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Does Hard Work Truly Pay Off? Examining the Legal Landscape and Contemporary Challenges of Agricultural Employment in Romania

Abstract

Romania is often described as a highly agricultural country, being one of the largest cereal producers in the EU and the leading producer of sunflower seeds, honey, and plums. If this is the case, it stands to reason that employment in the agri-food sector plays a significant role in the occupation of the active population.

Building on this observation, our study analyses the types of employment specific to the Romanian agricultural sector, alongside the most topical labour law issues it raises, with the aim of identifying both the potential positive aspects and pitfalls associated with work in this sector. Our hypothesis is that, due to the specific nature of agricultural activities and the structural characteristics of the Romanian agricultural system, the employment relationship based on an individual employment contract – as defined by the Labour Code – may not always provide a sufficiently flexible framework for the agricultural sector. Consequently, other atypical forms of employment are often necessary.

Therefore, our research does not examine the typical employment relationships governed by individual employment contracts, as the focus is on those specific forms of employment that have emerged in the agricultural sector and are regulated in light of the characteristics of this area of activity. With this in mind, we direct our attention to day labour, self-employment, and cooperative work, drawing on the historical, legal, and general economic analysis outlined in the study.

Keywords: Agricultural Employment, Unskilled Occasional Activity, Day Labour, Self-Employment, Atypical Employment Relationship, Agricultural Cooperative

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1. General context

Romania has long held a significant position in the European Union's agricultural sector and continues to be recognised for its high agricultural potential. This is evidenced by the extensive area of land dedicated to farming, its contribution to the national Gross Domestic Product (GDP), and the substantial proportion of the population engaged in agricultural activities. As a result, the agricultural sector plays an important role in Romania's socio-economic development by creating employment opportunities and strengthening the rural economy.[3]

As of 2023, agriculture accounted for approximately 3.88% of Romania's GDP.[4] Among all employers, 6.6% operated in the agricultural sector,[5] while employment in agriculture represented 11.9% of the total workforce.[6] Although this employment rate in agriculture remains relatively high compared to the EU average of approximately 4%,[7] Romania's agricultural workforce has been declining in recent years. This trend has led to a reduction in the number of farmers and agricultural workers,[8] influenced by various factors, including technological advancements, labour migration, and levels of educational attainment.[9]

For example, out of the 11.9% of workers employed in this sector, 8.3% consisted of skilled workers in agriculture, forestry and fishing.[10] Additionally, agricultural activities are predominantly carried out by the elderly population.[11] In 2023, among those employed as skilled workers in agriculture, forestry, and fishing, 30.3% were aged 45–54, while 27.2% were over 55 years old.[12] Furthermore, in 90.7% of cases, individuals with a secondary occupation – representing 0.6% of the employed population – had agriculture as their additional activity.[13]

Agricultural work differs remarkably from other sectors of the economy, often exposing workers to harsh conditions, low job security, and limited social protection.[14] As a result, the adequacy of the legal framework governing agricultural employment, and its rigorous enforcement, holds particular importance. This study aims to examine the legal background of three forms of agricultural

3 | Ursu et al. 2023, 1.
4 | Statista 2025.
5 | Actmedia 2024.
6 | Ibid.; International Trade Administration 2024. According to EURES (European Employment Services), in 2023, over 8.2 million individuals were active in Romania's labour market, with an employment rate of 63%.
7 | Ibid.
8 | Ursu et al. 2023, 2.
9 | Ibid. 23.
10 | Actmedia 2024.
11 | Popescu et al. 2021, 481.
12 | Actmedia 2024.
13 | Ibid.
14 | Ursu et al. 2023, 1.

employment – namely, day labour, self-employment, and cooperative work – discussing their characteristics, advantages, and shortcomings. Ultimately, it seeks to honestly address a fundamental question: does hard work truly pay off?

2. Occasional work of day labourers

Before 2011, Romanian legislation was characterised by a lack of regulation concerning the occasional work of day labourers, leading to uncertainty regarding workers' rights, taxation, and social contributions. In response to these challenges, legislation was introduced to establish a clear legal framework for day labourers' employment. This section examines the background of its enactment, relevant terminology, and essential aspects related to the work of day labourers, specifically in the agricultural sector, which serves as the primary focus of this paper.

