

## PROTECTION OF YOUTH WITHIN THE EUROPEAN UNION

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### **Abstract**

*The protection of young people's work is ensured by a unitary set of imperative legal norms that have as their object the regulation of the social relations that are formed regarding the organization and conduct of the control of their work process, in order to ensure the specific conditions of safety and health at work, for the defense. the life, bodily integrity, and health of workers.*

*The content of this material briefly presents general aspects regarding the rights of the young employees as well as the obligations of the employers, elements integrated into the European and internal legislative concerns in the field of the protection of the youth work.*

**Keywords:** *protection of young people's work, general obligations of employers, activities of specific risks.*

### **Introductive aspects**

Labor security and health are some of the main concerns of the European Union and a more and more important issue on a national level.

The improvement of labor security and health is a matter of great importance in the EU ever since the '80s. By introducing legislation throughout Europe, minimal standards for protecting workers have been established, at the same time allowing member states to maintain or adopt stricter rules. After the Treaty of Lisbon had come into force, The Charter of Fundamental Rights of the European Union became compulsory making the politics regarding labor health and security within the EU even more important.

Labor conditions and keeping the rights of workers are some of the most important objectives of the Union, the goal being for the development of the market not to be followed by the dropping of labor standards and other distortions. The Community prioritizes the definition of the minimum labor requirements through national legislation. Contributing to the protection of employees are the adopted directives referring to:

- collective personnel leave (Directive no. 98/59/CEE);
- the transfer of enterprizes (Directive no.2001/23/CEE);
- the protection of pregnant women (Directive no. 98/85/CEE);
- the protection of young employees (Directive no. 94/33/CEE) etc.

The Council of the European Union has adopted Directive 94/33/CEE concerning the protection of young employees, which regulates the legal aspects for defining terms such as young, child, adolescent, light labors, working and resting time, interdiction of child labor and possible derogations of this interdiction, general obligations of the employer regarding the employment of youth, especially in what concerns labor security and health, working time, night shift, legal resting time, activities that imply the exposure of youth to harming chemical, biological and physical factors. [1, 629]

## **The legal reaction regarding the protection of youth**

### *1.1. Within the EU*

Legal concerns about labor security and health have been a priority within the European Union, provisions on this subject are found both in the constitutive treaties of the European Community and in a broad series of directives based on them.

Directives are judicial acts that have a general meaning which only establishes the objective, the choice for the necessary means for achieving it being in the hands of the authorities of every state. Emerging from the community decision, the directive that is correctly published or communicated binds the intended member state to take the necessary measures for effectively applying it by transposing or implementing it. [2, 15\_16]

Regarding the protection of youth, the European Union adopted Directive 94/33/CE concerning the protection of youth at the workplace which regulates the main aspects of youth protection and the keeping of their rights within the labor relations in which they are allowed to take part.

This Directive refers to youth under 18 years of age and includes legal provisions concerning the legal obligations of the employer, such as:

- the protection of the health and security of the youth;
- evaluating the risks associated with the labor of the youth;
- evaluating and supervising the youth's health;
- informing the youth and their legal representatives of the possible dangers of their health and security;
- the work schedule;

- night shifts;
- resting time;
- Annual leaves and breaks.

Oftentimes the physiological risks are the same for both adults and the young. There are however some fields where the young workers need more protection than the adults because of the physiological differences:

- work where the rhythm is determined by hand;
- work within a highly pressurized environment;
- ionized radiations;
- the vibration of the whole body;
- exposure to dangerous substances;
- Among the specific biological factors that must be taken into consideration there are:
- the existence of the individual protection equipment adapted for the young;
- the dimensions of the body and the arm strength about the ability to operate commands;
- The dimensions of the youth's body concerning the stability distances to present access to dangerous areas. [1, 630]

The risks to which the youth can be exposed are high and must be prevented by regulations regarding the insurance of labor health and security. Their lack of experience, training, and awareness must be taken into consideration while evaluating the risks of accidents or professional diseases.

The young need good counseling, good training and adequate, safe and healthy workplaces. There are special measures, which provide restrictions regarding the exposure to danger during working hours of youth under 18 years of age who are under professional training as well as for youth working occasionally during training.

Every workplace must have a management system of labor health and security to protect all employees but special attention must be given to young or new employees.

Improvement of labor conditions and keeping employee's rights are some of the most important objectives of the Union through which it aims for the development of the market not to be followed by a drop in labor standards or other distortions. The priorities

of the European Community regarding labor legislation are directed to the definition of minimal labor requirements through national legislation.

