PART-TIME WORK: PARTICULARITIES OF EMPLOYEE RIGHTS

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Abstract

Part-time working is a method of ensuring the reconciliation between professional life and family life, the possibility of undergoing education and training, of improving the qualification and of opening new professional opportunities to the mutual advantage of employers and employees in a manner that supports the development of enterprises. Employees' rights based upon a part-time labour agreement can be grouped in rights given unconditionally or rights conditioned by the performance of a certain volume of work, the latter being a characteristic of this type of labour agreement, taken from the special regulation. In this survey we will refer to particular aspects of certain rights given to the employee who performs part-time working, namely: the right to a salary for the work carried out, to weekly rest, the right to annual rest leave, seniority, length of service in this field and retirement contribution.

Keywords: *part-time working, part-time labour agreement, right to salary for the work carried out, weekly rest, seniority, length of service and retirement contribution.*

JEL Classification: K31

1. Introductory notions

Part-time work represents a method ensuring the reconciliation between professional life and family life, the possibility of education and training, of improvement and qualification and of capitalizing on professional opportunities to the mutual benefit of the employer and employees in a manner which supports enterprise development[2]. A reduced labor duration is the essence of this contract and a certain type of schedule, established by agreement of the parties within the individual employment contract, is important to allow the part-time employee to cumulate several part-time individual employment contracts, respectively, to comply with the family motivations, related to professional training, etc., which have determined them to conclude such an employment contract[3]. Part-time labor represents either the activity carried out by the part-time employee, whose number of business hours, calculated on a weekly basis or as a monthly average, is lower than the normal number of working hours for a full-time employee[4], either due to variable business hours, even theoretical, of one day per week or even per month[5] or it may represent a specific manner of performance concerning the employment contract, being characterized solely by the reduction of the normal business hours[6].

2. Framework Agreement on Part-Time Work

This study is based on the coordinates included in the *Framework Agreement on Part-Time Work* and especially on:

- clause 1: Object. The object of this Framework Agreement is: (a) to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work;

- clause 3 - Definitions: "part-time worker" refers to an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year,

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[2] Directive 97/81/EC of the Council as December 15, 1997 on the Framework Agreement on part-time work, concluded by UNICE, CEEP and ETUC, annex Framework Agreement on Part-Time Work, section 5.

[3] Felicia Roșioru, *Dreptul individual al muncii. Curs universitar (Individual Labor Law. University Course),* Universul Juridic Publishing House, Bucharest, 2017, p. 450.

[4] Claudia-Ana Moarcăș Costea, Ana-Maria Vlăsceanu, *Dreptul individual al muncii. Analize teoretice și studii de caz (Individual Labor Law. Theoretical Analyses and Case Studies),* C.H. Beck Publishig House, Bucharest, 2010, p. 50.

[5] Magda Volonciu, in Alexandru Athanasiu, Magda Volonciu, Luminita Dima, Oana Ileana Cazan, *Codul muncii (Labor Code). Comments on articles. Volume I. Articles 1-107,* C.H. Beck Publishing House, Bucharest, 2007, p. 521; Lavinia Onica Chipea, *Dreptul muncii. Curs universitar (Labor Law. University Course),* Pro Universitaria Publishing House, Bucharest, 2013, p. 75.

[6] Septimiu Panainte, *Dreptul individual al muncii (Individual Labor Law),* Hamangiu Publishing House, Bucharest, 2017, p. 195.

are less than the normal hours of work of a comparable full-time worker; "comparable full-time worker" means a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work or occupation, due regard being given to other considerations which may include seniority and qualification or skills. Where there is no comparable full-time worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement or, where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.

- clause 4 on the principle of non-discrimination: (1) In respect of employment conditions, part-time workers shall not be treated in a less favorable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds; (2) Where appropriate, the principle of *pro rata temporis* shall apply; (3) The arrangements for the application of this clause shall be defined by the Member States and by the social partners, having regard to European legislation, national law, collective agreements and practice; (4) Where justified by objective reasons, Member States after consultation of the social partners in accordance with national law, collective agreements or practice and/or social partners may, where appropriate, provide access to particular conditions of employment subject to a period of service, time worked or earnings qualification. Qualifications relating to access by part-time workers to particular conditions of employment should be reviewed periodically having regard to the principle of non-discrimination as expressed in clause 4, paragraph (1).

and the provisions of the national laws, respectively, the Labor Code:

Art. 103 - A part-time employee is an employee whose number of normal working hours, calculated on a weekly basis or as a monthly average, is lower than the number of normal working hours of a similar full-time employee.