2.1. Background of enactment and objectives of Act No. 52/2011

Act No. 52/2011[15] was the first legal instrument in Romania to regulate the work performed by day labourers. By addressing a legislative gap and establishing a legal framework for carrying out activities of an occasional nature, the Act aimed to provide beneficiaries with a streamlined process for quickly recruiting labour. This, in turn, reduced bureaucratic procedures, making employment practices more flexible and simplified for day labourers,[16] thereby ensuring broader employment opportunities. An equally important goal behind the enactment of the legislation was to tackle the persistent societal issue of the widespread practice of undeclared – and thus illegal and untaxed – work in certain sectors,[17] particularly agriculture.[18]

Art. 2 of the Act sets out its objective, stipulating that this legislation regulates, by way of derogation from the provisions of Act No. 53/2003 – the Labour Code,[19] the manner in which day labourers may perform unskilled activities of an occasional nature within an employment relationship. Before analysing the various aspects of this legal institution – such as rights, obligations, remuneration, and the register of day labourers – which has undergone multiple amendments, it is essential to establish a precise understanding of this imperative provision.

15 | *Legea nr. 52/2011 privind exercitarea unor activități cu caracter ocazional desfășurate de zilieri*, published in the Official Gazette No. 276, 20 April 2011 and republished in the Official Gazette No. 947, 22 December 2015.
16 | Roșioru 2017, 32.
17 | Ibid.
18 | Ibid., 69.
19 | Republished in the Official Gazette No. 345, 18 May 2011.

2.2. Terminology

To fully grasp the content of the relevant terms appearing in the objective of Act No. 52/2011, one should break them down by focusing on three key concepts: 'day labourers' (*zilieri*), 'unskilled occasional activities' (*activități necalificate cu caracter ocazional*), and the nature of the 'employment relationship' (*raport de muncă*). This analysis will also provide an overview of the legislative amendments that have shaped the regulation of occasional work performed by day labourers.

2.2.1. Who qualifies as a 'day labourer' and who can – or cannot – be a 'beneficiary'?

According to art. 1 (1) a) of Act No. 52/2011, a day labourer is defined as a natural person, either a Romanian or a foreign citizen,[20] who has the capacity to work and performs unskilled activities of an occasional nature for a beneficiary or an authorised representative thereof,[21] in exchange for remuneration. Beyond the general rule that, in an employment relationship, the employee is always a natural person,[22] the requirement of capacity to work stands out. Analogous to the provisions of the Labour Code, individuals can, as a main rule, perform work as day labourers starting at the age of 16. However, in exceptional cases, they may do so between the ages of 15 and 16.[23]

Before further unfolding the meaning of the other two phrases, the term 'beneficiary' (*beneficiar*) also calls for clarification. Art. 1 (1) b) enumerates administrative-territorial units, legal entities, authorised natural persons, individual enterprises, and family enterprises as potential beneficiaries of the works performed by day labourers. Initially, the scope of this provision was limited to legal

20 | The amending Act No. 18/2014 (*Legea nr. 18/2014 pentru modificarea şi completarea Legii nr. 52/2011 privind exercitarea unor activităţi cu caracter ocazional desfăşurate de zilieri, precum şi pentru modificarea art. 8 alin. (1) din Legea nr. 416/2001 privind venitul minim garantat*), published in the Official Gazette No. 192 on 19 March 2014, further clarifies this provision, specifying that citizens of other states or stateless persons who have their domicile or, as the case may be, residence in Romania may also perform unskilled occasional activities under the conditions set forth by Romanian legislation.
21 | The phrase 'or an authorised representative thereof' represents an amendment to Act No. 52/2011 introduced by Act No. 132/2019 (*Legea nr. 132/2019 pentru modificarea și completarea Legii nr. 52/2011 privind exercitarea unor activități cu caracter ocazional desfășurate de zilieri*), published in the Official Gazette No. 575 on 15 July 2019.
22 | Vallasek 2020, 18–19.
23 | The exception to the 16-year age limit, which allows minors aged 15 to 16 to perform unskilled occasional activities with parental or legal representative consent, was introduced by the amending Act No. 277/2013 (*Legea nr. 277/2013 pentru modificarea şi completarea Legii nr. 52/2011 privind exercitarea unor activităţi cu caracter ocazional desfăşurate de zilier*), published in the Official Gazette No. 661 on 29 October 2013. It applies only if the activities are suitable for the minor's physical development, skills, and knowledge and do not pose a risk to their personal growth or health. Act No. 18/2014 later extended the applicability of these conditions from minors aged 15 to 16 to encompass all minors between the ages of 15 and 18.

entities on whose behalf and under whose authority the day labourer's work was carried out, excluding authorised natural persons or enterprises.[24] From this, it can be inferred that, under this legal basis, natural persons were also unable to engage the occasional services of agricultural workers.[25] The reasoning behind this somewhat discriminatory limitation was based on the idea that peasants simply "help each other" when working their land with neighbours or relatives,[26] without formally entering into an employment or any kind of legal relationship.

