
THE MODIFICATION OF THE PROBATION PERIOD AS AN EFFECT OF TRANSPOSING THE DIRECTIVE (EU) 2019/1152 IN THE ROMANIAN LAW

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Abstract: Directive 2019/1152 has brought to the forefront the importance of the probationary period in an employment relationship, by its dual importance both in the activity of an enterprise by enabling the employer to find workers as competent as possible for the performance of the activity, and for the worker, who has the opportunity to know from the beginning of the employment relationship what conditions he must fulfill. Law no. 283/2022 amended the national law in the sense that it made it mandatory to expressly mention the conditions of the probationary period, if any, thus creating a conflict between the existing rules, in relation to the fact that during the probationary period, there is the possibility of termination of the individual employment contract by a simple unjustified notification by either party. In the following study, we will try to solve the legal problem of whether there or there is not a change in the legislator's optics regarding the reasons for the termination of the individual employment contract during the probationary period.

Keywords: probation period; unreasoned notification; practical case; conditions of the probation period.

1. Introduction

Directive (EU) 2019/1152 was adopted to ensure greater predictability for workers in employment and employment-like relationships.

It was transposed into the Romanian law by Law no. 283/2022 amending and supplementing the Labor Code, as well as the Government Emergency Ordinance

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no. 57/2019 on the Administrative Code. Not all provisions of the Directive have been fully transposed, some have been partially transposed, while others not at all. Thus, with regard to the matter under investigation, according to point 3 of the Directive (EU) 2019/1152 of the European Parliament and of the Council of June 20, 2019, on transparent and predictable working conditions in the European Union, Principle No. 7 of the European Pillar of Social Rights provides that employees should receive, in writing, at the time of their recruitment, clear information on their rights and responsibilities arising from the employment contract, including details of any probationary period. Before they are dismissed, they have the right to be informed of the reasons for the decision and to a fair notice period. They also have access to effective and impartial mechanisms for resolving employment disputes and, in the event of unfair dismissal, they have access to legal remedies, including appropriate compensation.

And, according to point 27 of the Directive, probationary periods allow both employers and employees to assess the compatibility between the worker and the post occupied, while providing the necessary support for an integration process of integration into the labor market or transition to a new role should not be marked by a long period of uncertainty. Therefore, in line with the European Pillar of Social Rights, the length of probation periods should be balanced and justified.

Unlike a regulation, with a directive, it is the result that matters, and Member States can choose how they want to achieve that result.

Thus, by Law no. 283/2022 (in force since 22.10.2022), which transposed the Directive to which we refer, Art 17 Para 3 Let n) of the Labor Code was amended in the sense that the individual employment contract must state: the duration and conditions of the probation period, if any.

In view of the amendments brought by the above-mentioned law, another model of the framework employment contract was issued by Order no. 2171/2022 of November 25, 2022 for the approval of the framework model of the individual employment contract issued by the Ministry of Labor and Social Solidarity published in the Official Gazette no. 1180 of December 9, 2022, which mentions in point d) the probation period: a) duration of ... business days, for the fixed-term individual employment contract; b) probationary period conditions (if any)...

Another provision that changes the perspective on the status of the probationary period, as we will see below, is the introduction by Art. I Pct. 19 of Law no. 283/2022 of Art 62 Para 4 with the following content: employees who consider that they have been dismissed as a result of exercising their rights under Art 17 Para 3, Art 18 Para 1, Art 31, 1521, 1522, 1532 and Art 194 Para 2 shall have the right to request from

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the employer an additional written explanation, in addition to those provided by Para 3 on the reasons for the dismissal decision

Throughout this paper, we will present how the institution of the probationary period has changed as a result of the transposition of Directive 2019/1152 into Romanian law, what we must take into account in an employment relationship, as well as the consequences of these changes to the legislation.

Thus, we will present the current state of research in the field regarding the problem analyzed, we will continue with the presentation of a practical case followed by the issuance of conclusions and legislative proposals.

2. Literature review

The Labor Code states in Art 31-33 the institution of the probationary period.