Art. 104 - (1) An employer may hire part-time employees with individual employment contracts of an unlimited duration or limited duration, called part-time individual employment contracts. (2) An individual part-time employment contract shall be concluded only in writing. (3) A similar employee is a full-time employee within the same organization, having the same type of individual employment contract, performing the same or a similar activity as the employee hired under a part-time individual employment contract, with due regard to other issues too, such as the length of service and the qualification/professional skills. (4) When there is no similar employee within the same establishment, the provisions in the applicable collective labor contract shall be taken into account.

When there is no applicable collective labor agreement, the provisions of the legislation in force or the collective labor agreement concluded at national level shall be taken into account.

The rights from which employees subject to a part-time employment contract may be classified[7] as:

1) rights unconditionally granted by the provision of work in a certain amount;

2) rights conditionally granted by the provision of work in a certain amount.

With regards to the first category, the rights are granted to employees who carry out part-time activities in the same conditions as the ones carrying out their activity based on other types of agreements.

In the second category, the rights are conditionally granted by the provision of work in a certain amount, part-time work implies certain features falling within the special regulation:

1) The rights of the part-time employee subject to an individual employment contract. Art. 106, para. 1 of the Labor Code establishes that "An employee hired under a part-time employment contract shall enjoy the rights of the full-time employees, under the terms of the law and the applicable collective labor agreements".

The aforementioned legal provision refers to the whole of rights associated with the part-time employee, rights arising from their capacity of employee. The legislator imperatively states, in

[7] Ion Traian Ștefănescu, *Tratat teoretic și practic de drept al muncii (Theoretical and Practical Labor Law Treaty),* 4th edition, revised and supplemented, Universul Juridic Publishing House, Bucharest, 2017, p. 584.

order to avoid all doubts concerning the regulation, that the rights are the ones granted to full-time employees, therefore the capacity of employee is taken into account. The rights granted to part-time employees are the ones substantiating a work relation arising from an employment contract, in which context regulating the fundamental rights in a different manner, yet specific to the work performed based on an employment contract implies discrimination *ab initio.* The work relation arising from a deed regulated by the labor legislation creates a system of rights which singularizes this work from other types of work performed based on other deeds which fall under the labor legislation. Therefore, the rights provided by art. 39, para. 1 of the Labor Code[8] shall be granted to all employees, regardless of the type of employment contract concluded, this representing the common stock of all employment contracts. The rights associated with various types of employment contracts are provided by the legislator via imperative and special norms, and highlight the essence and object of each of these judicial deeds.

Art. 106, para. 2 of the Labor Code establishes that the wages for a part-time employee shall be paid in proportion to the time actually worked, in connection with the rights established for the normal work schedule, a regulation which underlines the fact that the specific rights of the employment contract are conditioned as the amount of actual work performed, notwithstanding the right. By virtue of these legal provisions, the wage, annual leave allowance, etc., rights which may be quantifiable by taking into account the working time performed during a business day, are granted in proportion to such working time. The rights which cannot be quantified, such as the right of equal opportunity and treatment, the right to dignity, the right of occupational security and health, the right of access to professional training, the right of information and consultation, are granted unconditioned by the time actually worked.

2) Pursuant to art. 39, para. 1, let. a of the Labor Code the employee is entitled to remuneration for the work performed. The doctrine states[9] that initially, the rights of part-time employees have been protected in the context of indirect discrimination based on the gender criterion. Within the case law of the CJEU the setting of a greater hourly wage for full-time workers compared to part-time workers has been deemed a discrimination, measure applied to both women and men, justified by the need to encourage full-time work.

By the decision of March 31, 1981[10] the CJEU acknowledged that a difference in wage between full-time workers and part-time workers does not represent a discrimination prohibited by art. 119 of the Treaty unless in reality it only represents an indirect means to reduce the wage level of workers by ½ given the circumstances according to which this group of workers exclusively or predominantly comprises of female workers. The Court has further shown that the provisions of art. 119 of the Treaty directly apply to such situation, and the national judge may establish, given the work identity and equal wage criteria, without the intervention of community or national measures, that the granting of a lower hourly wage to part-time work compared to full-time work represents a discrimination based on gender.