Subsequently, the amendment of Act No. 52/2011 introduced by Act No. 277/2013 expanded the list of potential beneficiaries to include natural persons, authorised natural persons, and enterprises. Nevertheless, Act No. 18/2014 later removed natural persons from this list. As a result, the legal relationship between a natural person, as beneficiary, and a day labourer ultimately falls outside the scope of Act No. 52/2011 and remains governed by the provisions of the Civil Code.[27] This implies that, despite the existing subordination, a natural person benefiting from the work of day labourers is not subject to the obligations established in Act No. 52/2011, which are mostly characteristic of an employment relationship and will be examined in detail shortly.[28]

The fluctuations in the scope of Act No. 52/2011 concerning eligible beneficiaries of day labourers' work came to a halt – at least for the time being – with Act No. 242/2020,[29] which further broadened the category by including administrative-territorial units. Besides the clear-cut listing of work recipients of day labourers, Act No. 52/2011 also explicitly states the general rule that public institutions – except for administrative-territorial units and a few other exceptions listed in art. 1 (3)[30] – shall not be beneficiaries under this regulation.

To comprehensively analyse the subjects involved in this relationship, it is essential to highlight another important aspect of the legal framework. Art. 1 (5) of this Act establishes a general rule prohibiting the beneficiary or their authorised representative from employing day labourers for activities that benefit a third

24 | Țop 2018, 38.
25 | Ibid.; Ștefănescu 2014, 17.
26 | Ibid.
27 | Roșioru 2017, 70.
28 | Ibid.
29 | *Legea nr. 242/2020 pentru modificarea și completarea Legii nr. 52/2011 privind exercitarea unor activități cu caracter ocazional desfășurate de zilieri*, published in the Official Gazette No. 1041, 6 November 2020.
30 | These include botanical gardens subordinated to universities; the 'Gheorghe Ionescu-Șișești' Academy of Agricultural and Forestry Sciences and the institutes, centers, and research-development stations under its authority; the State Institute for Variety Testing and Registration subordinated to the Ministry of Agriculture and Rural Development; county pedological and agrochemical study offices; national institutes; didactic-experimental stations of universities under the coordination of the Ministry of National Education; high schools under the subordination of the Ministry of National Education specialised in fields in which unskilled occasional work may be performed, etc.

party.[31] This provision aims to exclude the possibility of temporary employment agencies hiring personnel as day labourers.[32] Reinforcing the *intuitu personae* nature of the employment relationship,[33] this provision aligns with the principle that a day labourer cannot be substituted by third parties in performing the occasional activities. This conclusion follows from the beneficiary's obligation to register all day labourers performing occasional activities for their benefit, in chronological order, in the Electronic Register of Day Labourers (*Registrul electronic de evidență a zilierilor*) and submit it to the territorial labour inspectorate daily, before the commencement of work by each individual.[34] The topic of this register will be examined in detail in a separate subchapter.

2.2.2. A closer look at 'unskilled occasional activities': definition, duration, characteristics

When it comes to the term 'unskilled occasional activities', this was not defined in the Act prior to its amendment by Act No. 18/2014, which explicitly outlined the key characteristics of 'occasional activities' that must now be highlighted. Pursuant to the newly inserted art. 1 (1) d), occasional activities are defined as being carried out incidentally, sporadically, or accidentally, without a permanent or continuous nature.[35] Hence, the *facere*-type work performed by day labourers, although carried out successively,[36] is inherently temporary and lacks enduring characteristics.

In accordance with this, the duration of such activities is subject to specific limits. As a general rule, it must be at least one day, equivalent to 8 working hours, with the maximum daily working time set at 12 hours.[37] This aspect of the regulation aligns with the common understanding of the term 'day labourer' as a worker employed and paid on a daily basis.[38] For minors with the capacity to work, the daily limit is restricted to 6 hours, with a weekly maximum of 30 hours, and night work

31 | The 2019 amendment of Act No. 52/2011 introduced an exception to this provision, allowing beneficiaries to engage day labourers in activities benefitting a third-party, provided these activities fall under service contracts concluded between the beneficiary or their authorised representative and the third-party.
32 | Țop 2018, 42.
33 | Roșioru 2017, 72.
34 | Art. 1 (1) c), art. 5 (1) a) and b) and art. 8 (1) of Act No. 52/2011.
35 | According to the Explanatory Dictionary of the Romanian Language, *incidental* (incidental) means "occurring by chance or happening unexpectedly", *sporadic* (sporadical) refers to something that "appears, manifests itself here and there or from time to time; without continuity", while *accidental* (accidental) describes that which "results from an accident, occurs by chance, unexpectedly or incidentally".
36 | Ciochină-Barbu 2020, 263.
37 | Art. 4 (2) of Act No. 52/2011.
38 | Roșioru 2017, 72; Ciochină-Barbu 2020, 256.