According to Țop, (2024), the probationary period represents a period of time during which both the employer and the employee can analyze and verify how the rights and obligations stipulated in the employment contract are respected and fulfilled.

According to Groshen, and Loh (1993), the probationary period can lead to the elimination of workers who have certain professional defects, which they themselves know about but do not want to reveal. The probationary period can be the means by which employers select workers taking into account differences that are not easily noticeable. [1]

Thus, according to the doctrine, the probationary period is a contractual, optional clause, it is not presumed, therefore it must be expressly stipulated and does not constitute a unilateral act of the employer. [2]

According to Gilca (2024), in relation to the provisions of the Labor Code, during the probationary period, either party may terminate the employment relationship by simple notification. This mechanism, intended mainly for the employer, aims to facilitate the termination of the individual employment contract in the event that the employee does not meet the professional or behavioral requirements imposed by the employer.

According to Preduț (2022), from the provisions of Art 31 Para 3 it follows that for the termination of the individual employment contract, the following essential conditions must be met: the clause relating to the probationary period must be included in the individual employment contract or in an additional act, clearly stating its duration; the employment relationship must take place within the probationary period or reach its end; one of the parties must expressly and unilaterally express its intention to terminate the contract, and this decision must be communicated in writing to the other party (the employee or the employer) before the expiry or at the end of the probationary period.

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However, even if the employer does not have to justify its termination decision, it must respect the principle of consensualism and good faith, so as not to find ourselves in a situation of abuse of rights. According to Modiga, Miclea, Avramescu (2017), the way this type of termination of the employment contract is technically interpreted during the probationary period has a significant impact on the effective application of the right to terminate the employment relationship. [3]

According to Dimitriu (2019), given that the employer is not obliged to justify in any way the termination of the employment relationship, this termination may be attributed to other causes, for example unauthorized leave or reasons other than those that could lead to a dismissal, including the fact that the employer has identified another candidate more qualified for employment than the employee on probation. Marcu-Siman (2022) specifies that the notification must be in writing to be valid, but it is not mandatory to be called the exact word "notification". Regardless of the name used (e.g. "decision to terminate the contract", "decision to dismiss" or "resignation"), what matters is the real intention of the party that issued the act. At the same time, it is appreciated that the notification may be unmotivated, but, if it is motivated, the other party cannot challenge the insufficiency or imprecision of the motivation in order to nullify its effects. At the same time, it considers that the notification may be unreasoned, but, if it is reasoned, the other party cannot challenge the insufficiency or imprecision of the reasoning in order to nullify its effects. However, the parties may agree by express agreement or by internal regulation that the notification be reasoned, and in this case, the lack of reasoning could affect the validity of the act. [4]

This was the majority opinion prior to the amendments brought by Law No. 283/2022.

According to Țiclea (2022) through Law No. 283/2022, which amends and supplements the Labor Code and Government Emergency Ordinance No. 57/2019 on the Administrative Code (in force since 22.10.2022), the legislator consolidated the principles of consensualism and good faith (Art 8 of the Labor Code) in labor relations during the probationary period. Thus, the obligation to specify the "conditions" of the probationary period, if provided for, was introduced as an essential element of information, prior to the signing of the individual employment contract and included in its content [Art 17 Para 3 Let n) of the Labor Code].

Given that prior to this legislative amendment, the employment contract could be terminated by the unilateral will of either party, without the need to motivate it, the act of termination being considered in doctrine as an act of withdrawal, we believe that the legislator's perspective has changed and with the entry into force of this law,

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we can no longer discuss a pure and simple termination of the employment relationship during the probationary period.

In relation to the new legislative amendments, according to Moțiu (2024), the employer's obligation to motivate and prove the employee's professional inadequacy during the probationary period is evident.

Regarding the Directive under analysis, Bozhko, Kulchii, Zadorozhnyy (2020) concluded that it provides guarantees for the exercise of employees' right to receive information regarding their working conditions, among which essential ones are those relating to the probationary period and its conditions, if any.

Unfortunately, national courts have not yet embraced the legislator's new vision.

