

Romania: Striving for Balance in the Face of Demographic Challenges

Magdolna VALLASEK

ABSTRACT

Long regarded as second-rate rights or disregarded in practice and implemented sparingly and partly insufficiently backed up by active, coherent measures to guarantee their exercise, social rights are coming back into focus in bad economic times.¹

Accordingly, it is relevant to say that the question of social rights is a particularly important topic these days, as the global society faces renewed crises generated by economic recession, inflation, pandemic and war. In this context, the issue of sustainability of the social system is a key factor.

This chapter presents the regulatory framework and sustainability issues of social benefits in Romania. As a starting point, we will set out the constitutional foundations and legal principles of social law and briefly outline the main stages in the development of Romanian social law regulation and the role of social law in the Romanian legal system. In the second half of the paper, we will go into more detail on some of the most important areas, such as the regulation of the pension system, accident insurance, and healthcare and long-term care, with an emphasis on demographic aspects and sustainability.

KEYWORDS

social law, social benefits, demographic issues, Romania, sustainability

1. Brief introduction to the development and evolution of Romanian social law

1.1. Historical evolution

The development of Romanian social law basically accords with the general development of the field of law, as it was also observed in other countries of the region. Similar to the development of social security law in other European countries, the first legal provisions in the field of workers' insurance appeared in Romania. The first law of this kind ('Legea minelor') in 1895 introduced compulsory insurance in the mining sector and provided for the creation of insurance funds and pension funds,

1 Moroianu Zlătescu, 2009, p. 3.

Vallasek, M. (2023) 'Romania: Striving for Balance in the Face of Demographic Challenges' in Jakab, N. (ed.) *Sustainability of the Social Security System: Demographic Challenges and Answers in Central Europe*. Miskolc-Budapest: Central European Academic Publishing. pp. 135–154. https://doi.org/10.54171/2023.nj.sotsss_7

with the joint contribution of employers and employees. It was followed in 1902 by the law providing for compulsory insurance for craftsmen ('Legea meseriilor') and, in 1912, by the law on workers' insurance ('Legea pentru asigurările muncitorești').

The most significant social security legislation of the pre-World War II period was the Social Insurance Act of 1933, which provided for the equal sharing of the 6% contribution between employer and employee, treated occupational diseases in the same way as accidents at work for the first time, and made incapacity benefit compulsory from the first day of incapacity. After the Second World War, social security legislation was also affected by the political and ideological attitudes of the time. The great ideological slogan and the main political target of the period in Romania was zero unemployment, and given the practical implementation of this slogan, despite the general social poverty, everyone had some income that at least allowed for a minimum standard of living. Meanwhile, the social security system, particularly the pension system, provided in many respects more relaxed and favourable eligibility conditions than today. Soon after the change of regime at the end of December 1989, Romania faced a crisis in the social security system, as the previous system and standards of benefits became impossible to maintain in the changed economic and demographic circumstances.

1.2. Constitutional principles

Article 1 of the Romanian Constitution declares, that

Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed.

Even so, how should we understand the term 'social state' in this constitutional framework? In his work, professor Ion Deleanu considers that the meaning of this concept, often paired with the concept of the rule of law, is straightforward: it does mean the involvement of the state in the social and economic sphere.² Meanwhile, the extension of social and economic rights and freedoms and the accentuation of the functions of these rights and freedoms, in the context of a market economy, resolves the activism of the state and multiplies its social value. The state's obligations, which are linked to social and economic rights and freedoms, are not just a rhetorical figure, but also a prerequisite for its responsibility.³

Despite declaring Romania a social state by the very first Article of the Constitution, only a few other articles deal specifically with the issue of social security; indeed, they do that only tangentially. These articles are limited to the statement of the right to social security in principle and enumerating the main elements of it. Moreover,

2 Deleanu, 1996, p. 71.

3 Ibid., p. 72.

Articles 49 and 50 of the Constitution set out general principles for the protection of people with disabilities and of children and young persons.⁴

The first of these constitutional provisions relate to the right to health protection, as set out in Article 34. This right to health is guaranteed, and the State is obliged to take measures to ensure hygiene and public health. Meanwhile, the organisation of medical care and the social security system regarding illness, accidents, childbirth and the restoration of health, the control of the medical professions and activities related to medicine, and other measures to protect the physical and mental integrity of the person are also laid down by law, as provided for in the Constitution.

The second Article of the Constitution that can be considered a fundamental principle of social law is the declaration of the right to a standard of living. Under Article 47, the State is obliged to adopt economic development and social protection measures to ensure a decent standard of living for its citizens. Meanwhile, citizens are entitled to a pension, paid maternity leave, medical care provided by public health institutions, unemployment benefits and other types of public or private social security prescribed by law. The constitutional provision also stipulates that citizens have the right to social security measures under the terms of the law.

As Attila Varga, constitutional lawyer and judge of the Romanian Constitutional Court, notes in his work, although the state is obliged to take appropriate economic and social measures,

...the achievement of a high standard of living is possible only through the joint efforts of individuals and the state, since it is necessary to create a well-functioning market economy and a high-quality and diversified social security system that enables adequate living conditions.⁵

Thus, the state's obligation to provide a high standard of living remains essentially declarative in meaning.

The protection of children and youth is stated in Article 49 of the Romanian Constitution. According to this Article, children and youth will enjoy special protection and assistance in realising their rights. In achieving this protection, the state will grant benefits to children and provide aid for the care of sick or disabled children.