is strictly prohibited.[39] These daily and weekly limitations are consistent with the provisions of art. 112 of the Labour Code. However, while the Code sets a maximum weekly working time of 40 hours for full-time employees,[40] the legislation on day labourers does not impose such a restriction. Consequently, at least theoretically, adult day labourers may work without a weekly rest period.[41] Likewise, they are not entitled to daily rest when their working time exceeds six hours,[42] nor are they granted paid public holidays or annual leave.[43]

Regarding the specificities of this type of work, unlike employees whose employment relationship has no maximum duration and for whom the general rule is the conclusion of a full-time and indefinite-term employment contract,[44] a beneficiary may not employ a person as a day labourer for more than 25 consecutive calendar days.[45] If the nature of the performed activity requires a duration beyond this limit, the worker may instead be employed under a fixed-term employment contract,[46] which is regulated by and subject to the provisions of the Labour Code.[47] Additionally, the total duration of activities performed by any day labourer may not exceed a maximum of 90 cumulative days within a calendar year for the same beneficiary, or, following the 2019 amendment, for an authorised representative thereof.[48]

However, amendments to Act No. 52/2011, introduced by Act No. 105/2017,[49] Act No. 86/2018,[50] and subsequently, by Act No. 132/2019, established exceptions for certain sectors. These include the agricultural, forestry, viticulture, fruit-growing, vegetable-growing, floriculture, and fishery sectors, as well as extensive livestock farming through the seasonal grazing of cattle and horses. Additionally, exemptions apply to seasonal activities in botanical gardens and to research, development, and innovation activities within the agricultural sector under the Academy of Agricultural and Forestry Sciences 'Gheorghe Ionescu-Șișești', its subordinate institutes, research-development stations, as well as national institutes and agricultural and forestry educational institutions. In these fields, the maximum allowable period for working with the same beneficiary was extended from 90 to

39 | Ibid. The weekly limitation, along with the prohibition of night work for minors, was introduced solely by the aforementioned Act No. 277/2013.
40 | Art. 137 of the Labour Code.
41 | Dumitru 2015, 21; Roșioru 2017, 74.
42 | Art. 134 of the Labour Code.
43 | Ibid. art. 139 and 144. Dumitru 2015, 21; Roșioru 2017, 74.
44 | Vallasek 2020, 53.
45 | Amendment introduced by Government Ordinance No. 114/2018, published in the Official Gazette No. 1116, 29 December 2018.
46 | Ibid.
47 | Țiclea and Georgescu 2022, 25.
48 | Art. 4 (1) and (4) of Act No. 52/2011.
49 | Published in the Official Gazette No. 376, 19 December 2017.
50 | *Legea nr. 86/2018 pentru modificarea și completarea Legii nr. 52/2011 privind exercitarea unor activități cu caracter ocazional desfășurate de zilieri*, published in the Official Gazette No. 313, 10 April 2018.

180 cumulative days within a calendar year. Regardless of the field in which the activity is carried out, the extension applies to day labourers who take up employment through agency intermediation,[51] as provided in Chapter II^1 of the Act.

Furthermore, Act No. 132/2019 also introduced a limitation on activities performed for different beneficiaries, stipulating, *inter alia*, that an individual may not work as a day labourer for more than 120 days within a calendar year, regardless of the number of beneficiaries. Exceptions made in the aforementioned sectors also apply in this case, allowing a higher limit of 180 cumulative days within a calendar year, irrespective of the number of beneficiaries.[52] Thus, since no weekly rest period is stipulated, the only restriction remains the cumulative limit of either 90 or 180 days per calendar year, depending on the applicable provisions, during which they can work for the same beneficiary.[53]

Non-compliance by beneficiaries with any of these limits – whether by employing a day labourer for more than 25 consecutive calendar days, exceeding 90 cumulative days within a calendar year for the same beneficiary, surpassing the upper limit of 120 days, or exceeding the extended limit of 180 cumulative days within a calendar year for activities performed for the same or different beneficiaries – is sanctioned with a fine of 6,000 lei. These restrictions clearly serve a protective purpose for day labourers in terms of occupational safety, with the prescribed fine reinforcing their importance and encouraging compliance. However, it is questionable whether the specified intervals are reasonable or overly restrictive, potentially forcing the beneficiary to exceed them to have the given activity completed. If the limit is indeed thoughtfully set, taking the nature of the activity into account, one must still consider whether the fine is high enough to outweigh the costs of legal compliance. What is more costly for the beneficiary: violating the law and paying the fine or – providing an example – covering the contributions and taxes required when forced to conclude a fixed-term employment contract if the day labourer's activity exceeds the 25 consecutive days limit? If the latter, the legal restriction may – instead of preventing – encourage risk-taking and undeclared work. Furthermore, the increase in bureaucratic procedures directly correlates with a higher likelihood of undeclared labour, making administrative burdens an additional incentive for non-compliance.

