

employment - legal changes published in February 2018

Decision of the Constitutional Court no. 759/23 November 2017 regarding the admissibility of the unconstitutionality exception of the provisions of art. 56 para. (1) let. c) second sentence, the first hypothesis of Law no. 53/2003 - The Labor Code was published in the Official Gazette of Romania, Part I, no. 108 of February 5, 2018, its provisions being applicable by that date.

The Constitutional Court upheld the exception of unconstitutionality raised by Felicia Oanea in Case no. 27.722/3/2014 (old no. 3,680 / 2016) of the Bucharest Court of Appeal - Section VII for cases concerning labor disputes and social security and by Veronica Doboş in File no. 7.802 / 99/2015 of the Iaşi Court of Appeal - Labor and Social Security Litigation Division and found that the provisions of Art. 56 para. (1) let. c) second sentence, the first hypothesis of Law no. 53/2003 - Labor Code are unconstitutional.

Thus, the Constitutional Court mentioned that the provisions of art. 56 para. (1) let. c) second sentence, the first hypothesis of Law no. 53/2003 provide the notification of the third-degree disability pension decision as one of the causes that lead to the automatic termination of the individual employment agreement. Unlike the beneficiaries of the first or second degree invalidity pension, who can not cumulate the pension with obtaining monthly income, being in one of the situations provided by art. 6 par. (1) point I let. a) and b) or point II of the Law no. 263/2010, in the case of third degree invalidity pensioners, the employer has theoretically the option of concluding a new individual employment contract for a maximum of half of the normal working time. Also, the pensioner is free to find another job if the employer refuses to renew the employment relationship.

In this respect, the Constitutional Court considered that the restriction of the exercise of the right to work resulting from the provisions of Art. 56 para. (1) let. c) second sentence, the first hypothesis of Law no. 53/2003 is a disproportionate measure in relation to the considerations envisaged by the legislator and creates an imbalance in terms of the protection afforded to the two parts of the employment relationship, thus defeating the provisions of art. 41 par. (1) of the Constitution. This conclusion is outlined by the fact that it refers to persons with low chances of integration into the labor market, as a consequence of the state of disability.

Separate opinion:

In the separate opinion on the Constitutional Court's decision, the termination of the employment agreement is not determined by a manifestation of the parties' intention to end the employment relationship, but by the effect of the law, as a result of the intervention of a factual situation stipulated by the law, which no longer allows the continuation of the employment relationship under the initial conditions, independently of the will of the employee or the employer.

According to the law, the person having third degree disability lost at least half of the work capacity, being able to perform a professional activity corresponding to at most half of the normal working time (art. 69 let. c) of Law no. 263/2010 on the unitary pension system). It follows that a medical decision finding the third degree invalidity obviously changes one of the essential elements of the individual employment contract, namely that of working time. It is a change that is independent of the will of the employee or the employer, established by law.

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The automatic termination of the employment relationship in such a case is not equivalent to an abusive, unlawful and unjustified cessation, which would result in state interference in order to ensure the employee's exercise of their right of defense against any unlawful or ungrounded measures.