Constitutional principles of the european legislation and regulations regarding human rights ignored in order to justify a questionable reform

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Abstract

The sustainability of the public pension system can only be achieved by increasing the number of taxpayers, but not by the forced leveling of the old systems of special pensions, but by creating a massive number of new jobs by investing heavily in areas such as agriculture (whose potential is not fully exploited) tourism, road and rail infrastructure, attracting foreign investors, attracting massive funds provided by the European Union, the return to the country of more than 2 millions Romanian who, because of the discouraging policies regarding labor management, were forced to seek employment in other countries etc..

Also, to ensure the total independence and impartiality of the judges of the Constitutional Court, we propose lex ferenda that they should no longer be appointed on political criteria, as now, but to be elected by the High Court of Cassation and Justice from among the judges of this court.

Keywords: financial and economic crisis, pension system, reform, sustainability.

I. PRELIMINARY MATTERS

The current financial and economic crisis, widely regarded as one of the most profound crisis of modern capitalist system, has not spared Romania. The consequence of this was the fact that the leaders took some legislative measures, but they were not accompanied by measures to stop and exit this economic crisis, able to lead to revitalizing of the production of goods, labor productivity growth etc.. This way, only by reducing budgetary spending drastically, without increasing production we will not be able to exit the crisis, which could lead to another wave of austerity measures with profound consequences on the living standards of the population, inflation growth which are likely to lead to the loss of foreign and local investors with serious consequences for the economy.

In accordance with the arrangements established by the Loan Agreement with the International Monetary Fund, World Bank and the European Union since the summer of 2010, through a series of normative acts measures to drastically reduce budgetary spending have been taken such as staff reduction in the public sector, and what was more painful, a 25% reduction in wages, unemployment allowances, allowances for children, increased VAT from 19% to 24% etc. measures on which we have not yet returned, although they claimed they had only a temporary character.

The pension system in Romania has not been spared. It is in full reform triggered by a series of macro-economic and social factors which have made changes in both the public pension system (parametric elements, eligibility for different categories of retirement, increasing the degree of accountability and control, etc.) and in terms of its non-integrated systems.

The initiators of the reform have suggested taking into consideration the following directions:

Broadening the inclusion sphere of compulsory insurance - by integrating the unitary public pension system for persons belonging to specific systems (military pensions), and persons with income from liberal professions;

Improving the financial sustainability of the pension system - by introducing more restrictive conditions on access to early retirement and partial disability pension;

Maintaining the living standard of pensioners in payment - by correlating the buying power of retirees with the inflation rate;

Ensuring fair treatment of insured persons, future retirees - by regulating the way pensions are established in direct correlation with the level of insured income for which social insurance contributions have been paid;

Discouraging partial early retirement - by increasing the pension penalty coefficient;

The implementation of more stringent criteria regarding the access to invalidity pension and the enhancement of subsequent controls;

The increase of retirement age because of increased life expectancy of the population and the gradual equalization – until 2030 – of the complete contribution for women and men [1].

The main normative acts which were adopted during this period and which regulates matters relating to pension system reform are: Law no. 118/2010

regarding some measures necessary to achieve budgetary balance [2], Law no. 119/2010 laying down measures on pensions [3], as well as two implementing decisions of the latter normative act, namely, Government Decision no. 735/2010 for recalculation of pensions established under the laws of the state military pensions, state pensions of police and civil servants with special status in the prison administration system, according to Law no. 119/2010 laying down measures on pensions [4] and Government Decision no. 737/2010 regarding the method of recalculation of the categories of service pension specified in Art. 1 letter c)-h) of Law no. 119/2010 on protection measures in the pension field [5]. Subsequently, it was adopted the Government Emergency Ordinance no.1/2011 regarding the establishment of measures in the pension field for beneficiaries coming from the defense system, public order and national security [6]. This last normative act was drafted as a result of the irrevocable Decision no. 38 issued by the High Court of Cassation and Justice, Department of Administrative and Fiscal Litigation, in the public hearing on 7 January 2011, which noted that the methodological norms for the application of Law nr.119/2010 (regulated by Government Decision no.735/2010) are capable of creating an imbalance between the general interest and the obligation to protect citizens' fundamental rights which produces an imminent and foreseeable loss which contravenes the European Convention on Human Rights [7].