Although not defined *per se* in the legislation, the term 'unskilled' is referenced in the definition of 'day labourer', to indicate that the activities in question do not require a strict set of specialised skills, training, or qualifications. However, unlike individual employment contracts, which may involve intellectual, physical, or artistic work, the performance of unskilled occasional activities is restricted to fields explicitly and exhaustively enumerated in art. 13 (1) a)–q) of Act No. 52/2011,

51 | Art. 13^5 of Act No. 52/2011.
52 | Ibid. art. 4 (6).
53 | Dumitru 2015, 21.

primarily involving activities of a physical nature.[54] Accordingly, the beneficiary must operate within the legally specified fields,[55] and is responsible for ensuring that the day labourer is informed about the activity they are about to perform, as well as their rights and obligations.[56]

While agriculture is mentioned first, the length and variety of the list of fields demonstrate that the scope of the Act is not limited to it, meaning it does not exclusively regulate the work performed by day labourers in the agricultural sector. The amendment introduced by Government Ordinance No. 114/2018, however, restricted the domains provided by law to agriculture, hunting, and related services; forestry, excluding forest exploitation; and fishing and aquaculture. Some sources argue that this was the best modification of the Act, as the earlier expansion of sectors eligible for unskilled occasional activities had allowed many beneficiaries to use day labourers as a means of tax evasion.[57]

Despite the fluctuations in the scope, the specified fields now include approximately 20 domains, such as activities related to organising exhibitions, fairs, and congresses; advertising; catering services for events; restaurants; bars and other beverage-serving activities; hotels and other accommodation facilities; and activities of sports facilities, among others. Even with such a long list, the engagement of day labourers in activities outside the legally permitted sectors is a common issue.[58] Since the employment of day labourers for activities not explicitly regulated can be considered a form of illegal and undeclared work, it is sanctioned with a notably high fine ranging from 10,000 to 20,000 lei.[59]

In addition to this terminological clarification, it is also worth noting that the term 'unskilled' may not be the most appropriate for accurately describing this category of activities, as it could carry a negative connotation implying diminished intrinsic value, whereas the focus is not necessarily on the absence of skills.

2.2.3. Understanding the nature and source of the 'employment relationship' between day labourers and beneficiaries

After reviewing the concepts of day labourer, beneficiary, and unskilled activities of an occasional nature – including agricultural work – it is necessary to examine the employment relationship within which these elements are framed. It was only with the amendment of Act No. 52/2011 operated by Act No. 18/2014 that the work of day labourers performed under the authority of the beneficiary was granted the status of an 'employment relationship' (art. 2). This recognition,

54 | Ciochină-Barbu 2020, 256.
55 | Ștefănescu 2014, 17.
56 | Art. 5 (2) d). of Act No. 52/2011.
57 | Economica 2019.
58 | ITM Control 2024, 113.
59 | Art. 14 (1) e) of Act No. 52/2011.

although accompanied by certain derogations, integrated the relationship into the framework of labour law, which thus became, to a certain extent, the applicable legal regime.[60]

Prior to this amendment, art. 3 merely provided that the relationship between the day labourer and the beneficiary was established without the conclusion of an employment contract. As it implicitly imposed a *de plano* prohibition on entering into such a contract, the uncertainty surrounding the genuine legal nature of the contract underlying this legal relationship has sparked controversy in specialised literature. Scholars have variously interpreted it as either a civil contract or an employment contract of a specific character.[61]

However, through this wave of amendments, art. 3 of Act No. 52/2011 was modified to explicitly state that the 'employment relationship' – the legal nature of the agreement clarified in the amended art. 2 is reiterated here – between the day labourer and the beneficiary, or an authorised representative thereof, is established *solo consensu*, that is, solely by the mutual agreement of the parties, without the general requirement[62] for a written employment contract. Thus, the source of the atypical or imperfect[63] employment relationship between the day labourer and the beneficiary undoubtedly lies in an unwritten employment contract – understood as *negotium iuris*[64] – through which the two parties jointly establish their mutual rights and obligations.[65] With the quasi-totality of scholars[66] now recognising this as an imperfect individual employment contract, the doctrinal view that the activity carried out by a day labourer is based on a civil contract has become outdated.[67]

This otherwise bilateral, synallagmatic, and named contract – similar in this respect to the individual employment contract – is characterised in legal doctrine as atypical,[68] primarily because it derives from and is governed entirely by a *lex specialis*.[69] Consequently, while this employment relationship shares several characteristics with dependent work, it also displays distinct peculiarities. Its imperfect