4 Some authors also place Article 41 of the Constitution firmly within the constitutional basis of social rights. Under the provisions of the article on labour and social protection of labour, it is stated that the right to work shall not be restricted, and everyone has the right to freely choose their profession, trade, or occupation, including work place. All employees are also entitled to measures of social protection. Such measures concern employees' safety and health, working conditions for women and young people, the establishment of a national minimum wage, the weekly time off, paid annual holidays, work under difficult or special conditions, and other specific situations, as defined by law. The maximum duration of a working day is eight hours on average, and women receive the same pay as men for equal work. The right to collective bargaining and the binding nature of collective agreements are also guaranteed in this article of the Romanian Constitution. Țiclea and Georgescu, 2021, p. 26.

5 Varga, 2013, pp. 137-139.

Meanwhile, the Constitution states that other forms of social protection for children and youth will be determined by law. Linking social protection to labour rights, the same Article says that the exploitation of minors and their employment in activities that might be harmful to their health or morals or which might endanger their life or normal development are prohibited. Therefore, minors under the age of 15 cannot be hired as employees. Regarding the right of young persons to social, legal, and economic protection, the Article states that public authorities must contribute to ensuring conditions for the free participation of the youth in the political, social, economic, cultural, and sports life of the country.

The last Article of the Romanian Constitution closely linked to the system of social rights of the European Social Charter is Article 50, which addresses the social protection of disabled persons. Under the constitutional provision, disabled persons have the right to enjoy special protection. The State will ensure the implementation of a national policy of equal opportunities, disability prevention, and treatment such that disabled persons can take part effectively in community life while respecting the rights and obligations of their parents or legal guardians.

A closer look at Articles 34, 47, 49, and 50 of the Romanian Constitution leads to the conclusion that their provisions reflect the spirit of the European Social Charter. Although the noted constitutional Articles do not contain the full range of rights listed in Articles 11-17 of the Charter, they do outline its general framework.⁶

2. The place of social law in the Romanian legal system

2.1. *The concept of social law in Romania*

As part of Romanian social law, it is necessary to look at social security institutions and benefit institutions. As remarked by Professor Dan Țop, the national social assistance system operates as a subsidiary or, where appropriate, is complementary to social security systems and consists of the social benefits system and the social services system.⁷ In this context, social assistance, through its specific measures and actions, aims to develop individual, group or collective capacities to meet social needs, increase the quality of life and promote the principles of social cohesion and inclusion.⁸

The definitions in the Romanian literature are quite uniform, highlighting the same characteristics, and, thus, fit into the internationally accepted definition and

6 The Constitution of Romania was adopted shortly after the change of regime in 1991. The European Social Charter was ratified in 1999, when ratification law No. 74/1999 was published in the Official Gazette No. 193/1999 (Moarcăș-Costea, 2011, pp. 12–14.). A few years later, Law No. 429/2003 amending the Constitution entered into force but made relatively few changes to fundamental rights and freedoms. In this area, only the right to a healthy environment and the right of access to culture were added to the norms of the Constitution.

7 Țop, 2017, p. 291.

8 Țop, 2018, p. 124.

characterisation of social law. For example, social law is interpreted as ‘all the legal rules governing social security relations’⁹ or

...a set of cash and in-kind benefits provided to protect income in the event of social risks; a system of protection against loss of income or a system of rules ensuring solidarity with people facing loss of income from work or costs to prevent social risks¹⁰

by Romanian authors.

However, the emphasis on the autonomous nature of social law is not as strong as in the case of labour law. Even so, social law as an autonomous field of law remains a clear leitmotif in the explanations of the concepts provided by Romanian scholars. The best example of this kind of approach is the simple yet clear and traditional definition of Professor Athanasiu, who considers that social law is an autonomous branch of the legal system, made up of all the legal rules governing social security and social assistance relations.¹¹

Some scholars emphasise the strong links between social law and labour law, illustrating the autonomous nature of social law exactly with the close link between labour law and civil law, despite which labour law is an autonomous area of law. In this context, Vieriu explains that social security is not only an activity, a concern of states, but also a set of legal rules governing this activity, the protective measures, their specifics, and their beneficiaries. The legal rules governing social relations make up the branch of law known as social law. Just as labour law has separated from its parent discipline—civil law—social law has also separated from labour law to become an autonomous discipline and a new branch of law.¹² In the author’s view, this new branch, although separated from labour law, belongs to public law, not private law.

The same parallel is drawn by Țiclea and Georgescu in their book about Romanian social law. They consider that, until recently, legal relationships in the field of social law were considered to be related to legal employment relationships, established by the conclusion of the individual employment contract and included in labour law. Today, however, legal provisions in the field of social law have developed towards acquiring their own specificity, which gives them the individuality necessary to constitute a distinct branch of law.¹³ Based on these considerations, the definition given by Țiclea and Georgescu reads as follows: social law is ‘that autonomous branch belonging to the system of public law, made up of legal rules governing social insurance relations as well as social assistance’.¹⁴

9 Marian, 2020, p. 22.

10 Roș, 2018, p. 14.

11 Athanasiu, 1995, p. 24.

12 Vieriu, 2016, p. 113.

13 Țiclea and Georgescu, 2021, p. 13.

14 Ibid., p. 14.

2.2. The main principles of social law in Romania

Beyond the general principles that apply to several domains of law, such as the principle of ensuring the legal basis for the functioning of the state, the principle of equity, or the principle of accountability,¹⁵ Romanian scholars also analyse certain specific principles of social law.

