were in the first and second groups of work, as well as the persons who were to work in these jobs.

Also, the period of time during which a person worked wholly or only a part of the work schedule in the first and second groups of work was established by the order of the management or by the legal provisions.

On the occasion of the conclusion of the collective labor agreements, the work carried out by these employees was recognized as belonging to the first and / or the second group, but the employer did not fulfill the obligation to nominate the persons whose activity is belonging to higher working groups, according to the provisions of Order no. 50/1990.

As the employers did not fully comply with the provisions of Order no. 50/1990, among the employees who worked in higher labor groups, nominated by employers, and those who were not nominated but who did the same work in the same workplaces, have created discrimination, most of them or these situations are directed by court. In some companies where trade union structures were organized, collective agreements stipulated expressly that the list of jobs and categories of staff in the first and second groups of work shall be established by joint notes or additional acts at the level of these companies.

According to the law on pensions, the work group I comprises the workplaces in several fields, of which:

- mining units, for staff working underground at least 50% of the normal working time in that month;
- exploration, exploitation or processing of nuclear raw materials, I and II exposure areas to radiation;
- activities in the field of national defense, public order and national security;

- civil aviation;
- activity in sectors using explosives, dust and munitions;
- activity in the workplaces of the radiological risk categories III and IV of nuclear power stations, nuclear research and development units, nuclear fuel manufacturing units, radioactive waste treatment and storage facilities, radiological installations and other nuclear installations ;
- Underground work on hydro-technical constructions of tunnels, galleries, and underground power plants, in quarrying operations through tunnels and galleries;
- Underground work: construction, maintenance and repair of tunnels, railways, roads, as well as related galleries, with depths exceeding 8 m;
- Underground activities under the subway;
- port operation carried out by dockers and docheri-mechanizers;
- the work carried out by seafarers in shipping and inland waterway transport units working in the sea and river vessel machinery with a capacity of more than 600 HP, permanent underwater overpressure work (divers and chesonier)
- the work carried out by offshore personnel
- the activity carried out by the staff working in forestry operations: bosses, coroners, funicars, tractors, articulated forestry tractors, sortators

Law no. 380/2013, further states that, in order to reduce the retirement ages, periods of work completed in the second group of work until 1 April 2001 constitute a special contribution period.

Promoting GEO no. 68/2014 had the effect of modifying the date from which the money rights resulted from the application of the correction indices for the category of retired pensioners during January 1, 2011 - January 22, 2013 inclusive. The pension rights resulting from the application of the correction indices are appropriate as of 1 January 2013.

Law 187 / 29.12.2014 established that in 2015, the correction index established at art. 170 of Law no. 263/2010, be 1.07.

Ordered by Emergency no. 65/2015 of 30 December 2015 introduces after paragraph (1) of Article 29 of Law no. 263/2010, as amended and supplemented, two new paragraphs, (1 ^ 1) and (1 ^ 2), with the following wording:

- "(1 ^ 1) Workplaces can be maintained under special conditions by renewing their classification based on the methodology established by Government Decision, for a period of

maximum 3 years, starting on 1 January 2016, the period up to which employers have

the obligation to normalize working conditions.

- (1 ^ 2) The period between 31 December 2015 and the date of renewal of the notice of employment in special conditions constitutes a special contribution period for which the employer owes the difference between the contribution rate of social security for special conditions of work and those declared by them. "

Also, par. (2) of art. 30 was modified by art. I of the Law no. 325 / 16.12.2015, in the sense that, periodically, from 5 to 5 years, the workplaces in special working conditions provided by the Law 263 / 2010 in par. (1), letter e) shall be subject to the procedure for reassessment of the special conditions, established by a decision of the Government.

According to the same law (Article II), employers employers who, following the reappraisal procedure, have not obtained the approval for special employment conditions, owe the social security contribution to the statutory quota for normal labor conditions, and they do not have the basis legally for the employment of persons in special working conditions.

The correction index provided by art. 170 of Law no. 263/2010, was established by art. 18 of Law no. 340/2015 for 2016 at 1.09.