Some of these normative acts have been challenged at the Constitutional Court, others at the High Court of Cassation and Justice on grounds of unconstitutionality or illegality or unfounded reasons, issues which will be commented on extensively in the ranks below.

II. Some aspects regarding pensions in the EU approach

The main current document that proposes reformatory measures of the pension systems in the European Union is the Green Paper – Regarding the appropriate, viable and safe European pension systems [8]

According to that European legislation, with a recommendation or assurance character for now and in the future, of an adequate and sustainable pension for citizens of EU Member States is a priority for the European Union. Currently there is a constant aging population in Europe, which constitutes a major challenge. [9] The aging population has grown faster than expected, and recent financial and economic crisis had a dramatic impact on the budgets, capital markets and businesses. Profound changes have occurred, such as a new balance between generations, the transition from pension schemes based on the distribution of funded to the pension schemes financed by capitalization and even taking more risks by individuals. Almost all Member States have tried to prepare for this phenomenon of aging, including by reforming their pension systems. The crisis has shown that more efforts need to improve efficiency and safety of pension schemes.

According to the same sources, the Member States are responsible for providing pensions and the Green Paper does not question the prerogatives of Member States on pensions or the role of social partners; it does not suggests that there is an "ideal" model of pension scheme to fit everyone. The principles of solidarity between generations and the national solidarity are essential in this regard.

The Green Paper, its initiator states [10], adopts an integrated approach, encompassing economic, social and financial aspects, recognizes the links and synergies between pension and the global strategy "Europe 2020" for smart growth, sustainable and inclusive growth. The objective regarding the income generation of adequate and sustainable pensions through the pension system reforms and the objectives of "Europe 2020" strategy complement each other. Strategy "Europe 2020" emphasizes the numerous and better qualitative jobs that are needed, as well as the positive transitions: both are essential for the workers (women and men) to accumulate pension rights. Its target of 75% in terms of employment requires the achievement of employment rates significantly higher than are now for the population with ages between 55 and 65. Addressing gaps in terms of adequacy character of pensions, which may be a significant cause of poverty among the elderly, may also contribute to the fulfillment of the poverty reduction objectives laid down in "Europe 2020" strategy. Policies in many areas can help reduce poverty among older people and this will help, in turn, increase the appropriateness, thereby complementing the pension reforms. Other goals include reducing barriers to achieving the single market, such as increasing safety and integration degree of the internal market of financial products and facilitating mobility of all workers [11] and citizens within the EU.

In turn, pension system reforms will contribute to achieving the aims of "Europe 2020"Strategy for employment and long-term sustainability of public finances. Also, the achievement of internal market for pension products has a direct impact on the EU's growth potential and therefore contributes directly to the goals of "Europe 2020".

The Green Paper, starting from the analysis made in the research undertaken, made a number of priorities for the modernization of pension policy in the EU. They are: - Ensure the adequacy character of pensions - Ensure the sustainability of pension systems; - Removing obstacles from the way of the European Union's mobility; - Strengthening the

internal market for pension; - Mobility pensions; - Safer and more transparent pensions, in the context of greater awareness and better information; -Covering EU regulatory gaps - Improving the solvency regime for pension funds; - Taking action regarding the risk of the employer's insolvency - Improve governance of pension policy at EU level; - Facilitate decision-making informed choices; - Improving the governance of the pension policy at the level of the UE

III. Aspects of the violation of constitutional principles of European law and human rights by the pension reform

As it results from the foregoing, the European Union doesn't have an "ideal" model for the pension system to propose to the Member States. It is the duty of all governments to find the appropriate system for their country.

For what the current rulers concern, they have chosen the worst steps to implement the reformation measures of the pension system in Romania, flagrantly violating the constitutional principles, the European law and human rights.

Thus the provisions of art. 1-5 and art. 12 of Law no. 119/2010 breach the dispositions of art. 15 par. 2 of the Constitution, which enshrines *the principle of non-retroactivity of the law*.