Furthermore, we must reiterate the CJEU decision pronounced on November 5, 2014 in case file C-476/12, *Österreichischer Gewerkschaftsbund v. Verband Österreichischer Banken und Bankiers*[11], where Clause 4, section 2 of the Framework Agreement on Part-Time Work, concluded on June 6, 1997, included in Council Directive 97/81/EC as of December 15, 1997 concerning the Framework Agreement on Part-Time Work, concluded by UNICE, CEEP and ETUC, amended by Council Directive 98/23/EC as of April 7, 1998, must be interpreted with the meaning that the pro rata temporis principle is applied to the calculation of the dependent child allowance granted by the

[8] The right of remuneration, the right of daily and weekly rest, the right of annual leave, the right of equal opportunity and treatment, the right to dignity, the right of occupational security and health, the right of access to professional training, the right of information and consultation, etc.

[9] Felicia Roșioru, *op.cit.,* p. 453.

[10] http://www.costelgilca.ro/jurisprudenta/document/4510/, consulted on 1.10.2018.

[11] Court Decision (First Chamber), November 5, 2014, "Reference for a preliminary ruling - Social policy - Framework Agreement on part-time work - Principle of non-discrimination - Collective agreement providing for a dependent child allowance - Calculation of allowance paid to part-time workers in accordance with the principle of *pro rata temporis*", eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:62012CJ0476&from=RO, consulted on 1.10.2018.

employer, under a collective convention such as the one applicable for Austrian Bank clerks and bankers, to a part-time worker.

The right to a wage also includes the right to be remunerated for the overtime activity. Art. 105, para. 1, let. c of the Labor Code establishes the prohibition of part-time employee to perform overtime work, except for acts of God or other urgent works intended to prevent accidents or to remove their consequences.

The provision of art. 105, para. 2 of the Labor Code opens up the perspective of outlining certain aspects with potentially different interpretations in case of a failure to observe art. 105, para. 1, namely:

a) The contract is deemed to be concluded full-time unless a part-time individual employment contract states the 3 essential elements characterizing this type of contract[12].

b) Overtime is exceptional by nature, being subject to the restrictive requirements of art. 120 of the Labor Code, including the necessity of the employee's consent, and cannot be deemed *ab initio* compatible with the nature or specifics of the part-time employment contract[13]. Given the provision included in art. 105, para. 1, let. c of the Labor Code, primary thesis, the national legislator prohibits the performance of overtime by the part-time employee, by way of exception from the rule applicable to the other types of employment contracts. The exception is of the strictest application – *exceptio est strictissimae interpretationis* -, and cannot be extended to other situation not included in such legal norm, a rule of logical interpretation acknowledged both by doctrine and in practice[14], context in which overtime is prohibited, by principle, within an employment relation arising from a part-time employment contract, however the employer's deed shall be deemed as an offence[15]. If despite this prohibition, the part-time employee does perform overtime, upon request from the employer, the full legal regime thereof shall be applicable. The doctrine[16] stated that the prohibition of performing overtime aims to prevent abuse and fraud in terms of concluding part time employment contracts where the position or work conditions implied the conclusion of full-time contracts.

Concerning the regime of performing overtime, the legislator has established an exception applicable to all individual employment contracts, an exception which for part-time work generates a special effect on the whole of requirements established by the existence of the part-time employment contract.[17]If the employee performs overtime in case of force majeure events for urgent works designed to prevent the occurrence of accidents or to eliminate the consequences thereof, an element which must be mandatorily included within the part-time employment contract cannot solely generate the effect established by the legislator in art. 105, para. 2 of the Labor Code, due to the fact that the provision of overtime in the two situations implies two legal exceptions for all types of contracts. The purpose of providing overtime in the two situations, force majeure event or urgent works designed to prevent the occurrence of accidents or to eliminate the consequences thereof, is to protect the fundamental human rights, such as the right to life, physical integrity and also to protect the individual and/or collective property assets.