3. Practical case study

By Civil Judgment No. 1009/2024 pronounced in the public hearing of 17.09.2024 by the Arad Court, the court rejected the appeal filed by the appellant B. R. in contradiction with the respondent B. R.T SRL having as its object the dismissal decision appeal – Decision No. 648/08.04.2024 and obliges the appellant to pay the respondent the amount of 6000 lei, as partial court costs.

I appealed against the aforementioned sentence in which I invoked ab initio, that the first instance rendered the judgment invoking only general legal aspects without analyzing the merits of the dispute, respectively it took into account decisions of the Constitutional Court without analyzing the dispute referred to the court. From the entire reasoning, it only results that the defendant activated the withdrawal clause, without the court analyzing any aspect invoked by the plaintiff.

Thus, the claimant was involved in a work-related accident on 26.10.2023, an incident caused by the absence of compliant stoppers at the furnace where he was performing specific activities. As a result of this work accident, he sustained serious injuries and was hospitalized and immobilized for a prolonged period. Subsequently, he was subjected to psychological pressure from the former employer's henchmen, being summoned to give statements and being threatened with the suspension of ISCIR authorization without adequate justification. The applicant's return to work was accompanied by pressure and unjustified changes in his job duties.

During the probationary period, the employer terminated the claimant's employment contract on the basis of Art 31 Para 3 of the Labor Code, which allows the termination of the contract without motivation. The first court accepted the employer's argument that the termination decision was not abusive and considered the application of this legal provision justified, reasoning that the verification of professional and human aptitudes is the exclusive right of the employer, and that no prior assessment or justification of the decision was necessary.

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The Tribunal held that during the probationary period the employment contract is of a precarious nature and the employer has the right to terminate the employment relationship without giving reasons. The court held that the employer's decision complies with Art 31 Para 3 of the Labor Code and does not constitute an abuse of rights. The Tribunal held that the notification of the termination of the probationary period amounted to a negative assessment of the employee's aptitude, without the need for factual justification.

The serious work accident in which the claimant was involved was due to the employer's failure to ensure safe working conditions, as evidenced by the subsequent repairs to the furnace (welding of shutters). By refusing to admit its own fault, the employer not only failed to take responsibility but also tried to punish the claimant afterward by applying pressure and changing his duties.

According to Art 253 of the Labor Code and Art 8 of the Labor Code, the employer is responsible for protecting the health and safety of its employees. The Tribunal failed to take these obligations into account in its analysis, ignoring the fact that the termination of the employment relationship following a work accident constitutes a form of abuse and victimization, which is protected by Directive (EU) 2019/1152, which guarantees transparency and predictability of working conditions.

Thus, we consider that the trial court misinterpreted the provisions of Art 31 Para 3 of the Labor Code, which allow the termination of the contract without giving reasons, but do not give the employer the freedom to use this right abusively, contrary to the principles of good faith and fairness. The abusive exercise of a right is prohibited by Art 15 of the Civil Code, which states that any right must be exercised in accordance with good morals and for the purpose for which it was conferred. In this situation, the termination was used in retaliation for the claimant's action in court for non-pecuniary damages against his former employer.

Even if the employer has a margin of discretion during the probationary period, it must not be discretionary and unjustified. According to Art 6 Para 4 and Para 5 of the Labor Code, the employer is obliged to respect the rights and dignity of the employees, which includes the right to challenge abuses and discriminatory treatment. The decision to terminate the contract immediately after the action brought against the employer for the damage suffered in the work accident constitutes an abuse of rights, which the court disregarded.

The plaintiff brought an action registered before the Arad Tribunal, seeking an order that his former employer pay the non-material damages caused to him as a result of the work accident he suffered.

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After the employer was notified of the claim, it issued a Notification lo. 647 and Decision no. 647 of 08.04.2024 on the termination of the claimant's employment contract.

Thus, the only reason for the termination of the employment contract is that the claimant brought an action against his former employer.

As it can be seen, on 03.04.2024 the former employer signed the acknowledgment of receipt of the claim and on 08.04.2024 he ordered the termination of the plaintiff's employment contract.