We specify that the first principle of non-retroactivity of law was enshrined by the Romanian legislator in the Romanian Civil Code and the Penal Code and, subsequently, in view of its importance for the rule of law, this principle has been elevated to the rank of constitutional status. [12]

In the specialty literature it was strongly argued that "the non-retroactivity principle of law is presented as a fundamental safeguard of constitutional rights, particularly freedom and security of person. The value and timeliness of the principle are undeniable and well-known and any mitigation means a suppression or limitation of human rights and freedoms". [13]

As stated in art. 15 par. 2 of the Constitution "the law is only for the future, except for the criminal or administrative law newly favorable". Thus, a law applies only to cases arising after its adoption, exerting its action on the facts that will occur after its entry into force and not before that, passed actions (*facta praeterita*), with all the effects it produced and will produce in time due to the situation created at that time. It is commonly known that while applying a law it is governed by the principle of non-retroactivity of the new law. The special pensions have been established based on the laws adopted in the pension field on certain socio-professional categories, and are exceptions from common law. These laws apply to legal situations created, modified and extinguished under their regulations and under which the definitive legal effect have been created. It is the state's job to enforce in time the payment of pensions (successive obligations). So the mandatory recalculation of all pensions granted under special legal provisions prior to the entry into force of Law no. 119/2010 laying down measures in the pension field is unconstitutional.

The government has assumed responsibility on Law. 119/2010 regarding certain measures relating to the pension field, as he will later do with other important normative acts, according to which all "special" pensions become public pensions and are recalculated based on the algorithm established by Law no. 19/2000, in force at that time and which was taken over entirely by the new law of the unified public pension system, willfully eluding the mandatory dispositions of the Constitutional Court regarding the special status of military pensions, policemen pensions, prison staff with special status, etc..

An eloquent proof is the Decision no. 20 of 20 February 2000, the Constitutional Court [14] which decided that magistrates' service pension and military service pension have been established to foster stability in the formation of a career in the judiciary system as well as among the permanent military. The establishment of service pension, for military and judiciary is not a privilege, but is objectively justified. It constitutes a partial compensation of the inconveniences arising from the rigor of special statutes to which the military and the judiciary personnel are subjected to.

Thus, these special statutes, established by Parliament by law, are more severe, more restrictive, requiring from the beneficiaries obligations and prohibitions that other categories of insured persons do not have. They are prohibited from activities that could bring additional revenue to ensure they give the possibility to create effective material circumstances likely to ensure, after retirement, the maintenance of a standard of living as that was appropriated during the activity.

Special pensions have been established based on the laws adopted in the pension field on certain socio-professional categories, and are exceptions to common law. These laws apply to legal situations created, modified and extinguished under their regulations, under which the definitive legal effect have been created, being the state's responsibility to enforce the payment of pensions in time (successive obligations).

Special pensions in payment are vested interests that can not be recalculated on the basis of a new law, can not be altered, because the law would apply retroactively. The Law no. 119/2010 and Law 263/2010 are considered to bring amendments to the legal regime of special pension, established under previous laws, leading to the violation of even the very substance of pension rights. Enlightening in this regard is the decision no. 375/2005 of the Constitutional

Court established that "the new regulations can not be applied retroactively, respectively, concerning the previously determined amount of pensions, but only for the future, since the entry into force". The same decision was pronounced by the Constitutional Court Decision no. 57/2006, which states: "the conditions for exercising the right to pensions and other forms of social assistance are established by law and therefore, it the is the legislature's exclusive right to modify or amend the legislation and establish the date on which the recalculation is operated, but any new provision may be applied only from the date it entered into force, in order to respect the principle of non-retroactivity enshrined in art. 15 par. (2) of the Constitution". Through the Decision no. 120/2007, the Court held that "the operation of recalculation regards inevitably the past, because the period of contribution was made in the past, but is made only after the entry into force of the ordinance and has effects only for the future, the recalculated pension will enter into payment only from the date the decision is issued. In cases in which the recalculation results in a higher amount of pension this amount will be paid and if the new result is smaller, the previously established value will continue to be paid, without prejudice to any legally rights previously won".

In Romania the Law no. 263/2010 was enacted regarding the unified public pension system, through the same abusive proceedings of government accountability in front of the Parliament, without allowing the main Legislative Body of the State to debate on articles of such an important normative act such is the pension law. This law is a *legal surrogate* because its developer did nothing but to insert in the contents of the old legislation governing the public pension system [15] a series of enactments regulating "special" pensions [16].

Regulations on military and police pension recalculation and the provisions of Law no.263/2010 on the unitary pension system induces the false premise that the current occupational pensions may be recalculated as if it had been obtained on the basis of *contributiveness*. If by law the retired military has not contributed to the social security system, how can we invent a virtual contribution, as long as in the context of the law the military didn't had the quality of an "insured" in the public pension system and neither that of "taxpayer"? The fact that the soldiers have never before had a record of employment should be an equally compelling argument in this regard.