The Pension Law has undergone several changes in 2016. In total, since the beginning of the year there have been 11 legislative interventions on Law no. 263/2010. The most important are related to early retirement, but also access to professional categories such as priests or lawyers to the classical pension system.

The interventions made on the Pensions Act this year are mainly additions that have the value of legislative clarification in order not to make a series of interpretations. And the decisions of the Constitutional Court are the rejections of exceptions of unconstitutionality raised by different people. But the most important changes were brought by two laws.

Law no. 142 amends Article 6 para. 2 and thus regulates the possibility of insuring to the state pension fund for clergy and assimilated persons, attorneys, notaries, upon

request, on the basis of a social insurance contract. It is about the qualities of "subjective right" that can only benefit from its own will, but it can be defended in court, so it is not granted "ex officio".

Another novelty has brought about the amendment of Article 60, which clarifies the method of calculating fractions of the year in reducing retirement ages for work under conditions other than normal, group I / special conditions and group II / special conditions. Thus, it is established that in paragraph 1 that the fraction of the contribution period in Group I and / or special working conditions for which no reduction of the standard retirement age on the old law is granted may be cumulated with periods of contribution carried out in special working conditions in order to reduce the standard retirement age according to the provisions of art. 55 par. (1) lit. a), article modified by Law no.155 detailed below. In addition, at paragraph 2 the standard retirement ages set out in and can be cumulated without the total reduction being greater than 13 years, as in paragraph 3, the reduced retirement ages under the conditions of para. (2) may not be less than 50 years for women and 52 years for men.

Also by the law of July 17, by modifying Article 65, paragraph 4, it is determined how to reduce anticipated pensions, which is done more advantageously by lowering the reduction percentage initially that was 0.75% for each month of anticipation and changing by applying some lower percentages per month of anticipation.

Changing the system of calculating partial early retirement, if the law so far provided that the amount of partial early retirement is determined by the amount of old-age pension that would have been due by reducing it by 0.75% per month anticipation until they meet the conditions for getting the old-age pension.

In the new formula, the amount of partial early retirement is determined from the amount of the old-age pension, by diminishing it in relation to the length of contribution and the number of months with which the standard retirement age was reduced, according to the table below with differentiated percentages, from 0.50% to 0.15%. Thus, up to one year over the minimum contribution period, the penalty is 0.50%, decreasing by 0.05% in one-year beaches to a minimum of 0.15% for up to 8 years of contribution minimum internship.

Finally, the law establishes a change to paragraph 5 of the Pensions Act, which grants an advantageous two-year retirement age to people who have worked or live over 30 years in polluted areas.

Thus, the Law no.142 stipulates that Article 65 (5) shall be amended and shall have the following content: "Persons who have lived for at least 30 years in the areas affected by the residual pollution due to the extraction and processing of non-ferrous ores containing copper, lead, sulfur, cadmium, arsenic, zinc, manganese, fluorine, chlorine, metallic powders, ammonia emissions and Baia Mare, Coșta Mică, Zlatna and Târgu Mureș, around these localities benefit from the reduction of the standard retirement age by 2 years without the penalty stipulated in par. (4)."

The second law that brings about changes in the calculation of pensions is Law no.155. Thus, art. 56.5 and 57.3 are supplemented with respect to certain given working rights under conditions other than normal. The problem to be discussed is that these regulations are not made by default but by request. Or it's an organic law, and it has to be fully respected when a citizen manifests his will to take advantage of these rights. Here it is possible to question the violation of the law in its entirety by conditioning the application or observance on factions for any reason, because changes, regulations or any other interventions occur over time. The same is true of the addition of contributory periods after retirement.

Worthy to be mentioned in the case of government decisions with effect from 2016 is Decision no. 1014/2015, of 31-12-2015 regarding the methodology for renewal of the vacancies notice for special jobs. The decision states that: starting with January 1, 2016, the vacancy notices for special employment, valid until December 31, 2015 inclusive, may be renewed according to the methodology established by this decision. However, the provisions of the present judgment apply only to employers who held on 31 December 2015 a notice of employment in special, renewed conditions, and which have not yet achieved the necessary measures to standardize the working conditions for the workplaces under particular conditions. Paragraph 3 establishes that the period of validity of renewed endorsements may not extend beyond 31 December 2018.