According to European statistics, the risk of labor accidents is much higher for young workers than in the case of older ones. Professional or other diseases (physical, biological) can also occur during the first experience at the workplace. On one hand, young workers are immature and lack experience and thus they need extra protection. They often work within heightened risk circumstances and areas such as constructions, agriculture, hotels, catering and hairstyling having temporary labor agreements or only working weekends.

The report of the European Agency for labor security and health notices that constant attention must be given to labor health and security of youth and to the development and enforcement of innovative strategies for preventing accidents. [3, 135]

According to the Directive, children and adolescents are groups of specific risk which require special measures regarding their labor health and security including their minimum resting periods.

The general interdiction of labor for children is provided in the specialized European legislation. [4, Art. 4 par. (1)] This interdiction does not apply in the following cases:

- children who take part in cultural or similar activities;
- children of at least 14 years of age who work during a training period or an internship at an enterprise;
- children of at least 14 years of age who perform light labor, other than cultural or similar activities;
- Children of 13 years of age can also perform light labor for a limited period per week and within the labor fields established by the national legislation.

Children can only perform cultural, artistic, athletic or advertising activities if they have authorization from the competent authority. These labors must not harm the security, health or development of the child and at the same time must not harm school activity, participation in orientation or training program or the child's chance to benefit from the given training. By derogation from the authorization procedure, the member states

can establish by law or regulation the possibility of children of no less than 13 years old to take part in artistic, cultural, athletic or advertising activities.

It is also provided that its dispositions do not apply to occasional or limited labors that regard: housework performed within a private household or labors that are not considered to be harmful, dangerous or prejudicial for children within their household. [4, Art. 2 par. (2)] Article 3 of the same Directive defines labor time as being the length of time when the young person is at the workplace, at the service of his employer and performing his duties according to the national laws and practices resting time at any period that is not labor time.

The employer has to take the necessary measures to ensure and protect the health and safety of the young especially taking into account the specific risks provided by the Directive regarding the night shift. [4, Art. 9], [2, 432]

### *1.2. Within the internal legislation*

In our country, the necessity and compulsory character of the existence of the regulations regarding the protection of youth at the workplace is a priority, considering the labor conditions for this sector of the population under the aspect of protecting the youth from every labor that can harm their security, health physical, psychological, moral or social development or their education.

As a consequence of synchronizing the national law to the European one, the Romanian state has not remained indifferent to the issue of protecting children at the workplace and enforces all the regulations in this regard that are compulsory to employers. Thus, Law 53/2003 – Labor Code, GD no. 600/2007 regarding youth protection at the workplace and GD no. 867/2009 regarding the interdiction of dangerous labors for children represents the frame legislation that protects people under the age of 18 who are working on the grounds of an individual labor agreement. For the child's health and morality not to be harmed by performing inadequate labors for the physical and psychological training of the young, the internal legislation has forbidden children to perform dangerous and intolerable labor for this category of employees, the criteria defining dangerous or intolerable labor being concretely established by GD no. 867/2009 and no. 600/2007.

The old Labor Code stated that every person who is apt for work can perform labor to gain the existence and spiritual development means starting with the age of 16. Likewise, there was a difference between temporary and industrial labor. For temporary labor, the age of 14 was the minimum allowed and 15 for industrial but the employer could only be done with the agreement of the parent or legal guardian and referred to labor that was adequate for the physical development and knowledge of the child.

Other important provisions referred to the fact that the employee had the right to continue his studies to graduate the compulsory education and the units that employed minors had the obligation to support them in this regard.

According to Recommendation no. 146/1973 and the Convention of the International Labor Organization no. 138/1973 regarding the minimum age required for employment this cannot be inferior to the age when compulsory education stops or the age of 15. By adopting this convention there was concluded that the dispositions of the Constitution of Romania regarding employment must be changed. What the Convention aims is to abolish child labor and to raise the minimum age of employment to allow children to fully develop both mentally and physically.

The minimum working age is established by synchronizing the constitutional provisions with the international regulations regarding the minimum employment age. Thus, the Constitution of Romania provides the following regarding the protection of youth and children:

- children and the young benefit from a special protection and assistance regime to help them achieve their rights;
- the exploitation of minors, their usage for activities that could harm their health, morality or that could endanger their lives or normal development are forbidden;
- Minors under the age of 15 cannot be employed. [5, 49]

The decision regarding the protection of youth at the workplace [6] is the normative act by which the legal provisions are adapted to the European regulations. It ensures the protection of youth against economical exploitation, any kind of labor that could harm their health, safety or their moral, physical, psychological or social development or that could harm their education.