The first principle, considered to be specific to social law is the principle of equality. According to Țiclea and Georgescu, this principle of equality concerns all rights regardless of the field of activity and the normative act that enshrines them.¹⁶ The practical application of the principle of equality in social law is regulated by Emergency Ordinance No. 67/2007 on the application of the principle of equal treatment between men and women in occupational social security schemes.¹⁷ According to Article 7, the principle of equal treatment implies the absence of any direct or indirect discrimination on grounds of sex, with particular reference to marital or family status, especially regarding the scope of occupational social security schemes and the conditions of access to them; the obligation to contribute and the calculation of contributions; the calculation of benefits, including supplementary benefits payable to spouses or dependants, and the conditions governing the duration and maintenance of entitlement to benefits. The principle of equal treatment shall be without prejudice to the provisions relating to the protection of women in the event of maternity laid down by law and the applicable collective agreements.

The second principle considered to be specific to social law is the principle of universality. Without needing to analyse this principle, we can see that it considers two aspects: first, the scope of the persons protected and the nature of the benefits to be granted, and, second, the lawful social purpose of providing some financial or other assistance in the event of loss or reduction of income.¹⁸ The third principle is the principle of compulsory insurance for social security benefits, acquired only through insurance, and the fourth principle concerns the financing of non-contributory benefits from the state budget. Finally, we must also mention the principle of indexation and compensation of benefits, measures necessary to maintain purchasing power and mitigate the effects of inflation on living standards.¹⁹

2.3. Legal framework of social law in Romania

The regulation of social law is based on a wide range of legal sources, with specific legislation dealing with each area or type of benefit. As the legislation is, thus, quite dense, we will present below the specific sources of law within each sub-chapter presenting the different benefits.

In the area of social security benefits, the legislator has attempted to bring the legislation together in a single framework as a veritable ‘Social Code’ but has not succeeded.

15 Popa, 2020, p.113.

16 Țiclea and Georgescu, 2021, p. 19.

17 Official Gazette of Romania No. 443/2007.

18 Marian, 2020, p. 24.

19 Vieriu, 2016, pp. 115–116.

In the field of social security, including pension insurance, Law No. 19/2000 was the first complex piece of legislation to enter into force after the change of regime in 1989 in Romania. This view is supported by the fact that the final provisions of the law abrogated 35 normative acts regulating the social law institutions and implicitly repealed all provisions that were contrary to the new legislation. The legislator's original intention, as reflected in the title of the law, 'law on pensions and other social insurance rights', was to regulate the entire Romanian social security system within a single framework. In our opinion, it was an unfortunate decision by the legislator, as it would have been more appropriate to regulate the pension system in a separate law from the outset, especially as this would have been more appropriate in the long term, starting from the perspective that other services still financed from the social security fund should gradually be separated from the pension system and removed from the pension fund. During the application of the law, it became clear relatively quickly that this objective had not been achieved. Given an ill-conceived legislative concept, after only a few years of application, the regulations on other social security entitlements and institutions were removed from the initial law. In 2005, the since repealed Emergency Government Decree No. 148 on family support and child-raising benefits and Emergency Government Decree No. 158 on social security leave and benefits were published. As a consequence of the publication of these two pieces of legislation, the chapter of Law No. 19/2000 on maternity, childcare, and sick child care allowances and temporary incapacity of work and reinstatement allowances was almost entirely repealed with effect from 1 January 2006. Around the provisions under the heading 'other social security benefits', only the rules on funeral allowances in the event of the death of an insured person remained in force under the initial normative act. Following the repeal of Law No. 19/2000, the Romanian legislator no longer proposed to regulate the social field in a single normative act in the form of a genuine social security code.

3. Social benefits in the Romanian system

3.1. Healthcare

3.1.1. Regulatory and institutional framework

The basis for the regulation of healthcare in Romania is the noted constitutional provision, Article 34 of the Constitution, according to which the state guarantees the right to health protection. Pursuant to Article 34, which provides for the right to guaranteed health protection, where the State must take measures to ensure hygiene and public health, the law organises healthcare and the social insurance system for sickness, accidents, maternity and rehabilitation, control of the practice of the medical professions and paramedical activities, and other measures for the protection of the physical and mental health of the individual.²⁰

| 20 Țichindelean, 2009, pp. 185–187. |

Currently, the main source of legislation on health insurance is Law No. 95/2006 on health insurance reform,²¹ which has been amended several times since it entered into force. Further, the role of Act No. 136 of 1995 on insurance activities, Decree No. 633 of 2012 of the National Health Insurance Fund on the national health insurance card, laws on the annual social insurance budget, and numerous decrees issued by the National Health Fund are also significant. The coordination and control of the system is the responsibility of the Ministry of Health through the National Health Insurance Fund as an organisational unit with territorial units in each county.

3.1.2. Objectives and features of the health policy

The general and main objectives of the state's health policy, declared by the law, are to improve the health status of the population, reduce health inequalities and health risks in society, and create an environment that supports the good health of the population. In the Romanian system, there are three broad categories of health insurance benefits: healthcare services, cash benefits for incapacity for work due to sickness, and accident benefits, including health services and cash benefits. Perhaps one of the most striking characteristics of health insurance is that, unlike pension insurance, for example, it is only partially insurance-based. While the cash benefits of health insurance are only available against actual contributions, the solidarity principle is much stronger for health benefits. Another important feature of Romanian health insurance is that it does not cover all health services, only those listed by the law.²² The law sets out the rights and obligations of the parties. Insured persons are entitled to a basic package of services under the terms of the Law on health insurance reform. The concrete rights and the content of the basic service package are determined by the multiannual framework contract published in the form of a Government Decision. Insured persons are entitled to the services of the legal basic package from the first day of illness.

