NOTIFICATION OF TERMINATION OF THE EMPLOYMENT CONTRACT. CONTROVERSY OVER THE PROBATION PERIOD

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ABSTRACT: *The study examines the legal regime of the notification by which the individual employment contract ceases, at the initiative of either party, for the duration or at the end of the probationary period. The analysis follows the relationship between the simplified nature of the mechanism provided by Article 31 (3) of the Labor Code and the requirements regarding the written form, communication, duration calculation, good faith, contract suspension and judicial control. Divergent doctrinal and jurisprudential guidelines are presented critically.*

KEYWORDS: *probationary period; written notice; unilateral termination; communication; judicial review.*
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1. PRELIMINARY CONSIDERATIONS

The probationary period lies at the intersection between the stability of the employment relationship and the freedom of both parties to verify, in particular, whether the contractual relationship can continue. The individual employment contract exists and is executed in all its elements, but the possibility of unilateral denunciations temporarily weakens the continuity of the report. From this perspective, the probation period is a bilateral verification interval of the compatibility between the employee's skills, the job requirements and the conditions offered by the employer (Marcu-Șiman, 2022).

The formula art. 31 par. (3) of the Labor Code seems unequivocal: the contract may terminate, during or at the end of the probationary period, exclusively by written notice, without notice and without motivation. The simplicity of the rule does not eliminate controversy. The difficulties concern the legal nature of the clause, the calculation of the

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duration, the relationship between the issuance and communication of the notification, the effects of the suspension of the contract, the demarcation of dismissal for professional misconduct and the extent of judicial review. The probationary period is a period of time during which the employer and the employee have the opportunity to evaluate the conditions for the exercise of the rights and obligations entered in their contract (Țiclea, 2021).

2. THE LEGAL FRAMEWORK

2.1. Establishment and duration of the probationary period

According to Article 31 (1) of the Labor Code, for checking the skills of the employee, at the conclusion of the individual employment contract, a probationary period of no more than 90 calendar days for the execution functions and no more than 120 calendar days for the management positions can be established. For disabled persons, Article 31 (2) provides for verification exclusively by probation period, of maximum 30 calendar days. During the trial, the employee benefits from all rights and has all the obligations provided by labor law, collective agreement, internal regulation and individual employment contract.

The optional character results from the legal expression „can be established". The clause is not presumed and cannot be imposed later, by the unilateral will of the employer. It must be known before the conclusion of the contract and expressly stated in it, as a result of the information obligation provided by Article 17 (3) letter n) and paragraph (4) of the Labor Code (Barbu & Cernat , 2004).

The legal duration is maximum. The parties may agree a shorter period, but may not extend it beyond the legal limit. For fixed-term contracts, Article 85 uses working days and sets progressive limits of 5, 15, 30 or 45 days, depending on the duration of the contract and the nature of the function. This lack of uniformity of legislative technique has been criticized in the doctrine, considering that, in order to ensure a regulatory unit, it is necessary to modify the legal provisions in order to establish its duration, in all cases, by reference to a certain number of working days (Pârvulescu, 2025).

2.2. Calculation of duration and suspension of term

The probationary period has the nature of a substantial legal term, not a procedural term. In the absence of a special rule in the Labor Code, the calculation of the period expressed in calendar days relates to art. 2.553-2.554 C. civ., to the extent compatible with the specifics of the employment relationship.

The term is counted on days off, so it does not take into account the day from which the term begins to run (the first day of work, part of the probationary period), nor the day when it is fulfilled, according to the Civil Procedure Code. The exceeding of this term shall be any of the parties to the right to terminate the individual employment contract exclusively on the basis of a notification and shall consolidate the employment relationship in such a way that, from the first day off after the expiry of the probationary period, any means of termination of the employment contract will follow the specific rules and restrictions provided by the Labor Code (Neagoe Dinita , 2022).

A different opinion insists that the phrase „calendar days" excludes the application of the rules specific to procedural time limits and that the notification must be issued at the latest on the last calendar day of the period, even if it is non-working. This

guideline was expressed in the commentary on a notification decision issued on the first working day following the expiry of the sample (Țiclea, 2010).

In case of suspension of the individual employment contract, Article 49 (6) of the Labor Code suspends all the terms related to the conclusion, modification, execution or termination of the contract, except for the legal termination. Therefore, the flow of the probationary period is suspended accordingly, and the remaining interval is resumed after the cessation of the case of suspension (Tinca , 2012).