According to Art 31 Para 1 of the Labor Code, in order to verify the employee's aptitudes, a probationary period of no more than 90 calendar days may be established for executive positions, and according to the provisions of Art 31 Para 3 of the Labor Code, during or at the end of the probationary period, the individual employment contract may be terminated only by written notice, without notice, at the initiative of either party, without the need to give reasons.

The probationary period represents, as qualified by the specialized doctrine, a true termination clause, which benefits both parties, the purpose being to establish a flexible procedure through which the employment contract can be terminated, if, within the term agreed by the parties as the probationary period, any of the contractual partners, either the employee or the employer, concludes that they do not wish to consolidate the employment relationship.

In this context, Art 31 Para 3 of the Labor Code regulates a legal case of unilateral termination of the employment contract [Art 55 Let c)], which should not be confused with dismissal for professional incompetence [Art 61 Let d)], which requires a prior assessment, nor with resignation (Art 81).

However, the termination of the contract during the probationary period cannot be used abusively. If the decision is taken contrary to the principle of good faith provided for in Art 8 of the Labor Code, the employee has the right to challenge the measure in court. Art 8 establishes that labor relations must be governed by consensualism and transparency, and employers and employees must inform and consult each other, respecting both the legislation and the applicable collective labor agreements.

Also, Art 57 of the Romanian Constitution requires the exercise of rights and freedoms in a fair manner, without affecting the rights of other persons. In this regard, through Law no. 283/2022, which amends and supplements the Labor Code and the Administrative Code, the legislator consolidated these principles, imposing the obligation to include the "conditions" of the probationary period in the contract [Art 17 Para 3 Let n) of the Labor Code].

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In the individual employment contract no. 888/03.10.2023, in the section regarding the probationary period, the following are mentioned: a) the duration of 90 calendar days; b) the conditions of the probationary period:

- a. The employee carries out his/her work according to the employment contract and job description;
- b. During or at the end of the probationary period, the contract may be terminated unilaterally by written notice, without prior notice and without the obligation to justify the decision.

In view of these aspects, I consider that the termination of the employment contract was made abusively and contrary to the principle of good faith. In the response filed before the court, the employer justified its decision by invoking alleged acts committed by the plaintiff, but, while he was dismissed, other people involved in similar situations received only a warning.

The court failed to analyze the disproportion between the measure of termination of the employment contract applied to the appellant and the lighter sanctions applied to colleagues for similar acts (only warnings). According to Art 5 Para 3 and Para 7 of the Labor Code, an employee cannot be discriminatory sanctioned or victimized for having exercised his right to challenge the employer's decisions.

Clearly, the measure of termination of employment applied only to the complainant, compared to the sanctioning of other colleagues with warnings for similar misconduct, demonstrates discriminatory and punitive treatment. This aspect contravenes Art 6 of the Directive (EU) 2019/1152, which protects employees against victimization following the exercise of their rights.

In *Eweida and others v. the United Kingdom* (2013), the ECHR emphasized that employers must have an objective and reasonable justification for taking measures that may be considered discriminatory, and indirect discrimination can be sanctioned. If an employer fails to provide objective reasons for an apparently discriminatory decision, this may constitute a breach of the right to non-discrimination. If an employer fails to provide objective reasons for an apparently discriminatory decision, this may constitute a violation of the right to non-discrimination.

In the cases of *Schüth v. Germany* (2010) and *Redfearn v. the United Kingdom* (2012), the ECtHR recognized that decisions to terminate employment contracts must strike a balance between the employer's interests and the employee's fundamental rights, such as protection against discrimination and respect for dignity. Dismissal on unjustified grounds, even in cases of trials or tests for employees, can be considered a violation of human rights.

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In Case C-157/15, Achbita v. G4S Secure Solutions NV (2017) the CJEU ruled that a dismissal can only be justified if there are objective and non-discriminatory criteria. Although this case concerned internal regulations, the Court concluded that employers cannot apply disproportionate and discriminatory measures that affect employees in a punitive manner.

In Case C-149/10, Chatzi v. Ypourgos Oikonomikon (2010), the Court stressed that the European directive on equal treatment requires that employees be treated without discrimination and benefit from transparency in the assessments carried out by the employer, including during probationary periods.