According to the legal definition contained in Article 219 of the Law on health insurance reform, social health insurance is the main system of financing the healthcare of the population, ensuring access to a package of basic services for the insured. It is compulsory and quasi-universal, covering virtually the entire population of the country. Meanwhile, according to Article 219 (4), it may operate in various special situations, along with other forms of health insurance. They are, of course, not compulsory and may be offered voluntarily by insurance bodies authorised by law. Thus, health insurance in Romania can be compulsory or voluntary, the voluntary insurance complementing the compulsory basic one. The purpose of private, voluntary health insurance is to finance access to a higher level or, where applicable, a wider range of health services. However, as a general rule, voluntary insurance does not cover the risk of occupational accidents and occupational diseases. According to the law, any Romanian citizen, foreign citizen, or stateless person who is a member

21 Official Gazette of Romania No. 652/2015.

22 Vallasek, 2021a, pp. 65–66.

of the compulsory health insurance system is entitled to private health insurance. Article 349 of the law defines two forms of voluntary private insurance: the voluntary complementary health insurance to pay the reimbursement fee from the voluntary insurance and the voluntary supplementary health insurance, which may be applied for the full or partial reimbursement of the costs of the health services not included in the basic health package, the choice of a certain healthcare provider or doctor, the reimbursement of the costs of an additional expert opinion, the reimbursement of accommodation costs required for medical treatments, or the reimbursement of the costs of other medical services specified in the contract.

3.1.3. Contribution and the types of benefits

The regulation of the health insurance contribution is determined by the Financial Code, Law No. 227/2015. Starting from 1 January 2018, the health insurance contribution rate is 10% and is owed by all employees and everybody with the obligation by law to pay the social health insurance contribution. Based on the provisions of the law, Article 156, the employer will not pay any contribution, as the whole contribution is covered by the employee.

Notably, there are several types of services financed by the National Health Insurance Fund (NHIF). Though this chapter will not present every type in detail, we can observe the following services in the Romanian system: preventive medical services, curative medical services, provision of medicines, sanitary materials, medical devices and other therapeutic means (with or without personal contribution) based on medical prescription, home care medical services, and medical services provided to insured persons on the territory of other states. Moreover, several medical services cannot be financed from the NHIF, their costs being borne by the insured, the units that request them, the state budget, or other sources. Exemplifying these categories are some dental medical services, aesthetic corrections with certain exceptions, different kinds of rehabilitation services and procedures, and medicines.

Persons with residency in Romania, insured for social health insurance benefits in the social health insurance system, have the right to various social health insurance benefits, regulated by Emergency Ordinance No. 158/2005.²³

Article 2 of this Act defines six types of benefits: medical leaves and allowances for temporary incapacity for work, caused by common illnesses or accidents outside of work; medical leaves and allowances for the prevention of illnesses and the recovery of work capacity, exclusively for situations resulting from work accidents or occupational diseases; maternity leaves and allowances; medical leaves and allowances for the care of a sick child; medical leaves and allowances for the care of patients with oncological conditions;²⁴ medical leaves and maternity risk allowances granted to insured persons under the conditions provided for by Government Emergency Ordinance No. 96/2003 regarding maternity protection at workplaces, approved with

23 Official Gazette of Romania No. 1074/2005.

24 Țop, 2022, pp. 25–29.

amendments and additions by Law No. 25/2004, with subsequent amendments and additions.

The minimum period of previous contributions for granting the rights is six months completed in the last 12 months before the month for which the benefits are granted,²⁵ except in the situation of maternity risk benefits, when no previous insurance is needed. The mandatory contribution rate for the health insurance benefits is 1% of the so-called ‘labour insurance contribution’, which also includes unemployment insurance, accident insurance and the mandatory contribution to the wage guarantee fund, resulting in a 2.25% contribution paid by the employer.

3.2. Romanian pension system

3.2.1. Development and general regulatory framework

After the regime change in Romania, pension reform has developed extremely slowly. The first wave of the reform dealt with the mandatory public pension pillar, and it was marked by the entry into force of Law No. 19/2000, followed by further corrective measures in Law No. 263/2010, which remains in force. However, how long it will be in force is uncertain, which negatively affects the stability and sustainability plans of the pension system. In 2019, Law No. 127 was published,²⁶ repealing the current Law No. 263/2010, but the start of the application of the law has been delayed several times by now. What is even more disturbing from the perspective of legal certainty is that, in the meantime, we are witnessing the drafting and tabling of new pension bills, which are ultimately neither put on the agenda of Parliament nor voted on. Under these circumstances, it is completely uncertain whether Law No. 217/2019 will ever be applied. Further, to add to the legislative absurdity, although it has not been applied yet, Law No. 217/2019 has already been amended several times by the legislator.²⁷

It is obvious, however, that the basic aim of all the laws on the state pension pillar that have been drafted up to now, was to tighten the conditions for pension eligibility

25 In the past, until 1 July 2018, only one month, not six months, of contribution was required of the previous 12 months to be eligible for benefits. From this perspective, the amendment of the law should be interpreted as a significant tightening of the eligibility criteria.