60 | Ștefănescu 2014, 15.
61 | Ibid.
62 | Established by art. 16 (1) of the Labour Code.
63 | Roșioru 2017, 70; Țiclea and Georgescu 2022, 15; Țop 2018, 40.
64 | A legal operation intended to produce specific legal effects, and not in the sense of *instrumentum probationis*, which refers to the document (of that contract) that merely records and proves the legal operation. Țiclea 2018, 30–31.
65 | Ciochină-Barbu 2020, 254.
66 | Ștefănescu 2014, 15–20.
67 | Ibid. 20.
68 | Roșioru 2017, 63; Țiclea and Georgescu 2022, 9.
69 | Art. 2 of Act No. 52/2011 explicitly states that the regulation derogates from the provisions of Labour Code. However, pursuant to art. 1 (2) of the Labour Code, these derogatory rules are supplemented by common law provisions from the labour legislation, insofar as they do not contradict the specific nature of this contract (*generalia specialibus non derogant*). Roșioru 2017, 70; Țiclea and Georgescu 2022, 25; Ștefănescu 2014, 20.

nature stems not only from the absence of a written form but also from several defining elements, such as the nature of the work performed, the fixed duration of the activity, the method of remuneration, and specific rights and obligations of the parties.[70] Moreover, the omission of key elements typically found in standard employment contracts further contributes to its atypical character.[71] These aspects, insofar as they have not yet been addressed, will be thoroughly analysed in the following subchapter.

2.3. A detailed analysis of essential aspects of occasional work

With the concepts of day labourer, beneficiary, and unskilled occasional activities scrutinised, and the nature of the underlying employment relationship clarified, including the characteristics of the concluded employment contract, the analysis of the elements that confer its typical and atypical nature is well-founded.

2.3.1. Subordination and remuneration

Art. 1 (1) a) of Act No. 52/2011 stipulates that a day labourer performs unskilled activities of an occasional nature for a beneficiary or an authorised representative thereof in exchange for remuneration. From this provision, two yet undiscussed but essential structural elements of employment relationships arising from an individual employment contract[72] can be identified.

Firstly, the element of subordination, inherent to employment relationships and essential for their legal qualification, is clearly present: similar to employees performing work under the authority of an employer,[73] day labourers work for a beneficiary. This hierarchical relationship is further emphasised by art. 5 of the act, which stipulates that the beneficiary or their authorised representative has the right to determine the activities to be performed, the place and duration of the work, and to exercise control over how the work is carried out. Among the rights conferred upon the beneficiary, this stands out in terms of legal significance. Nevertheless, while day labourers are not self-employed, they also do not hold the status of regular employees,[74] thus reinforcing the atypical nature of the contract.

In addition to subordination – or, more precisely, as the economic facet of subordination[75] – it can be outlined that this legal relationship, based on a fixed-term

70 | Țiclea 2018, 31.
71 | Ștefănescu 2014, 15; Țop 2018, 39.
72 | Defined in art. 10 of the Labour Code as an agreement under which a natural person, referred to as the employee, undertakes to perform work for and under the authority of an employer, whether a natural or legal person, in exchange for remuneration referred to as a salary.
73 | Țiclea 2018, 30–31.
74 | Țiclea and Georgescu 2022, 9.
75 | Ciochină-Barbu 2020, 257.

contract,[76] also involves, as a *dare*-type obligation, valuable consideration (*cu titlu oneros*). For the work carried out successively under the authority of the beneficiary, day labourers, like employees, are entitled to remuneration paid at defined intervals. This, in line with relevant provisions of the Labour Code, is determined by agreement between the parties.[77] However, unlike part-time employees, whose salary is calculated based on the number of hours actually worked, a day labourer must be paid for at least 8 hours of work, even if the parties have agreed on fewer working hours.[78] Moreover, the gross hourly remuneration cannot be lower than the hourly value of the national minimum gross base salary guaranteed in payment[79] – a rule that is also reflected in the Labour Code.[80]

That being said, it is also important to note that the remuneration differs in form from a salary.[81] The beneficiary or their authorised representative is obliged to pay the due amount by any legally authorised means of payment at the end of each working day.[82] Following several amendments to the act, remuneration may also be paid no later than the end of the week[83] or the period during which the work was performed.[84] If the period of activity exceeds 30 days,[85] payment may be made on a monthly basis. In each of these exceptional cases, the written consent of both the day labourer and the beneficiary or their authorised representative is required.