Regarding the "old-age purchase" law, the term was extended until 31 December 2017. Emergency Ordinance no. 32/2017 amended the law allowing the retroactive payment of social security contributions, Law no.186 / 2016. The Emergency Ordinance was published in the Official Gazette of Romania no. 288 Monday, 24 April 2017.

Thus, the term up to which a social insurance contract could be concluded on the basis of Law no. 186/2016 and 27 April 2017 respectively, was extended until

December 31, 2017. Also, the payment of the social security contribution is made in one installment or in installments, in monthly installments, until 31 December 2017.

Payment of the contribution shall be made in full - in one tranche or in monthly installments - only until 31 December 2017. The duration of the contract shall expire on 31 December 2017, while maintaining the effects obtained under it. Recall, in accordance with Law no. 186/2016, modified by the Emergency Ordinance no. 32/2017, may conclude a social insurance contract, any person, irrespective of his nationality, domiciled or residing in Romania, who fulfills the following conditions cumulatively: - he / she is not a pensioner at the date of conclusion of the social insurance contract; - has not been insured in the public pension system or in other non-integrated systems, during the period for which the insurance is applied for, ie he has not completed an internship or internship assimilated to the contribution period in the public pension system; - had no obligation to insure the public pension system during the period for which such insurance is claimed.

The social insurance contract provided by the Law no. 186/2016 is concluded only for previous periods (up to 5 years before the conclusion of the contract).

July brings new increases for some rights that are paid through the territorial pension houses, as follows:

I. According to article 2 of GEO no.2 / 2017, the value of the pension point increases - starting with 1.07.2017 - to 1.000 lei, which represents a 9% increase from the previous value (917.5 lei). The effects of applying this measure are reflected not only in the increase of pensions but also in the following indemnities: the indemnity for the accompanying person, in the case of 1st degree disability pensioners, representing 80% of the pension point value, increases from 734 lei to 800 lei; the monthly indemnity established in accordance with the Law no.8 / 2006 for the members of the creation unions, within the limits stipulated by the law, respectively 2,900 lei;

II. In accordance with the provisions of Law no.126 / 2017, the allowances provided by O.U.G. no. 105/1999 regarding the granting of rights to persons persecuted on ethnic grounds is also increased as of 1.07.2017.

Bibliography

- Law 142/2016 - amending Law no. 263/2010 on the unitary pension system of 12 July 2016, Official Gazette 528/2016;
- Law 155/2016 - amending and supplementing Law no. 263/2010 on the unitary pension system of 15 July 2016, Official Gazette 545/2016;
- GEO 65/2015 - to complete Art. 29 of the Law no. 263/2010 on the unitary pension system, Official Gazette 986/2015;
- Law 325/2015 - amending Law no. 263/2010 on the unitary pension system, Official Gazette 937/2015;
- Law 192/2015 - for completing the Law no. 263/2010 on the unitary pension system, Official Gazette 504/2015;
- Law 155/2015 - amending Law no. 263/2010 on the unitary pension system, Official Gazette 444/2015;
- Government Emergency Ordinance 83/2014 - on the remuneration of staff paid from public funds in 2015 and other measures in the field of public expenditures of 12 December 2014, Official Gazette 925/2014
- Law 187/2012 - for the implementation of Law no. 286/2009 on the Criminal Code, Official Gazette 757/2012
- Law 380/2013 - for amending and completing the Law no. 263/2010 on the unitary pension system, Official Gazette no. 842/2013
- Law 37/2013 - amending Law no. 263/2010 on the unitary pension system, Official Gazette no. 131/2013
- Law 76/2012 - for the implementation of Law no. 134/2010 on the Civil Procedure Code, Official Gazette no. 365/2012
- GEO 1/2013 - for amending and completing the Law no. 263/2010 on the unitary pension system, Official Gazette no. 53/2013
- Government Emergency Ordinance 117/2010 - for amending and completing the Law no. 571/2003 regarding the Fiscal Code and the regulation of some financial-fiscal measures, Official Gazette no. 891/2010
- <http://legeaz.net/legea-pensiilor/>