Thus, as stated in Art. 3 letter q of Law no.263/2010 the concept of *specialist contribution period* is introduced which can be defined as the period during which a person from the system of national defense, public order and national security as well as the prison administration system was in one of the fallowing: 1. acted as an active military, 2. has fulfilled the military service as conscripts, short-term military, military school student / police agency school or student of an institution of educational system, national defense and national security, public order and national safety for the training of military, police and public officials with a special status in the prison administration system, except for military high school; 3. was mobilized or concentrate as a reservist, 4. was in captivity, 5. acted as a civil servant with a special status in the prison administration system 6. had the quality of a military hired on contract and / or soldier and volunteer.

As it can be seen this specialty contribution period is a virtual one because these people *have not actually contributed* only to a limited extent to the public pension fund, but through a legal artifice it was appreciated that it is sufficient for the beneficiary of such a training to be found in one of the above situations to be treated as the beneficiary who contributed to the pension fund.

According to the author, by this artifice, the constitutional principle of equality between public pension recipients is violates although, Law 263/2010 on the unified public pension system was declared constitutional according to the Decision no. 1612 of the Constitutional Court. [17]

Putting a sign of equality between all professional categories it is difficult to accept after they have completed their period of service, while some of them were taken of every opportunity to supplement their income, having to bear incompatibilities and total prohibitions, while other professions have benefited from the opportunity to supplement their income without having any type of incompatibilities and prohibitions.

As stated in art. 14 of the European Convention on Human Rights, the exercise of rights and freedoms recognized by this international legal instrument must be ensured without discrimination. Not every difference in treatment constitutes discrimination. The right of nondiscrimination protects individuals in similar circumstances against the application of different treatment.

In the Law no. 119/2010 and Law 263/2010 discrimination refers to the fact that the beneficiaries of the service pension had a different resolution to their situation even though the legislature claimed it as identical with the abolition of special pension. The legislature understood that during the course of legal employment or service they should establish certain responsibilities for some professional categories, prohibitions and incompatibilities, while for other professions, they were not provided.

The establishment of service pension had as a cause the fact that these persons had during their service severe incompatibilities and prohibitions so that they have been unable, through their own will and effort to increase the base of their pension rights and

the state wanted to assure them a decent life after retirement.

What stood at the basis for calculating the pension was absolutely the specific legal relationship of employment.

In the recalculation of military state pensions, policemen's pension and civil servants with special status in the prison administration system, according to Law no. 119/2010 regarding the establishment of measures on pensions and later by Law no. 263/2010 on the unified public pension system, a different regime was established in the sense that they expected a full contribution period of only 20 years while for the remaining categories of pensions, former beneficiaries of service pensions, a contribution period was provided which was calculated as the sum of the periods for which the contribution owed to the state social insurance budget by the employer and the insured. Without adequate justification a different solution has been given to an identical situation.

Discrimination therefore relates to the method of determining pension rights for some categories compared with the soldiers, policemen, civil servants with special status in the administration of prisons. On the other hand it should be taken into consideration that the contribution percentage to the pension fund was lower for military personnel (5% according to Law No. 164/2001) and yet the amount of pension rights ignores this principle and also the length of contribution taken into account.

Increasing or maintaining the amount of military pensions within the limits had previous to the recalculation according to Law 263/2010 and Law nr.119/2010 is due to: -the use of a full different contribution period, lower in favor of the military, for which it has been preserved the complete stage of contribution previously regulated on comparison to the other socio-professional categories, which previously had a full contribution period of 25 years but which has not been maintained in the new statutes; - ignoring the principle of contributiveness, respectively the lower contribution rates paid by military, police, etc..

Although Law no. 119/2010, as well as Law 263/2010 argue that the abolition of service pensions in reality institutes for military, policemen and prison staff a different method of calculation of pension rights, whose purpose is to maintain the service pension.

Or, the definition given to the term discrimination by the European Court of Human Rights in the case Abdulaziz, Cabales and Balkandali v. United Kingdom, refers to the fact that discrimination exists if "an individual or group is seen without adequate justification to be treated less well than the other"

The above definition leads to the conclusion that the state through these interventions must not commit discriminations, either in law or in fact, in the exercise of the rights enunciated by the European legal instrument.