The remuneration received by the day labourer is subject to personal income tax (10%), which is calculated, withheld from the gross remuneration, paid, and declared by the beneficiary or their authorised representative.[86] Similarly, the obligation to calculate, withhold, pay, and declare the social insurance

76 | Roșioru 2017, 72; Ciochină-Barbu 2020, 278.
77 | Art. 11 (1) of Act No. 52/2011.
78 | Ibid. art. 4 (2).
79 | Ibid. art. 11 (2). Nevertheless, as of May 2022, by the effect of Act No. 135/2022, published in the Official Gazette No. 489, 17 May 2022, the minimum gross base salary guaranteed in payment for employees of employers operating in the agricultural sector on Romanian territory is set at no less than 3000 lei per month (art. 3 (1) and (2) of Act No 135/2022). This amount excludes allowances, bonuses, and other additions, and corresponds to a standard working schedule averaging 167.333 hours per month, resulting in an average hourly rate of approximately 18 lei. Since this provision must be correlated with art. 11 (2) of Act No. 52/2011, the minimum remuneration to which a day labourer performing unskilled occasional activities in the agricultural sector is entitled is the one established by art. 3 (1) and (2) of Act No. 135/2022, namely 3,000 lei. However, as of January 1, 2025, the minimum gross base salary guaranteed in payment is set at 4050 lei per month for a standard working schedule averaging 165.334 hours per month, equating to approximately 25 lei per hour. Consequently, since the gross hourly remuneration cannot be lower than the hourly value of the national minimum gross base salary, the provisions of Act No. 135/2022 are no longer relevant.
80 | Art. 164 (2) of Act No. 53/2003.
81 | Țop 2018, 39.
82 | Amendment introduced by Act No. 18/2014.
83 | Ibid.
84 | Amendment introduced by Act No. 277/2013.
85 | Amendment introduced by Act No. 105/2017.
86 | Art. 7 (1) and (2) of Act No. 52/2011.

contribution (25%) – which grant the day labourer insured status in the public pension system – also lies with the beneficiary.[87]

With regard to social contributions, unlike employees working under an employment contract, day labourers were initially not included in either the public pension system or the public health insurance system and could only obtain such coverage through voluntary contributions. While the payment of social insurance contributions now ensures their inclusion in the public pension system, their status within the public health insurance system remains unchanged—they are not automatically insured and must opt for voluntary coverage if they wish to benefit from it.[88] Furthermore, day labourers are not covered by insurance for work accidents and occupational diseases.[89] In the event of such incidents, the beneficiary or their authorised representative is obliged to cover the costs of any necessary medical care.[90] Finally, beneficiaries are not required to pay the labour insurance contribution on the remuneration granted to day labourers.[91]

2.3.2. The (Electronic) Register for Recording Day Labourers – theory and practice

As explained at the beginning of this chapter, one of the primary objectives of the Act regulating the work of day labourers is to prevent undeclared or 'black' labour. In line with this aim, and in order to simplify procedures for both beneficiaries and authorities by eliminating burdensome bureaucratic registration requirements, an essential component of the legislation is the register of day labourers, along with the obligation imposed on beneficiaries to maintain accurate records of the work performed.[92]

According to art. 1 (1) c) of Act No. 52/2011, this special-status register is prepared by the beneficiary or their authorised representative to record the daily activity of day labourers. Following the 2019 amendment[93] to Act No. 52/2011, a new article – Art. 4^1 – was introduced, establishing the Electronic Register for Recording Day Labourers (*Registrul electronic de evidență a zilierilor*), hereinafter referred to as the Register, as the sole means of transmitting data related to day labourers' records. Consequently, the register became fully electronic. Since then, beneficiaries have been required to establish and complete the electronic register in chronological order, including all day labourers,[94] and submit it to

87 | Ibid. art. 9 (1) and (2).
88 | Ibid. art. 9 (3).
89 | Ibid. art. 9 (4).
90 | Ibid. art. 9 (5).
91 | Ibid. art. 7 (3).
92 | Roșioru 2017, 72.
93 | Introduced by Government Ordinance No. 26/2019, published in the Official Gazette No. 309, 19 April 2019.
94 | Art. 8 (1) of Act No. 52/2011.

the territorial labour inspectorate daily, before any day labourer begins their activity.[95]

As regards the rule of daily completion, the amendments introduced by Act No. 132/2019 established exceptions for several sectors,[96] most of which had already been listed in connection with the exceptionally extended maximum allowable period for working with the same beneficiary. Without restating the entire list, it is important to note that, *inter alia*, in the agricultural sector, the electronic register is prepared on a monthly basis.

When it comes to technical aspects of recording day labourers in the Register, beneficiaries may obtain a password to access the relevant web application from the territorial labour inspectorate where their headquarters are located. The Register can also be completed and submitted directly from the field using a mobile application.[97] The establishment and proper completion of the register are facilitated by Annex No. 1 and Annex No. 2 of the Act, which contain, respectively, a model of the register and instructions for its use. According to Annex No. 1, the register may include the following information: the date of the activity; the full name of the day labourer; their identity document and personal identification number (CNP); the day labourer' signature, acknowledging their own health condition as suitable for the work; the signature of the day labourer confirming that health and safety training has been completed; the main or secondary domain of activity; the location of the activity; the number of working hours; the remuneration (both gross agreed and net paid amounts), and the signature confirming receipt of payment; as well as parental or legal representative consent for the minors engaging in day labour. Three of these elements – the three signatures – require further contextualisation.

