

# CONSIDERATIONS REGARDING THE REGULATION OF PERFORMANCE BY CHILDREN OF PAID ACTIVITIES IN THE CULTURAL, ARTISTIC, SPORTS, ADVERTISING AND MODELING FIELDS

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## Abstract

*A recent bill includes provisions regarding the performance by children of paid activities based on contracts concluded between the organizer and parents / legal representative of the child, under the provisions of the Civil Code. The performance by children of cultural, artistic, sporting, advertising and modeling activities is subject to prior information of the public service of social assistance by filing an information notice before the start of the activity. It is surprising that the normative act in question envisages only paid activities, without any reference to the activities carried out under a voluntary agreement that the minor can achieve.*

*Key words: remunerated activities performed by children; agreement concluded between the organizer and parent / child's legal representative; previous information of the public service of social assistance.*

JEL Classification: [K10]

Government Decision no. 75/2015 on regulating the provision by children of paid activities in the cultural, artistic, sports, advertising and modeling fields<sup>1</sup>, contains provisions relating to the performance by children of paid activities as: actor, extra, singer, musician, dancer, acrobat at cultural, educational or artistic manifestations; actor, extra, singer, musician, dancer, acrobat or model to shooting feature films or other type of filming; an extra or model at photo sessions and fashion shows; professional athlete in performance sports.

This text, as judiciously outlined in doctrine<sup>2</sup> should be read in conjunction with art. 91 paragraph 1 of Law no. 272/2004 on the protection and promotion of children's rights<sup>3</sup>, according to which "the child has the right to be protected against exploitation and cannot be compelled to work or domestic activity or outside the family, including educational institutions, special protection, rehabilitation and

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<sup>2</sup> I.T. Stefanescu, *Tratat teoretic si practic de dreptul muncii*, edition III, Publishing House Universul Juridic, Bucharest, 2014, p. 236

<sup>3</sup> Published in the Official Monitor, Part I, no. 557 of 23 June 2004, with the ulterior modifications and completions.

detention or in the cultural, artistic, sporting, advertising and modeling fields that involves a potential risk or is likely to compromise his education or harm his health or physical, mental, spiritual, moral or social development".

As was mentioned in doctrine, "the legislature is considering children aged up to 1 year and up to 15 years."<sup>4</sup>

It was mentioned in legal literature that "unlike Directive 94/33/EC which distinguishes between children, adolescents and young people, both Government Decision no. 600/2007, and Government Decision no. 867/2009 aim at protecting children, who are integrated and teenagers"<sup>5</sup>. Government Decision no. 600/2007, understands by *child*<sup>6</sup> any person who has not attained the age of 15 or any young person aged at least 15 years and not more than 18 years who is still subject to compulsory education based on a full program established by law, and by *young* anyone aged at least 15 years and maximum 18 years.

Government Decision no. 867/2009, understands by *child* anyone aged up to 18 years. By Government Decision no. 75/2015 on regulating the provision of remunerated activities by children in cultural, artistic, sporting, advertising and modeling fields<sup>7</sup> is going even further and is considering even children under one year and up to 15 years<sup>8</sup>.

Thus it results that "our internal rules assimilates teenagers, as they are understood by the European norm, to young people and those who are still subject to compulsory education on a full-time schedule, to children.

The solution adopted internally is able to produce not only some misunderstandings and ambiguities, but risks also to not respond to the purpose of the directive which obviously makes in its provisions a distinction in treatment between young people aged between 15 and 18 years depending on the existence or not of a contract or employment relationship and the inclusion or not in the mandatory school training program. It is, however, true that by not comprising the notion of adolescent the Romanian rule could contain more favorable standards than those included in the European directive<sup>9</sup>.

Article 2 of the Government Decision no. 75/2015 provides: "the child may perform remunerated activities in areas referred to in Art. 1 under the contracts concluded between the organizer and parent / child's legal representative or, if

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<sup>4</sup> Alexandru Ticlea, *Tratat de drept al muncii*. Edition IX, Publishing House Universul Juridic, Bucharest, 2015, p. 358.

<sup>5</sup> Loredana Steliana Doseanu, *Reglementarea muncii tinerilor si femeilor in dreptul national si European*, Publishing House Universul Juridic, 2014, p. 48.

<sup>6</sup> Teodor Bodoasca, *Opinii privind semnificatia juridica a termenului copil*, in "Dreptul", no. 6/2014, p. 125-132

<sup>7</sup> Published in the Official Monitor of Romania, Part I, no. 115 of 13 February 2015.

<sup>8</sup> Loredana Steliana Doseanu, op. cit., p. 48.

<sup>9</sup> Nicolae Voiculescu, *Dreptul social european*, Publishing House Universul Juridic, Bucharest, 2014, p. 248.

necessary, directly with him, when the child is 14 years old, with prior consent of the parents / legal representative”.

Therefore, children can perform such paid activities under a contract concluded between the organizer<sup>10</sup> and the parents observing the provisions of the Civil Code, such a contract can also be concluded directly with the child, only if he is 14 years old with the consent of legal guardians<sup>11</sup>, which are regularly the parents.

These provisions are related to article 42 paragraph 1 of the Civil Code, which state that "the minor can conclude legal documents regarding work, artistic or sports occupations or related to his profession, with the consent of parents or guardian, and observing the provisions of the special law".

As outlined in the specialty literature "the lack of sufficient life experience of a minor aged between 14 and 18, makes them vulnerable to influences and abuses. That is why the legislature considered appropriate that, at the conclusion of legal documents, in order for the minor's will to acquire legal efficacy it must be supervised, by the legal guardian with approval...."<sup>12</sup>.