The provisions also apply to people under 18 years of age who have signed an individual labor agreement according to the legislation in force.

According to the normative act, child employment is forbidden. A child is a person under 15 years of age or any young person between 15 or 18 years old who is the object of compulsory education based on a full-time schedule established by law.

By derogation children of at least 16 years old can sign an individual labor agreement as an employee for performing light labor. Light labor is any activity that through the nature of its duties and its conditions cannot endanger the security, health or development of the child or youth and cannot prejudice school attendance, participation in orientation or professional training programs or their ability to benefit from their training.[1, 631]

The child who is the object of compulsory education can sign an individual labor agreement from the age of 15 with the agreement of their parent or legal guardian for performing activities that are fit for their physical aptitudes, their skills, and knowledge, if their health, development and professional training are not harmed by doing so.

The decision states that the employer has to take the necessary measures to ensure the protection of the youth's health and security especially taking into account the specific risks of the lack of experience, insufficient acknowledgment of the potential or existent risks or of the fact that the young are still developing.

The employer has to inform the youth in writing of the possible risks and all the measures taken for their security and health. Likewise, he has to inform their parents or legal guardians in writing about these measures.

According to the new normative act the employment of youth is forbidden for activities that:

- exceed their physical or psychological capacities;
- imply a dangerous exposure to toxic or cancerous agents that can cause hereditary genetic mutations, having adverse effects on a pregnant woman or having any other chronic dangerous effect on the human being;
- imply dangerous exposure to radiation;

- implies risks of accidents that are assumed unable to be identified or prevented by the young because of their insufficient attention on labor security, of their lack of experience or training;
- Endanger their health because of extreme cold or heat or because of the noise or vibration.

According to the normative act, among the activities and procedures that can have specific risks for the young, there are, especially, activities that imply dangerous exposure to physical, biologic and chemical factors.

The decision states that in the case of youth the maximum working time is of 6 hours per day and 30 hours a week. [6, art.10, alin (1)] If the young gathers more jobs based on individual labor agreements, the total working time is added and its total cannot exceed that limit. Likewise, the young cannot perform overtime or night shifts and the employed children cannot perform labor between the hours 20.00 and 6.00.

The young benefit from a meal break of at least 30 consecutive minutes if the total working time per day exceeds 4 and a half hours. Between two working days, the young benefit from a minimum resting pause of 12 consecutive hours. Between two working days, employed children benefit from a minimum resting time of 14 working hours. The young benefit from a weekly break of two consecutive days, usually Saturday and Sunday. They also benefit from an additional leave of at least 3 working days.

The decision transposes the provisions of Directive 94/33/CEE regarding the labor protection of youth, directive that ensures the youth's protection against economic exploitation and any other labor that can damage their health, security or their physical, psychological, moral or social development or that can compromise their education.

The employer must take the necessary measures to ensure security and protect the health of the young, especially from the specific risks mentioned above.

The employer must put the necessary measures into practice to ensure security and protect the health based on the evaluation of the potential risks for youth and regarding their labor.

This risk evaluation must be made before the young are employed and any significant modification of the labor conditions must mainly take into account the following elements: [6, Art.6 alin. (3)]



- labor equipment and the organization of the workplace and the job;
- the nature, level, and duration of exposure to physical, biologic and chemical factors;
- the organization, category, and utilization of labor equipment, especially of physical, biological and chemical factors, of machines and devices as well as their handling;
- establishing labor procedures and development as well as their interaction, namely the organization of labor;
- The level of professional training of the young and their training.

If the evaluation finds risk for the security, physical or mental health or development of the young, the employer must ensure the evaluation and supervision of the youth's health regularly, adequately and free of charge, according to the regulation in force.

The employer must protect the young against specific risks for their health, security, and development, risks resulted from their lack of experience, from the insufficient acknowledgment of the potential or existent risks or from the fact that the young are still developing. [6, Art.9 alin. (1)]

Not keeping the obligation to design the workplace by taking into account the presence of the young is a contravention and is punished by a fine. [8, Art.39 alin. (8) lit. a)]

Although, as opposed to the European legislation, the national legislation does not differentiate among children, adolescents and young, the Romanian Constitution and Labor Code establish the age when a minor can perform activities based on an individual labor agreement, the special legislation emphasizing the type of allowed work as well as the working and resting times a derogation from the general rule abided by employed adults. For a good physical and psychological development as well as for keeping all needs related to the age of this employees' category, meal breaks, weekly rest as well as leaves are regulated by special norms and last longer than the ones that are considered to be sufficient for adult employees. [2, 431]

Among the activities that can present specific risks for the young there are especially:

- A. Work that implies dangerous exposure to physical, biologic and chemical factors
  1. Physical agents

- ionized radiations;
  - Labor in a highly pressurized environment, for example in under pressure instances, underwater diving.
2. Biologic agents:
- the biologic agent that can cause severe human diseases and can be a grave peril for workers; can be contagious but can usually be prevented or have efficient treatment;
  - The biologic agent that causes severe human diseases and represents a grave peril for workers: can be highly contagious and cannot usually be prevented or treated.
3. Chemical agents:
- substances and concoctions that are classified as toxic, highly toxic, corrosive or explosive; [9], [10]
  - dangerous substances and concoctions that have one or more of the following risks: very grave irreversible effects, the possibility of irreversible symptoms, irritation through inhalation or touch, can cause cancer, can cause hereditary genetic mutations, grave effects on health in case of prolonged exposure, can modify fertility, can have dangerous effects for the baby during pregnancy;
  - substances and concoctions that are classified as the irritating ad has one or more of the following risks: highly flammable, can irritate by inhalation or touch;
  - substances and concoctions mentioned by the Directive 90/349/CEE of 28 June 1990 regarding the protection of employees at the workplace against the risk of exposure to cancerous factors;
  - lead and its compounds if those agents can be absorbed by the human body;
  - Asbestos.
- B. Procedures and types of work
- making and handling devices, fireworks or various objects that contain explosives;
  - working with ferocious or venomous animals;
  - industrially sacrificing animals;
  - handling production machines, storing or using compressed, liquid or dissolved gas;
  - using tubs, basins, tanks, containers or canisters that contain chemical agents;
  - work that implies the risk of falling;
  - work that has a high risk of electrocution;

- work that has its rhythm commanded by machines and is paid according to the result; [11]

- The procedures and types of work provided within Annex 1 of Directive regarding protection at the workplace against the risk of exposure to cancerous agents. [12]

For the cases when a cancerous or mutagen factor is used, the employer must take the following measures:

- limiting the quantity of the cancerous or mutagen factor at the workplace;
- reducing the number of workers that are exposed or have the risk of being exposed;
- designing a labor process and technical measures of control to avoid or reduce the release of cancerous or mutagen substances at the workplace;
- evacuating the cancerous or mutagen factors through proper ventilation, local or general, compatible with the need to protect human health and the surrounding environment;
- using the proper measuring methods for the cancerous or mutagen factors, especially for timely detection of abnormal exposure resulted from an accident or an unforeseen event;
- applying adequate labor procedures and methods;
- insures collective and/or individual protection measures if the exposure cannot be avoided by other means;
- applying some hygiene measures, especially the regular cleaning of floors, walls, and other surfaces;
- informing the workers;
- separating the risk zones and using adequate security markers, including the “No smoking” sign within the areas where workers are or can be exposed to cancerous or mutagen factors;
- developing some measure plans for emergencies when there might be abnormally high exposure;
- insuring some means that allow storage, manipulation, and transport of cancerous and mutagen factors without risk, especially by using airtight containers visibly and labels;

- Insuring means that allow the safe collection, storage, and evacuation of waste by workers, including the use of airtight containers that are clearly and visibly labeled. [11, Art. 12 alin. (4)]

Likewise, it is to be remembered the fact that the Dispositions of the Charter are addressed to the institutions and organs of the European Union while keeping the principle of subsidiarity. Therefore, Romania does not directly have to assimilate the norms of the European Union Charter in its internal law. However, as a member state of the European Union, according to the dispositions of the Association Agreement, Romania must synchronize its legislation (include the labor law) with the community, primary and derivative law. In other words, those norms must be present in the internal law of Romania.

Economical exploitation of minors is a violation of the equal chances and education right and if it is tolerated it will cause misery and the deepening of economic inequity.

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- [5] The Romanian Constitution;
- [6] G.D. no. 600/2007 regarding the protection of the young at the work place;
- [7] Law no. 53/2003 regarding the Labor Code;
- [8] Law no. 319/2006 regarding labor security and health;
- [9] Directive 67/548/CEE regarding the approach of legal provisions of regulation and administration concerning the classification, storage and label of dangerous substances;
- [10] Directive 88/379/CEE regarding the approach of legal provisions of regulation and administration concerning the classification, storage and label of dangerous concoctions;
- [11] G.D. no. 1093/2006 regarding the establishment of the minimum health and security requirements for protecting workers against risks related to exposure to cancerous or mutagen factors at the work place;
- [12] Directive 90/349/CEE regarding the protection of workers at the work place against risks related to the exposure to cancerous agents.