26 Official Gazette of Romania No. 563/2019.

27 The title of Law No. 127/2019 would have only concerned the regulation of the pension scheme. However, Chapter IV also contains provisions on other social security benefits, such as a monthly benefit separate from the survivor’s pension, called the ‘monthly allowance for the surviving spouse’, a benefit to assist insured persons and pensioners for balneological treatment or a so-called ‘funeral benefit’ in the event of the death of an insured person, a pensioner or a member of their family. Regarding the pension scheme, the law would introduce changes in the areas of the calculation of the applicable pension point, the indexation of benefits, the simplification of administrative procedures, the possibility to ‘purchase’ the necessary insurance period, and early retirement and early payment of pensions. Moreover, the minimum social (pension) benefit should be regulated not by a separate law but within the framework of this law. The amount of this minimum benefit would vary per the length of service, set as a percentage of the current gross minimum wage.

and introduce and apply a points-based calculation of pensions, which can now be considered the most successful step of the Romanian pension reform.

This Romanian public pension system is complemented by parallel social security schemes for certain state-recognised churches and lawyers.²⁸ The second major wave of pension reform of the public pension pillar seemed to have come to an end in 2010, with the entry into force of Law No. 263/2010. However, from 2015 onwards, we have witnessed a process of regression, with new, in our opinion, fundamentally ill-considered and harmful provisions being introduced into several elements of the pension system, which was designed to be sustainable. It abolished the universality of the public pension system by introducing separate legislation for military, police, and law enforcement personnel²⁹ and reintroducing the so-called ‘special pensions’ for certain professional categories, such as prosecutors, judges, members of parliament and senators, and local government officials. The impact of this process and the direction that this process will take remain uncertain, and, unfortunately, the issue of the medium- and long-term sustainable development of the pension system has become a political battleground, the fierce but empty discussions often shifting attention from the more pressing issues of obtaining and maintaining a sustainable pension system.

From 2008 onwards, the mandatory public pension pillar was complemented by a mandatory private pension pillar³⁰ and an optional private pension pillar,³¹ creating a three-pillar mixed-funded pension system. This system was supplemented by a fourth pillar quite recently by introducing an occupational pension scheme regulated by Law No. 1/2020.³² Given the low incidence of occupational pension schemes, this fourth pillar is not particularly significant for now, and it is questionable to what extent its introduction can contribute to the sustainability of the pension system.

3.2.2. *The Romanian public pension pillar*

The Romanian public pension pillar operates based on the principles of universality (although, as indicated, given the amendments to the law, nowadays, this is at best a quasi-universality), compulsory contributions, and social solidarity.

Old-age pensions are granted to people who have reached the standard retirement age and have completed the minimum period of contribution to the public pension system. The retirement age is set at 65 (63) years for men (women). The issue of the retirement age is, however, a much-discussed problem in Romania. At the time Law No. 263/2010 entered into force, the Romanian Constitutional Court analysed the issue of differentiating the retirement age for women and men and concluded that this differentiation was fair because, in Romania, women traditionally conduct family and household tasks.³³ However, the Constitutional Court’s change of position is indicated

28 Law No. 72/2016, published in the Official Gazette of Romania No. 342/2016.

29 Law No. 223/2015, published in the Official Gazette of Romania No. 556/2015.

30 Law No. 411/2004, published in the Official Gazette of Romania No. 482/2007.

31 Law No. 204/2006, published in the Official Gazette of Romania No. 470/2006.

32 Official Gazette of Romania No. 10/2020.

33 Vallasek, 2021b, pp. 100–106.

by Decision No. 387/2018, which, while still declaring the age limit provision of Article 53 of Law No. 263/2010 regarding public pensions as being constitutional, also declared unconstitutional the provision of Article 56 (1) of the Romanian Labour Code, which states that the attainment of the age limit for retirement is a legal case of termination of the employment contract. Following the intervention of the Constitutional Court, the Labour Code was amended to allow female workers to notify, prior to 30 days before reaching the retirement age of 63 years, their employer of their intention to continue the employment relation such that the legal termination of the employment contract would only take place at the age of 65, the same age as it is set for men.

As far as the contribution period is concerned, it is the same for men and women: 15 years is the minimum contribution period and 35 years is the full contribution period necessary for the old-age pension. Following the entry into force of Emergency Government Decree No. 79/2017, from 1 January 2018, the pension contribution of 25% is fully and exclusively borne by the employee, the employer having only the obligation to withhold and pay this contribution, except in the situation of special or specific working conditions, when the employer contributes an additional 4% or 8%. Pension benefits in this public pillar include old-age pensions, survivors' pensions, invalidity pensions, and early retirement pensions but the eligibility criteria have become increasingly strict, as per the objectives of the parametric pension reform and the necessity of sustainability. However, beyond the strict conditions for early retirement, Article 65 (5) of the pension law continues to regulate the possibility for people living in certain heavily polluted municipalities to take early retirement two years before reaching retirement age, without any financial penalty. This special early retirement condition will be applicable until 2030.

3.2.3. *The Romanian private pension pillars*

The Romanian private pension system comprises three complementary but different pillars: mandatory private pensions, voluntary private pensions, and occupational private pensions.

The most important, even in terms of proportions, is clearly the compulsory private pension insurance. Based on current data, on 31 December 2022, the seven operating mandatory private pension funds had a total of nearly 8 million members. For comparison, the number of members of the voluntary pension pillar on the same date was 626,612 persons.³⁴

A minimum of 50,000 people are required to join the pension fund, with the clarification that the defined number of members must be reached within the first three years of the fund's establishment. Following the introduction of compulsory pension insurance, 14 pension funds started operating in Romania. After the three-year deadline, nine pension funds remained operational, while 7 funds are currently operating. To ensure transparency in the operation of the fund, minimise investment risk, and prevent unilateral dependence, Law No. 411/2004 establishes a precise set of rules on

34 Pensii Private Obligatorii (Pilonul II), no date.

the proportions of the assets in which the fund may invest. A pension fund may invest up to 20% of its subscribed capital in money market instruments of Romanian legal entities or foreign credit institutions authorised in Romania, up to 70% in domestic or EU government securities, and a smaller percentage in other financial instruments as defined by law.