Through the complaint formulated by the former employer, it is the first time that the plaintiff was informed about the commission of an alleged disciplinary act regarding the leaving of the keys to operate the equipment by him.

At the same time, the response mentions that all employees were made aware of this aspect, however, the case file does not contain any information note/any means by which employees were supposedly informed of the importance of this aspect.

The report regarding the plaintiff is drawn up one day after the defendant received the summons to court which is the subject of file no. xxx/108/2024 – perfect synchronization with the finding of an alleged disciplinary offense by the plaintiff – there is an abuse of law.

Regarding the change in the type of work after returning from sick leave, given that the ISCIR authorization was suspended for a month, the former employer should have known that the period for which it was suspended had expired, not to exert psychological pressure through its employees, in the sense of communicating to the plaintiff that in order to obtain the ISCIR authorization he must take the exam again, false and contrary to the law.

The response refers to alleged “repeated violations” with “potential for exposing the Company to occupational health and safety”, committed by the plaintiff, without mentioning only an alleged abandonment of the keys – 1 single action. At the same time, “the uncooperative attitude resulting from the way he chose to communicate with the company upon returning to work” would constitute grounds for “the plaintiff’s professional incompetence” – that is, because he requested moral damages as a result of the work accident, given that he had previously addressed a request to the defendant to resolve his request amicably, the plaintiff does not professionally correspond to the workplace.

It can be noted that, unlike the other colleagues who only received a warning, in the case of the complainant the termination of the individual employment contract was ordered. In this context, the measure applied is disproportionate in relation to the alleged misconduct and can be considered an act of discrimination according to Art 5 Para 3 of the Labor Code.

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Moreover, this decision may constitute a case of victimization, as defined in Para 7 of the same article, which provides that victimization represents any negative treatment applied in response to a complaint, a notification addressed to the competent authorities, or a legal action regarding the violation of legal rights or the principle of equal treatment and non-discrimination.

In addition, according to Art 6 Para 4 of the Labor Code, employees, their representatives, or union members who file a complaint or initiate proceedings to respect the rights provided for by law benefit from protection against any adverse treatment by the employer. At the same time, Para 5 of the same article provides that an employee who considers himself a victim of such treatment may notify the competent court to request compensation, the restoration of the previous situation, or the cancellation of the imposed measures, presenting the facts supporting the existence of such discriminatory treatment.

In conclusion, from the documents submitted by the defendant, it follows that the plaintiff was treated differently from other colleagues who allegedly committed the same act as him, the plaintiff being the victim of adverse treatment, for the fact that he filed an action for moral damages by the employer as a result of the work accident suffered.

With regard to the defendant's claim that it is not necessary to justify the decision to terminate the individual employment contract, it is important to emphasize that, although the employer has the right not to explicitly justify its decision, this does not amount to a lack of legal basis. Failure to provide reasons for the decision does not mean the absence of a real reason, and the employer's right to terminate the contract during the probationary period is not absolute or discretionary but must be exercised in accordance with the principles of good faith and fairness.

Given that Law no 283/2022 transposed the provisions of the aforementioned Directive, we must take into account its interpretations, which take precedence over domestic law. Thus, what is not found in the content of the employment contract are the criteria on the basis of which it is established whether or not the employee is compatible with the position for which he is employed.

Regarding the mentions in the contract at point d, regarding the fact that the employee carries out his activity according to the contract and job description, this does not represent an obligation specific to the probationary period, because, throughout the duration of the contractual relationship, the employee is obliged to comply with the provisions of the employment contract and job description.

Consequently, also analyzing this aspect, from the perspective of the fact that the individual employment contract does not comply with the requirement of transparent and predictable information of the employee by specifying the conditions regarding

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his compliance with the job position during the probationary period, the termination of the contract during the probationary period was carried out illegally and represents an abuse of rights, which results *ex lege*, by simply analyzing the Directive and the individual employment contract.

The employer who issues the notice of termination of the individual employment contract during the probationary period benefits from a relative legal presumption according to which the termination of the employment relationship was due to the employee's professional incompetence, without the need for a prior assessment similar to dismissal for professional incompetence.

