

Tax & Legal Weekly Alert

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In this issue:

The Constitutional Court upheld: Women can request the continuation of their individual employment agreements until they reach the age of 65

On 5 June 2018, the Constitutional Court upheld the unconstitutionality of art. 56 letter c) first thesis of Law no. 53/2003 - the Labor Code and ascertained that the provisions thereof are constitutional if the collocation "standard retirement age" is construed as not precluding a woman from requesting the continuation of her individual employment agreement, in conditions identical to men, respectively until she reaches the age of 65.



The Constitutional Court upheld: Women can request the continuation of their individual employment agreements until they reach the age of 65

Entry into force of the Constitutional Courts' decision ("Decision")

The Decision was brought to the public attention through a press release and it shall produce effects only after it will be grounded and published in the Official Gazette.

Thus, from the date the Decision will be published with the Official Gazette, art. 56 letter c) first thesis of the Labor Code shall be suspended by operation of law for a 45 days period. In the event that during 45-day period the Parliament or the Government will fail to align the unconstitutional legal provisions with the Constitution, they will stop producing effects at the expiry of the above-mentioned timeframe.

Practical implications stemming from the Decision

Following the publication of the Decision in the Official Gazette, employers will not be able to ascertain the termination by operation of law of an individual employment agreement concluded with a female employee based on the grounds that she cumulatively fulfills the standard retirement age and the minimum contribution period, as regulated under Law no. 263/2010 on the unified public pension system, if the respective female employee opts for the continuation of the employment relations until she reaches the age of 65.

Concretely and in accordance with the constant case law of the Court of Justice of the European Union, the Constitutional Court held that the termination of employment by operation of law upon reaching the standard retirement age and the minimum contribution period, in so far as the retirement ages are different for women and men, is likely to violate both the non-discrimination principle on grounds of sex and the women's right to work.

Thus, through an interpretative decision, the Constitutional Court ruled that in order to ensure the conformity of art. 56 Para (1) lit. c) first thesis with the Constitution, these provisions must be construed in the sense that "the collocation "retirement age condition" does not preclude a woman's possibility to opt for the continuation of the individual employment agreement in conditions identical to men, respectively until she reaches the age of 65."

For further questions regarding the aspects mentioned in this alert, please contact us.



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