c) Art. 260, para. 1, letter i) of the Labor Code contraventionally sanctions non-compliance with the provisions concerning overtime without making any mentions to the types of employment contracts, because the exceptions are expressly provided by the legislator, as is the case of the part-

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[12] Art. 105 - (1) An individual part-time employment contract shall include, besides the elements provided for in Article 17 (2), the following: a) the length of the activity and the distribution of the work schedule; b) the cases when the work schedule may be amended; c) overtime work prohibition, except for acts of God or other urgent works intended to prevent accidents or to remove their consequences. Alexandru Athanasiu, Ana-Maria Vlăsceanu, *Dreptul muncii. Note de curs (Labor Law. Course Notes)*, C.H. Beck Publishing House, Bucharest, 2017, p. 160.

[13] Septimiu Panainte, *op.cit*., p.198.

[14] https://www.juridice.ro/94324/noi-tendinte-in-sistemul-juridic-romanesc.html, consulted on 1.10.2018.

[15] Raluca Dimitriu, *Dreptul muncii. Anxietăți ale prezentului (Labor Law. Current Anxieties)*, Rentrop&Straton Publishing House, Bucharest, 2016, p. 123.

[16] Alexandru Țiclea, *Tratat de dreptul muncii. Legislație. Doctrină. Jurisprudență (Labor Law Treaty. Legislation. Doctrine. Case Law)*, 9th edition, updated, Universul Juridic Publishing House, Bucharest, 2015, p. 374.

[17] Art. 120, para. 1 of the Labor Code. The work performed besides the normal length of the weekly working time, as provided by art. 112, shall be considered overtime.

time employment contract whose performance does not allow overtime[18] because it would adulterate the purpose of concluding such an agreement and would represent a means for defrauding the employee's rights, respectively, the non-conclusion of a full-time employment contract.

3) Pursuant to art. 39, para. 1, letter c) of the Labor Code the right to annual leave. The doctrine[19] stated that the part-time employee benefits from a full length annual leave, yet the contents of art. 105, para. 1 of the Labor Code provides that the pay leave is calculated *pro rata temporis*.

We believe that the provision of the Labor Code overrules the basic principles of the work relation, as well as CJEU case law, for the following considerations concerning part-time employees, namely:

a) The actual length of the annual leave is established in the individual employment contract, pursuant to the applicable law and to the collective labor contracts[20], respectively, its length must not fall below the limit of 20 business days or the limit established within the applicable collective labor contract (which must observe the minimum length provided by the law). In this normative context, we believe that the principle of equal treatment between employees carrying out a full-time activity and those carrying out a part-time activity is seriously prejudiced because the former exert a greater physical and mental effort during a longer working period compared to part-time employees whose working time may be 2 hours, 4 hours, 6 hours, so the number of normal working hours, calculated on a weekly basis or as a monthly average, is lower than the similar number of normal working hours of a full-time employee[21]. ILO Convention no. 111/1958 on discrimination, states that discrimination (art. 1, para. 2) refers to any distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, and, taking this norm into account, the establishment of an equal length for annul leave for the two contract categories implies the surmounting the principle of equal treatment between the two employee categories by comparison to the purpose of granting such right, namely of recovering the physical and mental abilities of the employee after the work performed during a calendar year.

b) The Preamble of Council Directive 97/81/EC on the Framework Agreement on Part-Time Work, concluded by UNICE, CEEP and ETUC[22] provides two arguments which justify the enactment thereof, namely, the necessity of taking measures to promote employment and equal opportunity for men and women as well as the necessity of a more flexible organization of work so as to satisfy both the desires of employees, as well as the desires of the competition. The term „comparable full-time worker" implies the granting of all rights arising from an employment contract or relation, but that does not imply equality in quantifying the rights granted by taking into account the work actually performed.