However, if the employee files a lawsuit and alleges a possible abuse of rights by the employer, he/she benefits from all the procedural means and guarantees provided by law. This right derives both from the principle of good faith in employment relations, enshrined in Art 8 of the Labor Code and from the principle of reversal of the burden of proof in labor disputes, according to which the employer is obliged to provide evidence in his/her defense by the first day of appearance (Art 272 of the Labor Code).

Therefore, although the employer is not obliged to justify the decision to terminate the contract in the same way as a dismissal is justified (given the specifics of the probationary period), he must demonstrate before the court that he did not act in a discretionary manner and that the decision taken was not abusive.

In this case, the defendant's employer did not provide any direct and conclusive evidence regarding the applicant's training and skills demonstrated in performing one or more tasks assigned during the probationary period (not to be confused with the professional evaluation procedure), which would lead to the conclusion of the applicant's professional unsuitability or incompatibility in the employment relationship with the employer, but only indirect and equivocal evidence.

Through the defenses formulated, the only alleged incompatibility/inadequacy is a forgetting of the keys, which was also done by other colleagues, without constituting an actual inadequacy regarding the fulfillment of work tasks, moreover, as we exemplified above, it represents a victimization of the plaintiff/discrimination in relation to the fact that only a "warning" was ordered against the other employees in similar situations and the termination of the contract against the plaintiff.

Thus, since no alleged deficient activity of the plaintiff has been proven, the presumption of good faith of the employer can no longer be effective in the case, giving rise to the hypothesis that the real reason for the termination of employment relations was unrelated to the aspects invoked and unproven by the defendant company - representing, in fact, their response to the action brought by the plaintiff to cover the damage suffered as a result of the work accident suffered.

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In the absence of minimal proven reasons for the employee's fault, abusive conduct by the employer results, by misappropriating the purpose for which the simplification of the termination of employment relationships during the probationary period was enacted by the legislator.

During the probationary period, the termination of the employment contract must be directly related to the purpose of this stage, namely verifying the employee's skills. A different interpretation would contravene the provisions of Art 8 of the Labor Code, which require compliance with the fundamental principles of consensualism, good faith, information, and consultation in labor relations. Otherwise, the exercise of this right would exceed the limits imposed by the law, transforming from a legal prerogative into an abuse of the law.

The first instance court considered that the employer is not obliged to justify the decision to terminate the probationary period, neglecting the fact that Law no. 283/2022 requires transparency of the criteria on the basis of which the compatibility of an employee during the probationary period is assessed. According to Art17 Para 3 Let n) of the Labor Code, the employer is obliged to clearly specify in the contract the criteria for evaluating skills – the decisions of the Constitutional Court considered by the first instance are from 2012, but in 2022, the Labor Code was amended, introducing new regulations regarding the probationary period.

The court ignored the fact that the Directive (EU) 2019/1152 provides that probationary periods must be objective and reasonable, being strictly focused on the assessment of technical and professional skills. The court allowed the employer to use the termination without reason provision as a means of retaliation, ignoring the lack of clear and objective assessment criteria in the applicant's employment contract.

Regarding the probationary period in light of the amendments brought by the Law no. 283/2022, aspects also relevant to this case:

- Even in the case under analysis, this requirement was not respected in the individual employment contract, meaning that we are in the presence of an abuse of law by the employer regarding the termination of the individual employment contract during the probationary period;
- So, although no specific condition for the probationary period is established in the individual employment contract, the employer arbitrarily decided to terminate the plaintiff's individual employment contract.

In this regard, the plaintiff's assertion regarding the reason for termination is confirmed: the promotion of a dispute regarding the award of compensation.

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4. Conclusions and Legislative Proposals

Probationary periods should be used strictly for the objective assessment of skills, not as a pretext to dismiss an employee in a discriminatory or abusive manner.

Decisions to terminate the individual employment contract must be justified by an objective assessment, and the simple freedom offered by the probationary period does not allow for abuse of rights.