According to the Civil Code, art. 43 paragraph 1 juveniles under 14 have no legal capacity, and according to paragraph 2 of the same article, their legal acts are concluded by their legal representatives.

In his doctrine was emphasized that "people lacking legal capacity, participate in legal life by means of legal representation, art. 43 paragraph 2 of the Civil Code states clearly that the legal acts for minors lacking legal capacity are concluded on their behalf by their legal representatives. However, the same text of the law, the final sentence, states that "the provisions of art. 42 paragraph 1 shall apply accordingly"... meaning that juveniles lacking legal capacity may conclude the documents referred to in Article 42 paragraph 1 of the Civil Code, but with the consent of parents or guardians. However, from the phrase "properly we can rather deduce that such legal documents are signed on behalf of the minor lacking legal capacity by his legal representatives, which is in accordance with the principle embodied in art. 43 paragraph 2 of the Civil Code"<sup>13</sup>.

According to art. 2 paragraph 5 of this regulation "since the minimum age of employment for the activities provided ..., children can conclude individual labor contracts with the compliance of the provisions of Law no. 53/2003 – Labor Code ..."

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<sup>10</sup> By organizer we understand, according to art. 3 of GD no. 75/2015, the physical or legal person having provided in their statute, as object of activity, the organization and performance of activities, with professional character in the following fields cultural, artistic, sports, advertising and modeling or organizes events in these fields with occasional character.

<sup>11</sup> Ovidiu Unguranu, Cornelia Ungureanu, *Drept civil. Persoanele in reglementara noului cod civil*, edition II, Hamangia, Bucharest 2013, p. 168.

<sup>12</sup> I. Reghini, S. Diaconescu, P. Vasilescu, *Introducere in dreptul civil*, Sfera Juridica Publishing House, Cluj Napoca 2008, p. 101.

<sup>13</sup> Marilena Uliescu (coordinator), *Noul cod civil. Studii si comentarii*, vol. III, Publishing House Universul Juridic, Bucharest 2014, p. 181.

It is the only reference in the document contents analyzed regarding the legal capacity to work, according to labor legislation.

It is surprising that the normative act in question concerns only remunerated activities without any reference to activities carried out pursuant to a voluntary agreement under Law no. 78/2014 on regulating the volunteering activity in Romania"<sup>14</sup>.

In accordance with art. 3 point e of the mentioned law, "the volunteer is any individual, regardless of race, ethnicity, religion, sex, political affiliation, who has acquired the capacity to work according to labor legislation and conducts voluntary activities".

We believe that it creates a paradox situation, children being able to conclude contracts with consideration, is true for a limited number of activities under the age of 14 years through their legal representatives, but cannot perform in the same fields, volunteering, since they do not have work capacity according to labor legislation<sup>15</sup>.

The performance by children of activities in cultural, artistic, sporting, advertising and modeling fields is conditioned, provides art. 7, by prior information of the public social service by submitting information notice before the start of the activity.

This procedure is performed by submitting an information note accompanied by a series of documents, according to art. 8, by the child's legal representative at the public service of social assistance from the child's domicile.

We believe that such a procedure should be extended for minors between 15 and 16 who conclude labor contracts with the consent of the legal representatives, at least from the same minor child protection reasons.

For the same reasons would be required also the application in their case of the obligation for the legal representative to send to the public service of social assistance from the child's domicile, within 10 working days from the effective start of activity, a certified copy "according to the original" of the contract.

In the context of special child protection should be noted the Government Decision no. 867/2009 regarding the interdiction of hazardous child<sup>16</sup> labor which regulates the legal framework defining the prohibition and elimination of hazardous work for children, which by its nature or the circumstances in which it is carried out harms the health, safety or morals of children.

The adoption of this law was made in compliance with art. 4 paragraph 1 of the International Work Organization Convention no. 182/1999 on the interdiction for the worst forms of child labor and immediate action for their elimination<sup>17</sup> adopted at the

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<sup>14</sup> Published in the Official Monitor of Romania, Part I, no. 469 of 26 June 2014

<sup>15</sup> Dan Țop, *Discuții cu privire la capacitatea în muncă a persoanei care participă la activități de voluntariat*, Dreptul no. 1/2015, pp. 119-126.

<sup>16</sup> Published in the Official Monitor of Romania, Part I, no. 568 of 14 August 2009

<sup>17</sup> Ratified by Romania in Law no. 203/2000 (Published in the Official Monitor of Romania, Part I, no.

87th session of the General Conference of the International Labor Organization in Geneva on 17 June 1999.

The terms of the decision<sup>18</sup> apply to all employers, nongovernmental organizations, freelancers and family associations, and individuals who use child labor in the formal and informal sectors.

It has been said that "the obvious peculiarities of such labor contract consist in the work provider (which is minor), his object (limited), cultural activities, arts, sports, etc., the role of parents or legal guardians in the administration of the amounts due to the minor ..." <sup>19</sup>.

If it is proved that the money is used by parents / legal representatives of the amounts obtained by the child for a purpose other than the child's best interests, the court may refer to DGASPC guardianship.

There are provided and sanctions between 1000 and 8000 lei where parents and organizers do not comply with the conditions imposed by law.

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577 of 17 November 2000)

<sup>18</sup> Dan Țop, *The social protection of employment in Romania*, Lambert Academic Publishing, AV Akademikeverlag GmbH & Co., KG, Saaberoeken, Germany, 2013, p. 47.

<sup>19</sup> Alexandru Țiclea, *Tratat de drept al muncii. op. cit.*, p. 360.

9. Nicolae Voiculescu, *Dreptul social european*, Universul Juridic Publishing House, Bucharest, 2014.