The decision of CJEU pronounced for Zentralbetriebsrat der Landeskrankenhäuser Tirols, case file C-486/08 is also relevant in support of this opinion, which refers to clause 4, paragraph (2) of the Framework Agreement on Part-Time Work, concluded on June 6, 1997, included in the annex of Council Directive 97/81/EC as of December 15, 1997 concerning the Framework Agreement on Part-Time Work, concluded by UNICE, CEEP and ETUC, as amended by Council Directive 98/23/EC as of April 7, 1998, must be interpreted as an opposition to a national provision, such as article 55, paragraph (5) of the Law of Tirol state concerning contractual agents (*Tiroler Landes-Vertragsbedienstetengesetz*) as of November 8, 2000, in its version in force until February

[18] Art. 105, para. 1, letter c), first thesis of the Labor Code.
[19] I.T. Ștefănescu, *op. cit.*, p. 585.
[20] Art. 150, para. 2 of the Labor Code. The actual length of the annual leave is established by the individual employment contract, subject to observing the applicable law and collective labor agreements.
[21] Art. 103 of the Labor Code.
[22] Section (5) Whereas the conclusions of the European Council of Essen have outlined the necessity of taking measures to promote employment and equal opportunity for men and women and have requested measures for increasing employment, especially by a more flexible organization of work so as to satisfy both the desires of employees, as well as the desires of the competition; (6) Whereas, pursuant to article 3, paragraph (2) of the Article on social policy, the Commission has conferred with social partners on the possible direction of a Community measures in terms of work time flexibility and worker security.

1, 2009, according to which, when the working time of a worker changes, the leave not taken is adapted, so that the right of annual leave grained but not taken by a worker going from full-time work to part-time work is reduced, while working full-time, or such worker cannot benefit from such leave except subject to a reduced leave pay, which outlines the aim of this court towards granting efficiency to the *pro rata temporis* principle, i.e. the length of annual leave is established based on the time of actual work performed.

The judicial solution which the legislator should have proposed was the one of granting annual leave proportionally to the actual time worked.

4) Temporary allowance as a result of work termination. Concerning the right of allowance as a result of work termination, CJEU case law that such is granted regardless of contract type, and the amount thereof is granted *pro rata temporis,* in which context we believe that the purpose of the part-time contract reasonably combines the principle of equal treatment with that of remuneration for the activity carried out, included in the Framework Agreement norms. Therefore, by the Decision of June 1999[23], CJEU considered that the allowances granted to the worker by the employer after the cessation of the employment relation implies a different form of remuneration, to which the worker is entitled under their employment relation, but which is paid upon termination of the employment relation, for the purpose of facilitating their adaptation to the new circumstances resulting therefrom. Therefore, such allowance shall fall within the remuneration notion provided by art. 119 of the Treaty. CJEU further found that art. 119 of the Treaty opposes the application of the provisions of a collective agreement, concluded for national public services, which permitted employers to exclude part-time workers from the benefit of a temporary allowance in case of a termination of employment relations, when it is proved that, in fact, a considerably lower percentage of men compared to women work part-time, except when the employer does not establish that this provision is justified by objective factors, beyond any gender-based discrimination, a decision whereby CJEU settled the overly discussed issue of worker rights in various workplaces where the balance between men and women significantly slides towards one gender, which generates the premises for indirect discrimination. The Court underlined that in the presence of an indirect discrimination via the provision of a collective agreement, the members of the disfavored group, either men or women, must be treated in the same manner and must be subject to the same regime as the other workers, proportionately to the work time, a regime which, in the absence of a correct interpretation of art. 119 of the Treaty within national law, remains the only viable reference system.

5) According to art. 39, para. 1, letter f) of the Labor Code the right to occupational security and health. The Preamble of the Framework Agreement states that this refers to the employment conditions for part-time workers, admitting that the issues related to the mandatory social security obligations are related to the decision of Member States. In the context of the principle of non-discrimination, the parties to this Agreement have noted the Employment Declaration of the Dublin European Council of December 1996, wherein the Council inter alia emphasized the need to make social security systems more employment-friendly by "developing social protection systems capable of adapting to new patterns of work and of providing appropriate protection to people engaged in such work". The parties to this Agreement consider that effect should be given to this Declaration.

