THE ANNALS OF "DUNAREA DE JOS" UNIVERSITY OF GALATI
LEGAL SCIENCES. FASCICLE XXVI

On a Norm which Clearly Lacks Urgency in the Government Emergency Ordinance No. 9/2025 and Its Defective Implementation

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Abstract: *Article IV of Emergency Ordinance No. 9/2025 – which regulates measures related to certain projects for the expansion and repurposing, conversion, or modernization of natural gas transportation and distribution networks, modifies and supplements certain legislative acts, and repeals Government Decision No. 1,261/2024 that approved the financing from the Environmental Fund for such projects – amends Article 38 of Framework Law No. 153/2017 on the remuneration of personnel paid from public funds. It does so by introducing a new paragraph that regulates a case of ipso jure termination of the employment relationship for contract staff paid from such funds. Thus: The emergency ordinance contains legal provisions that were allegedly adopted in violation of Article 115(4) of the Romanian Constitution; The lack of urgency for such regulation is confirmed by the suspension of its application through Article VI of Emergency Ordinance No. 12/2025; The provision introduced via Article IV modifies an article of law concerninLabor Code, which it refers to; This legislative amendment appears to stem from High Court Decision No. 91/2024, which dealt with the ipso jure termination of public service due to a retirement decision – specifically, in cases where the individual requested to remain in public service*

Keywords: *unconstitutionality; right to work; indirect prohibition*

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1. Legislative Amendments Subject to this Analysis

The entry into force of Government Emergency Ordinance No. 9/2025[1] created waves. "Let's get rid of the retirees!" might sound like a battle cry from an oppressed social class—if it weren't so clearly absurd and lacking vision. So, we let them go, but with whom are we replacing them, both in quality and quantity? The areas most affected are healthcare and education, sectors already troubled by this very type of flawed legislative and managerial approach.

We train doctors only to "let" them leave the country or "push" them towards the private sector. And true educators are not supported—instead, we adopt regulations and attitudes that are so permissive that they become destructive in practice, or we remove them due to misinterpretation of the law—or sometimes, the law itself is flawed.

Beyond the various expressions used by the media[2]—which naturally do not carry the same legal weight and often create confusion for legal laypeople and pseudo-jurists (real or "adapted")—we can't leave Article IV of this legal act unexamined, especially regarding its constitutionality and potential interpretations.

First, let us consider the title of the emergency ordinance, which claims to regulate: "certain projects for the expansion and change of destination, conversion, or modernization of natural gas transport and distribution networks"; the "modification and supplementation of certain normative acts" (with or without clear connection to the ordinance's main provisions); the "repeal of Government Decision No. 1,261/2024 on the financing from the Environmental Fund of projects concerning gas network changes and modernization."

One of the modified legislative acts is Framework Law No. 153/2017 on the remuneration of personnel paid from public funds[3]. Under the provisions of Article IV of Emergency Ordinance No. 9/2025, a new paragraph (10) was introduced to Article 38, which reads:

"The employment contract of contractual personnel paid from public funds shall terminate *ipso jure* on the date the retirement decision for reaching the statutory retirement age is issued, including in cases where the employee requests suspension of the pension payment."

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[1] Published in the Official Monitor, Part I, No. 203 of March 7, 2025, subsequently amended

[2] For Example: https://www.digi24.ro/digieconomic/consumer/guvernul-interzice-angajarile-la-stat-dupa-pensionare-casa-de-pensii-pe-toata-lumea-a-luat-prin-surprindere-acest-act-normativ-48537.

[3] Published in the Official Monitor, Part I, No. 492 of June 28, 2017, subsequently amended and supplemented.