The Romanian compulsory private pension system does not distinguish between open and closed pension funds, and a person who joins the system either compulsorily or voluntarily can be a member of either fund. If the legal conditions are met, the pension fund cannot refuse a membership application.

The contribution to the private pension fund is a deduction from the social security contribution, calculated based on members' gross monthly income, similar to the contribution to the social security fund. The law originally contained only general provisions on the rate of the contribution, which was to be 2% of the basic pension contribution at the start of the scheme in 2008 and then gradually, with an increase of 0.5% per year from 1 January of each subsequent year, to reach 6% in eight years. With the planned increase, the contribution rate was to rise to 6% by 2016, which was not a particularly high percentage by international standards. After the first year, the Romanian government froze the increase in the contribution rate, keeping it at 2%, claiming that the country's severe economic challenges did not allow for the planned increase. In 2011, the contribution rate was increased to 3%; following the originally planned half-percent increase, it reached 5% in 2015. It was followed by a 0.1% increase in 2017 reaching 5.1%. However, from 1 January 2018, the contribution rate was reduced again to 3.75% by Emergency Government Decree No. 82/2017. Under the 2022 amendment to Article 43 of Law 411/2004 on compulsory private pensions, the contribution rate should increase to 4.75% from 1 January 2024, but, given the trends so far, it would not be much of a surprise if this planned increase will not materialise or will be postponed.

The voluntary private pension insurance scheme operates under Law No. 204/2006. According to the law, a voluntary private pension fund is a fund established by a civil law partnership contract under the provisions of the Civil Code and, practically, anyone can join a voluntary private pension fund. The specific amount of the contribution to the pension fund is determined by the trustee in the pension scheme and is paid directly by the member, or, where applicable, the employer, who transfers the amount to the pension fund designated by the employee at the same time as the compulsory social security contribution. However, under the legislation, the contribution payable may not exceed 15% of the gross monthly salary or other income.³⁵ The first attempt to introduce an occupational pension pillar was the drafting of Law No. 249/2004, but this law was never applied, as it was postponed by Law No. 141/2005 and

35 Some authors argue that the 15% contribution limit is grossly excessive. As the basis of calculation is the same as for contributions to social security or compulsory private pension schemes, if a person wants to take out voluntary pension insurance and choose the maximum contribution rate, he would have to spend almost half of his gross income on pension insurance. Major, 2009, p. 177.

subsequently repealed. The current legislation under which the scheme operates is Law No. 1/2020 on occupational pensions.

According to the legal definition, an occupational pension fund is an organisation with at least 100 participants, established by a company statute per the provisions of the Civil Code and Law No. 1/2020. The employer's contribution is determined by the rules of the pension fund, but the employer may set a differentiated amount of contribution for each of its employees based on length of service, position, or wage entitlement. The participant's contribution may not exceed one-third of gross monthly salary or equivalent income and, together with any other deductions, may not exceed half of net monthly salary or equivalent income. The contribution may be divided between the employee and the employer per the provisions laid down in the scheme and the individual membership document, the vesting clause being part of the pension scheme. The participant shall be the owner of the personal assets in his account under the conditions laid down in the occupational pension scheme. Entitlement to an occupational pension must be acquired at the participant's request under the conditions set out in the scheme and the prospectus, as per the legislation on private pensions. A participant whose personal assets are insufficient to qualify for an occupational pension shall receive, on request, a lump-sum payment or a payment in instalments over a maximum period of five years. Personal assets may be used exclusively to acquire an occupational pension.

The introduction of an occupational pension scheme does not seem to be a success story, at least for now, and it is questionable to what extent it can contribute to the sustainability of the Romanian pension system. Although the legislation came into force in 2020, the first fund offering occupational pension provision started operating in 2022. The provider is the Romanian Commercial Bank (Banca Comercială Română – BCR Pensii).³⁶

3.3. Accidental insurance in Romania

The primary legal source of insurance against accidents at work and occupational diseases in Romania is Law No. 346/2002,³⁷ as amended and republished several times, and Government Decision No. 144/2008, which contains the provisions for its application. Other important pieces of legislation include Law No. 319/2006 on occupational health and safety³⁸ and Ministerial Decrees No. 450/2006 and 825/2006, laying down the implementing provisions.

As a general rule, the employer is obliged to provide insurance for all his employees from the first day of employment. Since it is the employer's responsibility to organise work properly and safely, it is also, by analogy, the employer who is liable to pay the accident insurance contribution. This contribution comprises 5% of the so-called 'labour insurance contribution', which is a total of 2.25% contribution for

³⁶ Farkaş, 2022.

³⁷ Republished in the Official Gazette of Romania No. 251/2014.

³⁸ Official Gazette of Romania No. 646/2006.

which the employer is liable. The employer is also obliged to register the employee with the institution administering the accident insurance before the start of work, but the employee is insured from the start of work irrespective of the registration.

Article 5 of Law No. 319/2006 defines the accident at work as a ‘violent injury to the body, acute poisoning, which occurs in the course of work and which results in incapacity for work, disability or death lasting more than three days’.³⁹ Meanwhile, occupational disease is defined as ‘an impairment of health resulting from the exercise of a profession or occupation and caused by harmful factors specific to the workplace or by overwork’.