2.3. Uniqueness of the probation period

Art. 32 (1) of the Labor Code enshrines the rule of a single probationary period during the execution of the same contract (Duca , 2018). A new period is allowed only if the employee starts with the same employer in a new position or profession or is going to work in a job with difficult, harmful or dangerous conditions. The exception must be interpreted restrictively and presupposes a real change in the content of work, not just a formal renaming of the job.

Where there are two separate contracts concluded with different employers, the establishment of a probationary period in the second contract is not, by itself, prohibited, even if the activity is similar or the legal representative is the same person (Ticlea , 2023).

2.4. Conditions for notification

Art. 31 (3) imposes three essential requirements for the termination of the contract during the probationary period: the existence of a validly agreed probationary period, the written form of the manifestation of the will and the exercise of the right during or at the end of the period. The notice and the statement of reasons are expressly excluded. The written form is a condition of validity, and the act must unequivocally express the will to cease based on the probation clause (Arbănaș, 2015)**.**

The name of the document is not decisive. A document entitled „decision" may produce the effects of the notification if, from its content, the will to terminate unequivocally results pursuant to Article 31 (3) of the Labor Code. However, the mechanism cannot be used to subsequently save disciplinary dismissal or professional misconduct affected by procedural defects; actual will must result from the very act of termination (Marcu-Siman , 2022).

3. THE LEGAL NATURE OF THE PROBATIONARY PERIOD

3.1. Contractual clause of notice

The prevailing doctrinal opinion qualifies the probation period as a unilateral, legally enshrined contractual clause of denunciation. The immediate source of the clause is the agreement of the parties, and the effects are established imperatively by law. The mechanism is symmetrical: the employer checks the skills and adaptation of the employee, and the employee appreciates whether the job, the environment and the conditions offered correspond to him (Sasu , 2009).

The clause is a legal exception to the binding force of the contract and the rule of termination by agreement of the parties. It allows each party to terminate a contract in performance without notice, but only within the agreed timeframe. The denunciation does not affect the benefits already performed and does not transform the contract into a fixed-

term one. The probationary period is a clause that benefits both parties of the individual employment contract (Top , 2019).

3.2. Full report in content, precarious only in terms of continuity

The precariousness of the employment relationship does not signify the non-existence or diminution of the contract. The employee benefits from all rights, the period is seniority, and the employer is bound by all legal and contractual obligations. Precarity concerns only the possibility of a simplified termination, not the content of the legal relationship.

Moreover, the precariousness of the employment relationship during the probationary period is recognized by the Constitutional Court itself[1], considering that the employment relations are "consolidated (.) after the expiration of this probationary period and only if the employee corresponds professionally to the position in which he is employed or if he is satisfied with that position and wants to continue the activity".

3.3. Delimitation from dismissal and resignation

Termination notified by the employer during the probationary period is not to be confused with dismissal for professional misconduct. The latter requires prior evaluation, motivation, compliance with the procedure and, where appropriate, the provision of other vacancies. By contrast, article 31 (3) establishes an autonomous method of cessation, devoid of these formalities (Neagoe Dinita, 2022).

Likewise, the notification of the employee is not resignation. It shall take effect by unilateral will, without the approval of the employer and without notice.

3.4. Good faith and abuse of law

The lack of motivation does not amount to immunity from judicial review. Good faith, equal treatment and the prohibition of discrimination apply in full during the probationary period. The court cannot substitute the employer's assessment of professional opportunity, but it can check whether the right has been exercised for discriminatory, repressive, fraudulent or manifestly foreign purposes to the legal function of proof (Dicu & Manolache, fără an).

In a more protective approach, the real cause of termination must remain directly related to the fitness check or the compatibility of the employment relationship, even if the act does not have to include the reasons. This thesis limits the discretion of the prerogative and allows sanctioning proven abuse (Danciu & Dascăl, 2024).

[1] Constitutional Court, Decision no. 653/2011 on the rejection of the exception of unconstitutionality of the provisions of Article 31 (3) of Law no. 53/3002 - Labor Code, M. Of. no. 532/2011.

4. JURISDICTIONAL ANALYSIS

The probationary period, having the nature of a notice clause, either party may request the termination of the employment contract without the need to justify this measure, by drawing up other acts to justify or motivate the decision of the party[2]. Given the legal nature of the probationary period, namely that of the notice clause, the employer may terminate the individual employment contract without notice and without motivation [3].

The probationary period is as a legal nature a resolutory condition that affects the existence of the individual employment contract. Thus, if the employee does not correspond to the job, the condition is considered fulfilled and the individual employment contract is abolished, but since the individual employment contract is a contract with successive performance, the dissolution will not affect the already produced effects of the contract, which remain won to the parties[4].