2. The Emergency Ordinance Contains Legal Provisions Adopted in Violation of at Least Article 115(4) of the Romanian Constitution[1]

The lack of urgency in regulation is clearly illustrated by the suspension of its enforcement via Article VI of Emergency Ordinance No. 12/2025.

a. *No Evidence of an Exceptional or Unpostponable Situation*

There is no data or justification showing that the legislative amendment was triggered by an exceptional or unpostponable circumstance. Article 115(4) of the Romanian Constitution provides that the Government may adopt emergency ordinances only in extraordinary situations whose regulation cannot be delayed, and it is obligated to state the urgency in the ordinance itself.

The Constitutional Court[2] of Romania has ruled that the constitutional requirements for adopting an emergency ordinance are:

- the existence of an extraordinary situation (an objective, measurable reality beyond the Government's control, endangering a public interest[3]);
- the urgency of regulation (which does not automatically follow from the existence of an extraordinary situation[4]);
- and the explicit justification for urgency in the body of the ordinance.

In the preamble of Government Emergency Ordinance No. 9/2025, no extraordinary or objective circumstance is demonstrated that would demand the immediate modification of the legal framework regarding the termination of employment contracts for public-funded contract personnel. In fact, the rationale lacks any mention, let alone concrete arguments for such urgency. Consequently, the ordinance fails to satisfy the constitutional and jurisprudential standards set by the Constitutional Court.

b. Impact on Existing Employment and Legal Stability

Moreover, Emergency Ordinance No. 9/2025 affects current employment relationships and undermines the legal certainty of public sector employees without

[1] For a critical analysis of this regulation, see also (Glăvan & Cerbu, 2025). The authors conclude that the analyzed norm is unconstitutional - both intrinsic and extrinsic.
[2] See, for example, Decision No. 459/2024, published in the Official Monitor, Part I, No. 179 of February 28, 2025
[3] See, for example, Decision no. 1008/2009, published in the Official Monitor, Part I, no. 507 of 23 July 2009; Decision no. 14/2011, published in the Official Monitor, Part I, no. 266 of 158 April 2011
[4] See, for example, Decision no. 421 of May 9, 2007, published in the Official Monitor of Romania, Part I, no. 367 of May 30, 2007

offering a transition period or safeguards. This generates legal uncertainty and negatively impacts public trust in authorities.

c. Suspension via a Subsequent Ordinance Confirms Absence of Urgency

Furthermore, Article VI of Emergency Ordinance No. 12/2025, which provides financial support to certain pensioner categories and supplements other laws[1], suspended the application of paragraph (10) of Article 38 from Law No. 153/2017—introduced earlier by Ordinance No. 9/2025. This postpones the measure's effects until December 31, 2025.

This type of "self-suspension" clearly shows there was no imminent threat or crisis justifying the immediate enforcement of the norm. The fact that the measure can be delayed contradicts the very justification for emergency procedures.

In doing so, the Government implicitly acknowledges the absence of urgency and the lack of an objective, substantiated rationale for rushed legislative intervention.

If a provision can be suspended by another emergency ordinance (which, ironically, is motivated!), it becomes clear that the condition of urgency and unpostponability was not met. Therefore, the adoption of Article IV of Government Emergency Ordinance No. 9/2025 via an exceptional legislative route was unjustified, and its unconstitutionality is implicitly admitted by the Government itself

3. The Provision Introduced by Article IV Amends a Law that Covers only the Remuneration of Publicly Funded Staff—not the Termination of Individual Employment Contracts

Framework Law No. 153/2017 is a special legislative act whose regulatory object, as stated in Article 1(1), is "the salary system of personnel paid from public funds." Therefore, this law does not regulate employment relationships in their entirety, but only aspects related to remuneration.

By modifying Article 38 through Government Emergency Ordinance No. 9/2025, the newly introduced paragraph (10) steps outside the regulatory scope of this law. This paragraph has no connection to the other provisions in the article or to salary-related matters and instead targets a fundamental element of the employment relationship: its termination by law.

A legal act like Law No. 153/2017 cannot establish cases of ipso jure termination of employment contracts—even for contract staff paid from public funds—because this

[1] Published in the Official Monitor, Part I no. 225 of March 13, 2025

domain is regulated separately and comprehensively by the Labor Code and other special legislation, including professional statutes.