With all that, through the Decision no. 871/2010 of the Constitutional Court, regarding the establishment of measures on pensions and the subsequent legal acts, as well as Law no. 263/2010 were declared constitutional, however they flagrantly contravene the provisions and principles of the Constitution. The above statement is supported by the following considerations:

As stated by Law 304/2004 regarding the status of judges and prosecutors [18], the Constitutional Court is not part of the judiciary power;

Due to the way judges are appointed, the Constitutional Court can not be regarded as an independent and impartial tribunal. Even if it is shown that a constitutional judge from the ranks of a political party will seek to break all ties with its party, in reality, there will always be the suspicion and sometimes even the certainty that he will try to please in a way, the one who proposed him.

The exigency of the things stated above results from the fact that the judge must offer sufficient guarantees to remove any legitimate doubt. In this area even the appearances have a special role because, in a democratic society, the courts must inspire the confidence of individuals and, in this respect the Constitutional Court is not bound by suspicions [19]. In this respect, we invoke the case Grieves v. United Kingdom of Great Britain, where it was noted: "The Court recalls that in order to determine whether a tribunal can be considered independent it must be taken into account, inter alia, the manner of appointment of its members and whether the body presents an appearance of independence".

The pension system reform violates the provisions of the European Union *regarding occupational schemes* and constitutes a deviation from the military pension systems of the Member States of NATO and UE [20].

Through art.196, letter b) and e) of Law No 263 / 2010 on the unified pension system, among other acts the Law no.164/2001 was abrogated, law which regarded the state military pensions, supplemented and amended, as well as Law no. 179/2004 on state pensions and other social security rights of police officers who fell under the second pillar on occupational schemes (professional) governed by European Directive no. 86/378/EEC, as amended by Directive. 97 / 96/EEC.

In most EU and NATO member states the wages and retirement payment of the Armed Forces are governed by laws or specific and distinctive rules. So in Germany, Great Britain, USA, Turkey, South Korea, Israel, Egypt, Japan, the calculation of military pensions is regulated by a separate law or through an independent chapter, formally included in a single law, together with that of civil pensions in France, Italy,

Greece, Portugal, Austria, so *a special chapter in an uniform and unique law*. The military base pension is determined by the amount of wages gained in the last month of work in Germany, Britain, Turkey, Italy, Greece, Austria, Japan, South Korea, Israel, or by the average wages of three or six months in France and in Egypt by the full period worked in the army, which is of 35-36 years in most countries. In France the maximum limit for active service is 25 years and the minimum is 15 years. In the majority of NATO states in order to establish the pension, at the resulted calculation base a percentage of between 75-80% of the wages value of the last 3-6 months is applied [21].

IV. Law No. 119/2010 as well as the subsequent legal acts violate the provisions of the European Union legislation, the human rights law and the judicial practice in the area.

Referring to the compatibility of the normative acts listed above with the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) we found that they violate both the right to respect the property, protected by Article 1 of the First Additional Protocol to the Convention and Article 14 of the Convention on the prohibition of discrimination, combined with Article 1 of Protocol 1.

The European Court of Human Rights ruled by jurisprudence that the notion of *good* has an autonomous meaning, not limited to the ownership of tangible property; certain rights and interests with a patrimonial value constitute *goods* and falls under the protection of Article 1 of Protocol 1 (Gasus Dosier und Fördertechnik GmbH v. Netherlands, Decision of 15 February 2005, paragraph 53).

With respect to the right to pensions as a social right, the Court ruled on several occasions that it is a good within the meaning of Article 1 of Protocol No. 1 (for example, the cause Gaygusuz v. Austria, Decision of 16 September 1996).

The European Court of Human Rights has decided that the notion of "good" includes any interest of a private person which has an economic value so that the pension can be treated as proprietary and the pension of a good is private propriety (Case Buchen against Czech 2002).

In such a case any person interested legitimizes their interests by invoking its patrimonial value as having the meaning of a won, recognized and carried out right by the state under a special law, sufficiently clear and foreseeable at the time of retirement and that allowed him to plan both long-term actions and short-term for himself and his family as well as a certain way of managing its present and future assets.