In terms of form, even if after the issuance of the notice of termination of the contract of employment (which took effect during the probation period), the employer understood to materialize the unilateral denunciation of the contract of employment through another written act, entitled „Decision of termination of the contract of employment" it is not such as to lead to the conclusion that this last entry is unlawful or ungrounded. This is all the more so as the Decision to terminate the contract of employment does nothing else than to resume the elements set out in the Notification of Termination of the contract of employment, including the date of termination of employment and the legal basis that determined the taking of this measure[5].

The lack of information of the employee regarding the clause regarding the probationary period cannot result in the nullity of the clause [6] because even if a breach of the information obligation is created, the sanction that occurs is not nullity, the employee being entitled to request only compensation corresponding to the damage he suffered as a result of the violation by the employer of the information obligation, according to the provisions of Article 19 of the Labor Code.

As a general rule, resulting from the application of the provisions of Article 17 (2) letter m), in conjunction with Article 17 (3) of the Labor Code, the probationary period is optional and subsidiary to the contest or examination and is established by the individual employment contract. The probationary period is not presumed or constitutes a unilateral act of the employer, but must be expressly provided for in the contract. Therefore, the probationary period cannot be prior to the conclusion of this contract, but overlaps with the first period of its execution[7].

For the termination of the employment contract during the probationary period, it is not necessary to prove the professional inadequacy of the employee, this measure being left to the discretion of the employer can be ordered for subjective reasons.

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[2] Civil Sentence no. 255/2009 of the Arad Court.
[3] Decision no. 1034/2008 issued by the Court of Appeal of Timisoara, Department of Labor Disputes and Social Insurance.
[4] Decision no. 2429/2020 issued by the Bucharest Court of Appeal.
[5] Sentence no. 1509/2020, issued by Cluj Court.
[6] Decision no. 166/A/2015 issued by the Court of Appeal of Cluj, Civil, Section I.
[7] Sentence no. 1978/2018 issued by Prahova Court.

Therefore, the legislator allowed the employer to decide whether the employee meets the standards of the company or the profile of the sought employee and the fact that the employer pointed out his belief that there is a mismatch of the employee with the job is a pertinent justification for the termination of the employment relationship during or at the end of the probation period, the subjective component that such a decision implies cannot be assimilated to the abuse of an employer.

The employer's assessment that the employee does not correspond to the job for which the employment contract was concluded cannot be censored by the court, and the evidence administered does not reveal another conclusion, namely that the employer's decision would be arbitrary[8].

Any form of provision of work, including the probationary period, must be regulated by an individual employment contract concluded in written form prior to the commencement of the activity, according to Article 16 paragraph 1 of the Labor Code, precisely to ensure the social protection and security of the employee. A period of accommodation of the employee is outside the legal framework[9].

Not mentioning the length of the probationary period in the individual employment contract is equivalent to the very absence of the probationary period.

In these circumstances, since the contract concluded between the parties was not stipulated for a probationary period, this contract could not be terminated by the employer's initiative during the probationary period. Therefore, the notification and the decision on the termination of the employment contract during the probationary period is null and void.

5. CONCLUSIONS

The probationary period is an autonomous legal institution, designed for bilateral verification of the compatibility between the employee, the job occupied and the concrete conditions offered by the employer. Although the employment relationship acquires, since the conclusion of the individual employment contract, the fullness of its legal effects, its continuity remains temporarily affected by the possibility recognized by both parties to denounce it unilaterally, through the simplified mechanism regulated by article 31 (3) of the Labor Code.

From the perspective of the legal nature, the qualification of the probationary period as a contractual requirement appears to be closest to the normative configuration of the institution. Its immediate source is the agreement of the parties, expressed by inserting the clause in the individual employment contract, while its effects are established imperatively by law. The mere mention of a period of accommodation or the fact that a verification activity is carried out cannot supplement the contractual clause. In the absence of an express indication of the period and its duration, the employer cannot validly resort to the termination based on Article 31 (3) of the Labor Code.

The optional nature of the probationary period does not diminish the importance of the information obligation. The clause must be known and accepted by the employee prior to the commencement of the activity, and its content must be formulated with sufficient

[8] Sentence no. 190/2026 issued by the Covasna Court.
[9] The sentence of the Miercurea Ciuc Court no. 326/2026.

precision to allow the definite determination of the interval within which the right of establishment can be exercised. The case-law separating the non-compliance with the information obligation from the validity of the clause confirms that the sanction is not, in all cases, nullity, which may consist in the award of the compensation provided for in Article 19 of the Labor Code. However, this solution does not remove the need for the existence and duration of the probationary period to result unequivocally from the contract.