The scope of benefits granted in the Romanian system is quite wide. According to Article 18 of Law No. 346/2002, persons insured under the insurance scheme for accidents at work and occupational diseases are entitled to the following benefits and services: medical rehabilitation and recovery of working capacity, vocational rehabilitation and retraining, compensation for temporary incapacity for work, compensation for temporary transfer to another job and compensation for reduced working hours, compensation for loss of integrity, compensation in the event of death, reimbursement of expenses, invalidity pension following an accident at work or occupational disease, and survivor’s pension in the event of death as a result of an accident at work or occupational disease.

The organisation, management, coordination, and control of the entire insurance activity for accidents at work and occupational diseases is conducted by the National Public Pension House through its territorial organisations.

3.4. Long term care

In the field of long-term care, Romania has serious shortcomings in both the appropriate legal framework and the appropriate institutional framework. It can be seen in the strategy document for 2023–2030 (‘National strategy on long-term care and active ageing for the period 2023-2030’⁴⁰), approved by Government Decision 1492/2022.⁴¹ It is not yet possible to analyse the practical implementation of the strategy, as it was published only in the last days of December 2022, and the implementation of the targets has not even started. Nevertheless, we consider it important to briefly outline the starting point and the objectives of the Romanian strategy for long-term care that will define the next few years.

Among the main systemic problems are the Strategy notes that there are overlaps and inequalities in the social services system, including the long-term care services. Moreover, a consequence of this situation is the massive migration of dependent older people into the disability protection system. The development of long-term and

39 Dominte and Nagoie, 2022, pp. 116–147.

40 Strategia națională privind îngrijirea de lungă durată și îmbătrânirea activă pentru perioada 2023-2030.

41 Official Gazette of Romania No. 1251/2022. The Strategy is also based on the objectives of the previous ‘National Strategy for active ageing 2015-2020’ document approved by Government Decision 566/2015.

palliative care services has also taken place randomly, in the absence of a general legislative framework to integrate palliative care into the national health system. Meanwhile, the importance of long-term care is clearly underlined by deteriorating demographic data.

Based on data published by the National Institute of Statistics, the Strategy starts from the statement that Romania must deal with a rapidly ageing population of approximately 3.7 million people aged 65 and over, which represents approximately 19.2% of the population. The share of Romania's older adult population aged 65 and over is expected to increase further to 27.7% by 2050. During the same period, the share of people aged 80 and over is expected to increase from the current level of 4.8% to 8.5%. It is in the context of negative external migration, low birth rates, and rising life expectancy. Ageing and increasing life expectancy are generally accompanied by prolonged periods of frailty and dependency. Obviously, in Romania, there is a significant proportion of elderly people, especially those over 80, who require long-term care services. The problem of ageing is not new. The process of ageing of the population in Romania started decades ago, and this trend has accelerated in the last 20 years, especially when looking at the dependency ratio of the elderly. The median age in Romania has increased from 26.3 years in 1950 to 43.2 years in 2020 and is projected to reach 47.4 years in 2050. The group aged over 80 is projected to increase by 3.7 percentage points, from 4.8% to 8.5% of the total population.⁴²

The strategy proposes the overall objective of increasing the number of older people who manage to live independently for as long as possible and improving the access to appropriate long-term care services for dependent older people, ensuring equality of access, resilience, and sustainability of the long-term care system. This general objective can be achieved by realising specific objectives, including strengthening the accountability and management of services for older people, strengthening the continuum of services for older people in Romania and respect for fundamental rights, ensuring sustainable financing and sustainability of the system, improving the quality of services for older people, strengthening and protecting the formal and informal workforce for the long term, and promoting active and dignified social participation of older people.⁴³

According to the legal definition of Article 1 (4) of Law No. 17/2000 on social assistance for elderly persons,⁴⁴ elderly people having the right to social assistance are those who have reached the statutory retirement age. Moreover, elderly persons must be in one of the following situations: they do not have a family or are not dependent on a person or persons obliged to provide for them, as per the legal provisions in force; have no accommodation and cannot provide for themselves from their own resources; have no income of their own or their income is insufficient to provide the necessary

42 Strategia națională privind îngrijirea de lungă durată și îmbătrânirea activă pentru perioada 2023-2030, pp. 2, 13.

43 Ibid., pp. 25-26.

44 Official Gazette of Romania No. 157/2007.

care; cannot manage on their own or requires specialised care; and cannot provide for their own socio-medical needs given illness or physical or mental condition.⁴⁵

However, many older people in need do not have access to long-term care. It is quite obvious that urgent action is needed to establish an appropriate legislative framework, as the law in force at the moment is unsatisfactory. The Strategy itself indicates that the current regulation must be corrected, and, of course, sufficient funding sources must be allocated. Among the most important drawbacks, also pointed out by the Strategy,⁴⁶ is the non-existence of continuity and synergy in covering all dimensions of the concept of long-term care in the legislation governing the social and long-term care system and the healthcare system. There are, meanwhile, overlaps and inequalities in the social services system, including long-term care services. One of the consequences of this situation is the massive migration of dependent older people into the disability care system. The methodology for assessing dependency status and personal care needs currently used is challenging to implement in practice given the lack of specialised staff (social workers and doctors) and the lack of funds to support this activity. Even so, overall, there is an acute shortage of staff in the long-term care domain. This lack of personnel is leading to

...the increased risk of burnout, stress and exhaustion is one of the major challenges related to the geriatrics workforce in Romania. Even though many of these effects have been informally reported for long periods of time, the policy responses [failed] to address them properly.⁴⁷

It remains to be seen in the next few years to what extent a successful implementation of the Strategy will be able to address the acute problems faced by the long-term care system in Romania.