It is natural for anyone to recognize such a privilege and any unexpected intervention of the legislature has often, as is the case of occupational pension holders, the effect of affecting the substance of the right in its most important part. All special pension rights holders had when Law 119/2010 entered into force, an actual good in the opinion of the Convention, which has been removed by interference from the state.

The right protected by art. 1 par.1 of Protocol 1 of the European Convention on Human Rights is not an absolute right, in the sense that it carries limitations by state, which, in this respect has a wide discretion, but such limitations must meet certain requirements [22]:

a) *the interference should be prescribed by law*, a condition achieved if we consider that the abolition of occupational pensions and the service ones was done through a legislative act by the force of law, law resulting from the government assuming accountability in front of the Parliament. The law must be sufficiently clear and predictable. But predictability can have a larger sense, on not only the quality of existing laws, but it can also change laws in the future. People have a right to the continuity of such state action. This law requires that the state can not violate the legitimate expectations of those in the continuity of their action. Many occupational and service pension rights holders have been retired long before the emergence of new normative acts published in 2010. The biggest problem is not necessarily changing the law itself, but the regulations that unduly diminish the incomes from pensions because you can not admit that their decline with 40-85% is not a substantial and unpredictable one in 2010.

b) *the existence of a legitimate purpose for adopting the measure to abolish occupational and service pensions*. In the explanatory memorandum to the Law 119/2010 the Government specified that "it is necessary to adopt exceptional measures by which to continue efforts to reduce budgetary spending in 2010" due to the evolution of the economic crisis in 2009 and its extension during 2010 as well as the loan agreements with international financial organizations.

The fact that the documents containing the Government's promise to the international creditors to adopt the legal provisions in question does not mean that those creditors unilaterally established these conditions, they limited themselves to stating the objectives that are to be achieved (eg reduce budgetary spending), but choosing the most appropriate measures remains at the discretion of the State.

If measures of service pensions' recalculation of certain categories of former employees in the public sector in the sense of reducing them they are regarded as having the legal nature of exceptional measures. It is very clear that Law 119/2010 would not be based on the art. 53 of the revised Constitution, because it lacks one of the two essential features that would allow its invocation namely its temporary nature, limited in

time, or the effect of the pensions' recalculation is a definite and not a temporal one.

c) *the existence of a reasonable relationship of proportionality between the means employed and the aim envisaged for its use.*

This requirement was not respected by the state because the government proceeded to inadvertently reducing the occupational and service pensions with values ranging between 40-85%.

Even if one can accept that art.1 Protocol 1 of the European Convention on Human Rights guarantees pension to those who haven't paid contributions to a social insurance institution in direct proportion to the amount of future pension rights. It has no legal significance the establishment of a right to a certain fixed amount (EDH Commission, March 4 1985, X v. Sweden). On the other hand, the measure should not affect the very essence of the right.

In the case of holder, pensioners of service or military pensions the reduction with 40-85% of the amount of pension doubtlessly has such significance, contrary to those concisely stated by the Constitutional Court which found that this is only a limitation of the right and not a loss of right in its substance.

As the European Court of Human Rights found in the Case Sporrong and Lönnroth v. Sweden, the limitations brought to ownership rights by the state authorities have made it become uncertain with consequences for the value of the goods forming the subject of that right. So even if the Convention does not guarantee a certain amount of pension, if this amount is significantly reduced by the state through legislative action, then it affects the substance of this right. Thus in the cause Muller v. Austria, it has been decided that "a substantial reduction in pension levels could be regarded as affecting the substance of the right to own property and even the right to remain in receipt of old age insurance system."

The court ruled that, even if the state temporarily reduces the pension in situations of rapid economic recession a body of principles yet remains from which the state is forbidden to derogate, and the court considered essential to examine whether the right to social security has been achieved in its substance (the cause Kjartan Ásmundsson v. Iceland, Application no. 60669/00, 2005.)

Finally it should be noted that in the content of the principle of solidarity is required to be included a circumstance such as that one when an employee is used a long time under conditions of incompatibilities and a total ban to reward in some way the limitations brought by the economic and social rights, not necessarily by a larger pension than the active employee, but in any case, by a pension whose amount will not put him in difficulty to honor its financial obligations to the providers of utilities and bank creditors, medicines, daily food, etc..

The above should not lead us to the idea that a pension reform was not necessary, but the important thing is how this reform was made.