Temporally, the probationary period must be regarded as a substantial legal term, the expiry of which results in the loss of the right to use the simplified method of termination. After the deadline, the employment relationship is consolidated, and its termination can occur only under the general conditions and procedures provided by law. In this context, divergences in the calculation of the duration, the significance of the notion of „calendar days" and the possibility of exercising the right on the first working day following the expiry of the sample reveal insufficient regulatory accuracy. In order to avoid conflicting solutions, the notification should be issued and communicated, for reasons of legal prudence, no later than the last day of the probationary period.

The suspension of the individual employment contract entails, pursuant to Article 49 (6) of the Labor Code, the corresponding suspension of the probationary period. The solution is in line with the purpose of the institution, as the verification of professional skills and compatibility cannot take place in the interval in which the main obligations of the parties are not being executed. After the case of suspension has ceased, the probation period shall resume its course for the remaining period, without this equating to the establishment of a new period.

The rule of uniqueness of proof protects the employee against unjustified perpetuation of precariousness of the employment relationship. The establishment of a new period is admissible only under the limiting assumptions provided for in Article 32 of the Labor Code and implies a real change of function, profession or working conditions. A simple formal change in the job name cannot justify the derogation. Conversely, the conclusion of a separate contract with another employer allows, in principle, for the establishment of a new probationary period, the different legal personality of the employers being decisive, provided that the operation does not conceal fraudulent conduct.

The notification provided by Article 31 (3) of the Labor Code is a unilateral legal act, subject to the written form ad validitym. The name of the document is not decisive, and it is necessary that from its contents to clearly and unequivocally result the will to terminate the contract under the probation clause. The subsequent issue of a decision residing notification does not, by itself, affect the legality of the cessation already produced. By contrast, a subsequent act cannot cover the non-existence of notification, the overrun of the probationary period or the defects of a dismissal ordered under another case.

Termination of the contract during the probation period is not confused with dismissal for professional misconduct or resignation. It is a distinct means of termination, which does not involve formal professional evaluation, the motivation of the measure or the granting of a notice period. Consequently, the court cannot convert the review of legality into a re-assessment of the employer's assessment of the employee's compatibility with the job, nor can it impose continuation of the employment relationship only because professional misconduct has not been demonstrated under the rules applicable to dismissal.

However, the lack of the obligation to state reasons does not confer an absolute or arbitrary character on the right to declare. Its exercise remains subject to the principles of

good faith, equal treatment, non-discrimination and prohibition of abuse of law. Judicial control must concern the existence and validity of the clause, respect for form and term, the reality of the manifestation of the will, as well as the possible use of the mechanism for a discriminatory, repressive or fraudulent purpose. The court is not called to appreciate the professional opportunity of the measure, but it can censure the conduct by which the legal prerogative is diverted from its function.

The case-law analysis shows, as a whole, a favourable orientation towards the simplified nature of the termination of the contract during the probation period and the recognition of a wide margin of appreciation for the benefit of both parties. At the same time, the solutions on the legal nature of the evidence, the calculation of the time limit, the time of the occurrence of the effects and the extent of the judicial control are not fully unitary. The qualification of the probationary period as a resolutory condition does not fully explain the mechanism of termination, since the effects of the contract do not automatically cease by the realization of a future and uncertain event, but as a result of a unilateral manifestation of will. For this reason, the thesis of the notice clause provides a more appropriate conceptual basis.

By law ferenda, it would be useful to clarify how the probationary period is calculated, when the notification should be issued and communicated, as well as to standardize the criterion used for expressing the duration in case of indefinite and fixed-term contracts. A unitary regulation would reduce the practical risk of cessation after the deadline and limit the emergence of divergent case-law interpretations.

After all, the probationary period is not an outside range of the individual employment contract and no form of work without legal protection. This is the first stage of the performance of a fully valid contract, in which the employee benefits from all the rights recognized by law, and the employer is bound by all the corresponding obligations. The peculiarity of the institution concerns exclusively the temporarily diminished stability of the legal relationship. The balance pursued by the legislator can be maintained only by strictly interpreting the conditions for exercising the right of notice and, simultaneously, by avoiding the conversion of judicial control into an indirect dismissal procedure, incompatible with the purpose of Article 31 (3) of the Labor Code.

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