Thus, the clause in the individual employment contract regarding the employer's obligation to provide information regarding the duration and conditions of the probationary period, if any, represents one of the essential clauses of the individual employment contract.

So, in relation to the amendments made to the Labor Code by Law no. 283/2022, in what arises from Art 17 Para 3 Let n) and Art 62 Para 4, they require the amendment of Art 31 Para 3, in the sense that it is not sufficient to issue a notice of termination of the individual employment contract, given that it was established ab initio, what the conditions of the probationary period are. We can observe the change in the legislator's perspective.

Only in this way would we be in line with the letter and spirit of the law transposing the European directive, in the sense that the worker should know the reasons why his contract was terminated, namely which criteria he did not meet, which tasks he did not perform or performed in a defective manner.

European legislation and directives on transparency and predictability of working conditions protect employees against abusive practices and provide a framework for the exercise of their fundamental rights.

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Notes:

[1] Groshen L. Erica, Eng Seng LoH, in their article, reached the following conclusions regarding probationary periods: they are common, they are not limited to unionized employees but are most often implemented in medium-sized companies, as well as in public and service sectors. As a rule, employers dispense with probationary periods in a relatively uniform manner across various occupational categories. At the same time, they found that there is a positive correlation between the length of the probationary period and the salary level, and the manner and duration of the use of probationary periods are influenced by pre-employment selection methods, and this relationship varies depending on the size of the employer. Employers who do not impose probationary periods form a diverse group; from some perspectives, their behavior is similar to that of employers who apply extended probationary periods.

[2] (Gîlcă, Țop, s.a.) shows that in order to understand the legal nature of the probationary period, it is necessary to analyze the general framework regulated by common law (art. 1276 Civil Code). Thus, the unilateral termination clause (or rescission clause) has the following characteristics: it is a contractual provision that offers one or both parties the possibility to terminate the contract by a unilateral act, within a set period. It is based on the will of the parties, which requires its express stipulation in the contract, except in cases where it is directly provided for by law. Until the effective exercise of the right of withdrawal, the contract remains an ordinary one, without being affected by special clauses, whether conventional or legal. If one of the parties exercises its right of withdrawal, the contract automatically terminates, without the other party being able to contest or prevent this effect. Therefore, the intervention of the co-contractor or the court is not necessary. As a rule, it implies the obligation to grant a reasonable period of notice, but this requirement does not apply to the individual employment contract. It does not affect the services already performed or in progress. It is considered a form of lawful non-performance of the contract. Thus, the unilateral termination clause ensures contractual flexibility, allowing the termination of the legal relationship under pre-established conditions, without generating liability for non-performance.

[3] In their paper, Modiga, Miclea, and Avramescu refer to the termination of the employment contract of a pregnant employee during the probationary period. The exceptional provisions provided for in Art 60 Para 1 Let c) of the Labor Code, relating to the dismissal of a pregnant employee, are interpreted strictly. This article only applies in situations where the employer was aware of the employee's pregnancy at the time of the dismissal decision. However, it does not apply if the employee informs the employer of her condition after the decision is issued, even during the notice period, before it takes effect. Thus, if the employee does not fall within the legal definition of a pregnant woman at the time of the decision, the employer may resort to the procedure provided for in Art 31 Para 3 of the Labor Code, through which the employment relationship may be unilaterally terminated by simple notification, without the need for justification. The interpretation of this

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provision, in the context of existing case law, shows that termination of the employment contract is possible as long as it is not determined by the fact that the employee is pregnant. [4] Regarding the probationary period, the same author also shows that even if the notification does not have to be motivated, the courts can analyze possible abuses, but not from the perspective of the appropriateness of the employer's decision, but from the perspective of legality. For example, if the employer decides to terminate the contract citing the employee's lack of skills, but the evaluation was based on duties that were not listed in the job description, this could be considered abuse. At the same time, the notice must be issued during or at the end of the probationary period, without any minimum waiting period. Termination can occur at any time, even from the first days of the probationary period, but such a practice raises questions about good faith. If the notification is issued after the expiry of the probationary period, Art 31 Para 3 is no longer applicable.