In terms of social protection, the individual part-time employment contract implies certain particulars which result from the normative regulation thereof.

a) Unemployment benefit. According to art 5, section V of Law no. 76/2002 on the unemployment insurance system and unemployment stimulation, the period of contribution is defined within a special regulation taking into account the objectives thereof, namely the achievement of strategies and policies prepared for the protection of people from the risk of unemployment, ensuring a high level of employment based on the labor market demand. Therefore,

[23] Maria Kowalska v. Freie und Hansestadt Hamburg. - Demande de décision préjudicielle: - Politique sociale - Indemnité temporaire suite à la cessation du travail - Exclusion des travailleurs à temps partiel - Article 119 CEE. C-33/89.

the definition of the period of contribution from the aforementioned is different from the one provided by Law no. 263/2010 because it includes the period for which the person has been optionally insured by the conclusion of an unemployment insurance contract and by the payment, under such insurance contract, of the contribution to the unemployment insurance budget. Therefore, the period of contribution may be deemed as the mandatory or optional insurance period within the unemployment insurance system. This definition is not yet applicable to part-time individual employment contracts, because the legislator, via a special norm included in art. 34, para. 1^2 of Law no.76/2002 limits the notion of period of contribution for this type of contract solely to the time actually worked, by cumulating the periods performed based on the part-time individual employment contracts, excluding the period for which the person has been optionally insured by the conclusion of an unemployment insurance contract and by the payment, pursuant to this insurance contract, of the contribution to the unemployment insurance budget. The reason for this special regulation is justified by the general European strategy concerning employment, the concern of identifying flexible work forms so as to ensure an increase of employment to satisfy both the desires of the employees, as well as the desires of the competition[24].

We must also take into account Decision no. 664/2008 of the Constitutional Court[25] which, by settling the constitutional challenge of the provisions of art. 34 para. 1^2 of Law no. 76/2002 on the unemployment insurance system and unemployment stimulation, found that no discriminatory provision arises from the law text subject to constitutional review. The Court held that, from this perspective, creating a differential, potentially more favorable judicial treatment for people performing work based on a part-time employment contract would be deemed as discriminatory to the people performing more work hours and the simple contribution to the unemployment insurance budget cannot create an equity between people who have performed more work hours, and thus may obtain an unemployment allowance, compared to the people who have performed significantly less work hours.

b) Length of service and in the specialization. The legal regime of the part-time individual employment contract implies the definition of the two concepts specific to employment relations, namely: length of service and in the specialization.

According to art.16, para. 5 of the Labor Code „the work performed under an individual employment contract shall be included in employee's length of service".

The doctrine[26] stated that the length of service is calculated proportionally to the actual time worked because:

- while the contribution period takes into account the actual contributions paid to the social security budget, the length of service focuses on actual length, respectively the actual period the person in question occupied a certain function or position;

- essentially, rationally, when the normative acts establish such length of occupational service for employment or promotion, a certain occupational experience actually gained during full-time work is taken into account;

- in principle, the assimilation of periods when the person has not worked as length of service implies an express regulation, in which context the part-time work performed could be considered, in terms of length of service, as work carried out full-time only if there is a legal provision in this regard.

We believe the aforementioned arguments to be judicious for the application of the *pro rata temporis* principle, and an argument supplementing such is found in the legal provision referring to the institution of the individual employment contract, not stating the type thereof, in which situation the length of service shall be deemed the period of actual work performed.

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[24].Alexandru Athanasiu, Oana Cazan, *Piața muncii între eficiență economică și echitate socială. Legislația muncii-prezent și viitor (Labor Market between Economic Efficiency and Social Equity). Labor Laws - Present and Future).* Project co-financed from the Economic Social Fund via the „Invest in People" Operational Sectorial Program, Bucharest, 2012, Human Resource Development 2007-2013, p. 174.

[25] https://lege5.ro/Gratuit/geytanzwgu/decizia-nr-664-2008-referitoare-la-respingerea-exceptiei-de-neconstitutionalitate-a-dispozitii lor-art-34-alin-12-din-legea-nr-76-2002-privind-sistemul-asi, consulted on 1.10.2018.

[26] I.T. Ștefănescu, *op.cit.*, p. 585.

The doctrine[27] also features an opinion to the contrary of the foregoing opinion, which recommends the introduction within the Labor Code of a provision according to which the employee's length of service subject to a part-time employment contract must be integral because the application of the *pro rata temporis* principle doesn't always mean an equity of rights, as results from the legislation of other states in terms of length of service.

Length of service in the field[28] means the period of carrying out activities corresponding to a specialization in a certain position or determined profession. The connection between length of service and length of service in the field is similar to the one between gender and species, as a result, the *pro rata temporis* principle also applies to the length of service in the field.

c) Retirement contribution. The notion of length of service is not synonymous with the period of contribution referred to in Law no. 263/2010[29].