4. Closing remarks

The issue of the sustainability of the social system has been an ongoing problem in Romania, without any real solution from the successive waves of reforms since the regime change in 1989. The ageing of the population at an accelerating pace will put Romania in a situation full of challenges that must be managed without any delay.

As described above, Romania defines itself as a social state and, accordingly, makes a firm constitutional promise to provide its citizens with adequate social security and assistance services and benefits. Thus, since the change of regime in 1989, Romania has witnessed a continuous reform effort to make the social system sustainable. The first step was a parametric, then paradigmatic reform of the pension

45 Article 3, Law No. 17/2000 on social assistance for elderly persons.

46 Ibid., p. 25.

47 Ungureanu et al., 2020, p. 29.

system, which seems to be coming to an end with the introduction of the fourth, occupational pension pillar. It remains to be seen what legislation will replace the published but unimplemented state pension law and what changes it will introduce. In parallel with the adjustment of the pension system, a legislative framework has been established to form the basis for other social security benefits, in particular childcare benefits, accidental insurance, healthcare and others.

As a final step, the regulation and redefinition of the field of social assistance have also come to the centre of attention, without any particular successes being achieved in this area so far. In this respect, it would be of the utmost importance to achieve as much as possible of the objectives of the Strategy as outlined above. Meanwhile, we must not forget that the issue of social law and social policy can never be considered only by itself but must be interpreted in connection with the education, health, labour, and even tax policy of the given state. In this context, the need for a coherent, long term planned social policy is unequivocal. In our opinion, it is precisely this long-term planning that is sorely lacking in Romania. The legal uncertainty given the continuous changes in legislation did not only characterise the immediate period following the change of regime 30 years ago but is also a regrettable feature of our days.

Bibliography

- AthanasIU, A. (1995) *Dreptul securității sociale*. București: Actami.
- Deleanu, I. (1996) *Drept constituțional și instituții politice. Tratat*. Vol. II. București: Europa Nova.
- Dominte, C., Neagoe, V. (2022) 'Accidentul de muncă. Tipicitatea infracțiunilor specifice', *Dreptul*, 2022/4, pp. 116–147.
- Farkaș, N. (2022) *BCR Pensii devine primul administrator de pensii ocupațion* [Online]. Available at: <https://www.bcr.ro/ro/presa/informatii-de-presa/2022/02/15/BCR-Pensii-devine-primul-administrator-de-pensii-ocupationale-Pilon-IV-din-Romania> (Accessed: 28 April 2023).
- Major, D. E. (2009) *Asigurările sociale în România. Realități și perspective*. Cluj-Napoca: Casa Cărții de Știință.
- Marian, B. (2020) *Dreptul securității sociale*. București: Pro Universitaria.
- Moarcăș Costea, C-A. (2011) *Drepturile sociale ale lucrătorilor migranți*. București: C.H. Beck.
- Moarcăș Costea, C-A. (2013) *Dreptul securității sociale*. București: C.H. Beck.
- Moroianu Zlătescu, I. (2009) *Drepturile sociale: tratate Europene*. București: Institutul Român pentru Drepturile Omului.
- Pensii Private Obligatorii (Pilonul II)* [Online]. Available at: <https://apapr.ro/utile/statistici/> (Accessed: 28 April 2023).
- Popa, N. (2020) *Teoria generală a dreptului*. 6th edn. București: C.H. Beck.
- Roș, N. (2018) *Dreptul securității sociale*. București: Pro Universitaria.
- Strategia națională privind îngrijirea de lungă durată și îmbătrânirea activă pentru perioada 2023-2030* [Online]. Available at: https://www.mmuncii.ro/j33/images/Documente/MMSS/Transparenta_decizionala/Anexa_proiect_HG_pentru_aprobare_strategie_LTC_10102022.pdf (Accessed: 28 April 2023).
- Țichindelean, M. (2009) 'Pensie. Contribuția de asigurare social de sănătate', *Revista Română de Jurisprudență*, 2009/4, pp. 185–187.
- Țiclea, A., Georgescu, L. (2021) *Dreptul securității sociale*. București: Universul Juridic.
- Țop, D. (2017) *Dreptul securității sociale*. Târgoviște: Zven.
- Țop, D. (2018) *Jurisdicțiunile dreptului social*. Târgoviște: Zven.
- Țop, D. (2022) 'Un nou tip de concediu pentru salariați – concediul pentru îngrijirea pacientului cu afecțiuni oncologice', *Revista Română de Dreptul Muncii*, 2022/1, pp. 25–29.
- Ungureanu, M. I., Brînzac, M. G., Forray, A., Paina, L., Avram, L., Crișan, D. A., Donca, V. (2020) 'The geriatric workforce in Romania: the need to improve data and management', *European Journal of Public Health*, 2020/4, pp. 28–31; <https://doi.org/10.1093/eurpub/ckaa127>.
- Vallasek, M. (2021a) *Román társadalombiztosítási jog*. 2nd edn. Kolozsvár: Forum Iuris.

- Vallasek, M. (2021b) *Dezvoltarea sistemului public de pensii în România din 1918 până la intrarea în vigoare a Legii nr. 263 din 2010 privind sistemul unitar de pensii publice*. Kolozsvár: Forum Iuris.
- Varga A. (2013) *Román Alkotmányjog*. Kolozsvár: Nemzeti Kisebbségkutató Intézet.
- Vieriu, E. (2016) *Dreptul securității sociale*. București: Pro Universitaria.