The pension system reform in Romania was absolutely necessary in order to join the provisions and recommendations of the European Union, but the governments must find the most appropriate measures so that through them they should not seriously affect the human rights as enshrined both in the international documents, those of the European Union and the Romanian Constitution.

V. Conclusions

The need for a reform of the pension system is unquestionable. This results from the most recent community documents which recognizes that in the context of a society with an aging population it will become increasingly difficult to provide financial support of the pension system and believes that there should be an adequate ratio between the active and retired population, thus the Member States are therefore recommended limiting the use of early retirement scheme and encourage employees to remain in service until the legal age necessary to obtain old-age pension.

The sustainability of the public pension system can only be achieved by increasing the number of taxpayers, but not by the forced leveling of the old systems of special pensions, but by creating a massive number of new jobs by investing heavily in areas such as agriculture (whose potential is not fully exploited) tourism, road and rail infrastructure, attracting foreign investors, attracting massive funds provided by the European Union, the return to the country of more than 2 millions Romanian who, because of the discouraging policies regarding labor management, were forced to seek employment in other countries etc..

Obviously, this situation requires the government to find solutions, but the ones identified so far are in total contradiction with the principles enshrined in both the domestic and international law or in the one of the European Union, just as it follows from the above.

We appreciate that this reform could have been done with less social impact if the following measures would have been taken:

-to reduce pressure on public pension fund the suspension is required, at least for the economic recession, of the contribution to the private pension fund, if not even its abolishment and the encouragement of voluntary pension insurance. In countries like Hungary or Czech such funds have been abolished and thus the deficit of budget insurance was reduced.

- reducing insurance contributions for both employees and employees, thereby stimulating the creation of new jobs.

- hard legislative measures in the fight against undeclared work

- the application of the flexicurity principle more boldly in Romania's work relations

- according to the principle of solidarity the obligation to contribute to the found of pensions could have been introduced for the pensioners holders with special pensions at a certain limit, measure which would not have affected them as drastically as it did the recalculation according to Law no. 119/2010.

- the increase in the number of contributors to pension funds by adopting certain economic investment politics exploiting more efficiently the funds allocated to Romania by the European Union.

- to ensure total independence and impartiality of the judges of the Constitutional Court, we propose de lex ferenda that they should not be political appointees, as now, but to be elected by the High Court of Cassation and Justice from among the judges of that court.

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[16] Law no. 164/2001 on state military pensions, as republished in the Official Gazette no. 748 of 14October 2002, Law no. 179/2004 on state pensions and other rights of the policemen, nr.485 published in the Official Gazette of 31 May 2004 relating to pension provisions contained in art. 11 paragraph 1 and 2, Art. 21 par 3 and art. 24 of Law no. 80/1995 on military rule, published in Official Gazette no.155 of 20 July 1995, Art. 68, art.681, paragraph 2 of Law no. 567/2004 on the State's expert staff of courts and prosecutors' offices attached to them, published in Official Gazette no. 1197 of 14 December 2004, Art. 29 and 52 of Law no. 269/2003 on Diplomatic and Consular Corps, State of Romania, published in Official Gazette no. 441 of June 23, 2003, Art. 49 par. 4 and art. 51 par.2 of Law 94/1992 on the organization and functioning of the Court of Auditors, no.282 republished in the Official Gazette of 29 April 2009, Art. 49-52 and 54 of Law no. 223/2007 on State Aircraft flying professional staff of civil aviation in Romania, published in the Official Gazette of 18 July 2007 no.481, Art. 9, 12-15, art. 16, par. 2 of art. 20 of Law no. 95/2008 on the State civil aviation aeronautical personnel in Romania, published in Official Gazette no. 304 of 18 April 2008, all repealed by Law no. 263/2010.;
[17] Published in the Official Gazette nr.72/2000;
[18] Regarding the state judges and prosecutors, republished in the Official Gazette no. 826 of 13 September 2005
[19]http://www.wseas.us/elibrary/conferences/2009/tenerife/EACT-ISP/EACT-ISP-38.pdf
[20]http://www.wseas.us/elibrary/conferences/2010/TimisoaraW/EMT/EMT1-60.pdf
[21]http://www.wseas.us/elibrary/conferences/2010/TimisoaraW/EMT/EMT1-38.pdf
[22]http://www.wseas.us/elibrary/conferences/jamaica2000/papers/152.pdf