With regards to the period of contribution, as a generic term, we believe certain remarks are required concerning the content of notions used by the legislator in art. 3 of Law no. 263/2010, namely:

a) period of contribution - the period during which a social security contributions were due to the public pension system, as well as for which the insured with a social security contract owed and paid social security contributions to the public pension system;

b) full period of contribution - the period provided herein during which the ensured have undergone the period of contribution in order to benefit from an old age pension, early retirement pension or partial early retirement pension;

c) minimum period of contribution - the minimum period provided herein during which the ensured have undergone the period of contribution in order to benefit from an old age pension, upon reaching the standard retirement age.

The period of contribution for the social security public system is established according to the law, similar to the case when the employee would be working full-time[30]. The legislator and the doctrine observe the CJEU opinion on the legal social security regime embodied by the decisions pronounced concerning the interpretation of art. 119 of the EEC Treaty in light of the principle of equality between men and women in case of part-time contracts.

Therefore, by the Decision pronounced on May 13, 1986[31], CJEU showed that art. 119 of the EEC Treaty is breached by a company of large stores which excludes part-time employees from the occupational pension regime if this measure affects a significantly greater number of women compared to men, except when the enterprise establishes that the measure stipulated is motivated by justified objective factors and which are not related in any way to gender discrimination. Pursuant to article 119, a company of large stores may justify the enactment of a wage policy which implies the exclusion of part-time workers from the occupational pension diagram, regardless of their gender, by stating that it aims to employ fewer workers of this type, if it is found that the means chosen for reaching this objective are applied to an actual need of the enterprise, may reach the objective in question and that such are necessary in this regard. Article 119 does not aim to force an employer to prepare their occupational pension diagram provided for their employees so as to take into account the fact that the family obligations of female employees prohibit them from meeting the conditions for benefiting from such pension.

Furthermore, by CJEU Decision as of November 22, 2012, in case no. C-385/11, with the object of a reference to preliminary ruling formulated under article 267 TFUE in the *Isabel Elbal*

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[27] Ovidiu Ținca, *Despre contractul de muncă cu timp parțial (Concerning the Part-Time Employment Contract)*, „Revista de drept comercial", issue 10/2003, p. 55.

[28] I.T. Ștefănescu (coordinator), *Dicționar de drept al muncii (Labor Law Dictionary)*, Universul Juridic Publishing House, Bucharest, 2014, p. 360.

[29] Monica Gheorghe in I.T. Ștefănescu (coordinator), *Codul muncii și Legea dialogului social.Comentarii și explicații (The Labor Code and the Social Dialog Law. Comments and Explanations)*, Universul Juridic Publishing House, Bucharest, 2017, p. 49.

[30] I.T. Ștefănescu, *op.cit. (Tratat teoretic și practic…)*, p. 585.

[31] Case no. 170/84 Bilka-Kaufhaus GmbH v. Karin Weber von Hartz (Reference to a preliminary ruling formulated by Bundesarbeitsgericht), Equal treatment for women and men – Part-time workers — Exclusion from the occupational pension system, http://www.ier.ro/sites/default/files/traduceri/61984J0170.pdf, consulted on 1.10.2018.

Moreno v. Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS) proceeding, Article 4 of Council Directive 79/7/EEC as of December 19, 1978 on the gradual application of the principle of equal treatment between men and women in the field of social security, CJEU found that this must be construed as an opposition, given the circumstances similar to the ones in the main dispute, to the regulation of a Member State which imposes a longer period of contribution for part-time workers, mostly women, compared to full-time workers, in order to have access, if appropriate, to a pension for a contributive age limit whose amount is proportionately reduced depending on the type of work performed[32].

We believe that within this normative and case law framework, the pension amount shall be calculated based on the *pro rata temporis* principle, taking into account the character of the part-time individual employment contract.

3. Conclusions

The analysis of the international and national standard, the provision of relevant cases from the CJEU case law outline the necessity of approaching the part-time individual employment contract within national law from various perspectives (economic, labor market, social security, etc.) in order to ensure the purpose for which the Framework Agreement on Part Time Work has been enacted, so as not to resort to focusing on one perspective to the detriment of another, to sacrificing social security in exchange for increasing employment by the development of this flexible form of work as a dimension of work freedom.

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