Additionally, introducing termination causes for employment contracts outside the Labor Code and special laws and embedding them into a normative act with a completely different purpose generates legal confusion, lacks clarity, and increases the risk of discriminatory application.

This situation represents a distortion of the legislative purpose and a violation of the principle of legality established in Article 1(5) of the Constitution, leading to regulatory incoherence by embedding labor law provisions in unrelated laws.

This amendment also seems to stem from Decision No. 91/2024 of the High Court of Cassation and Justice[1], which, however, addressed the *ipso jure* termination of public office upon issuance of the retirement decision in cases where public servants had requested to remain in office after fulfilling retirement criteria—based on Article 517(2) of the Administrative Code.

4. Its Practical Application is Prone to Error due to a Lack of Harmonized Interpretation with Article 56(1)(c) of the Labor Code

This new provision contentiously innovates a rule for *ipso jure* termination of the individual employment contract, existing in parallel with the regulation already provided in Article 56(1)(c) of the Labor Code, which states:

"*The individual employment contract shall terminate ipso jure: (...) on the date on which the employee meets the cumulative conditions of standard retirement age and minimum contribution period; or, in exceptional cases, for female employees who opt in writing to continue working, within 30 calendar days before meeting those conditions, at the age of 65; on the date the pension decision is communicated in cases of partial early retirement, full early retirement, disability pension Grade III, or retirement with reduced standard age; on the date a medical certificate is communicated in cases of Grade I or II disability*."

The central issue is that the new rule does not integrate coherently with the cited Labor Code provision[2], especially regarding its scope of application:

Given its wording—"the employment relationship of contract staff paid from public funds"—it clearly applies only to contract staff, i.e., employees working under an individual employment contract.

[1] Published in the Official Monitor, Part I, No. 77 of January 29, 2025.
[2] With a partially similar opinion, see (Glăvan & Cerbu, 2025)

It does not apply to civil servants, who are not part of an employment relationship, but rather of a public service relationship.

b. The new provision does not apply where special rules derogate from Article 56(1)(c) of the Labor Code

There are certain legal frameworks that contain special, derogatory provisions overriding Article 56(1)(c) of the Labor Code. In such cases, the new paragraph (10) of Article 38 from Law No. 153/2017 does not apply, as it lacks the proper legal authority to supersede or coexist with special legislation.

c. Termination Date Depends on the Pension Type—A Misalignment with Existing Pension Law

5. Conclusions

For some categories of pensions, the employment relationship terminates upon communication of the pension decision—not its issuance. However, the text of Article 38(10) from the Framework Law does not even comply with Article 46 of Law No. 360/2023 on the public pension system, which clearly distinguishes between types of pensions:

- Old-age pension;
- Early retirement;
- Invalidity pension;
- Survivor's pension.

Yet, the way Article 38(10) is formulated implies that it might cover all pension categories, blurring essential distinctions. This provision specifically targets the situation of contractual personnel paid from public funds who continued working after meeting the standard retirement age and minimum contribution period, in accordance with Article 46(2) of Law No. 360/2023.

It does not apply to situations in which the employment contract was already lawfully terminated under Article 56(1)(c) of the Labor Code, and a new employment relationship was entered into after retirement. Clarifying the Distinction Between Continued and New Employment Relationships, it is crucial to differentiate between: *Continuing an existing employment relationship beyond retirement age, and establishing a new employment relationship after retirement*.

Therefore, every time this provision was invoked (during its brief validity—between the adoption of Emergency Ordinance No. 9/2025 and its suspension by Emergency Ordinance No. 12/2025) to terminate the contracts of pensioners who were lawfully

combining pension and public salary under new employment contracts, such application constitutes a misinterpretation—possibly even an abusive one—and a violation of the right to work. In fact, this would amount to an indirect prohibition of pension-salary cumulation, a principle that remains legally permitted unless explicitly restricted by law.

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