First, in line with the beneficiary's obligations in the area of occupational health and safety, introduced by the amending Act No. 18/2014, beneficiaries must not only ensure the health and safety of day labourers,[98] provide training on workplace hazards, preventive and protective measures[99] – completion of which is confirmed by the second signature in the register – and supply suitable work equipment,[100] but they are also required to request day labourers to assume responsibility for their own state of health, confirming that they are fit to carry out the assigned activities.[101] This assumption is formally recorded through the day labourer's first signature in the register. By contrast, no such obligation exists in the context of entering into an individual employment contract. Under

95 | Ibid. art. 5 (1) a) and b).
96 | Ibid. art. 8 (2).
97 | Pop C A 2022, 74.
98 | Art. 5 (3) a) of Act No. 52/2011.
99 | Ibid. art. 5 (3) b).
100 | Ibid. art. 5 (3) d).
101 | Ibid. art. 5 (3) c).

art. 27 (1) of the Labour Code, employment is conditional upon a medical certificate attesting that the individual is fit to perform the work in question. As for the third signature, it serves as proof of payment, in accordance with art. 11 (3) of Act No. 52/2011.

Thus, analysis of the content of the Register reveals that, beyond serving to document the work performed, it also serves as evidence of both the day labourer's assumption of responsibilities, and the beneficiary's compliance with legal obligations. Although the employment relationship is established through mutual agreement between the day labourer and the beneficiary, the formalised obligations set out in the register – such as confirmation of payment and acknowledgement of safety training – can be regarded as equivalents to contractual clauses found in individual employment contracts.[102]

To realistically assess the practical implementation of this register, it is useful to refer to the National Campaign for Monitoring Beneficiaries' Compliance with the provisions of Act No. 52/2011 on the Performance of Occasional Activities by Day Labourers, conducted by the territorial labour inspectorates in October 2024. As part of this campaign, unannounced inspections were carried out at 748 beneficiaries.[103] A total of 118 administrative sanctions – including fines and warnings – were imposed, while 203 corrective measures were ordered to address the identified irregularities.[104]

The main deficiencies included failure to establish the Register of Day Labourers and to register day labourers before the commencement of their activity.[105] Violations of the Register-related provisions are subject to a fine of 6,000 lei.[106] Another frequently observed infringement, as previously mentioned, was the engagement of day labourers in activities outside the legally permitted domains, as enumerated in art. 13 of Act No. 52/2011.[107] These findings illustrate a significant lack of awareness among beneficiaries regarding the legal conditions governing the employment of day labourers and the sectors in which they are lawfully permitted to operate. As previously discussed, the purpose of maintaining accurate records of the work performed is to ensure transparency, promote legal compliance, and prevent undeclared labour. At the same time, it is closely linked to the beneficiary's obligations, particularly in proving the payment of remuneration and compliance with health and safety standards. Therefore, the absence of the register ultimately results in an inadequate level of protection for this category of workers.

102 | Ciochină-Barbu 2020, 263.
103 | ITM Control 2024, 113.
104 | Ibid.
105 | Ibid.
106 | Art. 14 (1) b) of Act No. 52/2011.
107 | ITM Control 2024, 113.

1.3.3. About sanctions prescribed in and outside Act No. 52/2011

Besides the previously mentioned fine for employing day labourers in activities outside the legally permitted domains (ranging from 10,000 to 20,000 lei), the most severe sanctions apply to violations of provisions related to remuneration. These include cases where the remuneration falls below the minimum gross hourly wage guaranteed by law or is not paid at the end of each workday or week, which result in a fine of 10,000 lei. Additionally, non-compliance with income tax regulations incurs a fine of 20,000 lei, alongside the prohibition of using day labourers for the entire duration of the beneficiary's existence. These sanctions emphasise the legislation's dual overarching objective: to prevent tax evasion – whether through the unlawful use of day labourers or non-compliance with income tax provisions – and to safeguard the rights of day labourers, particularly by ensuring payment of remuneration in accordance with the minimum standards established by the law.

In this context, it is important to address the so-called 'CAP reform' – namely, the introduction of the 'social conditionality' measure within the Common Agricultural Policy (CAP) by Regulation (EU) 2021/2115.[108] According to art. 14 of the Regulation, which outlines the principle and scope of social conditionality, "from 1 January 2025, farmers and other beneficiaries receiving direct payments [...] or annual payments [...] are to be subject to an administrative penalty if they do not comply with the requirements related to applicable working and employment conditions or employer obligations."[109]

To facilitate the implementation of this measure, Government Decision No. 1343/2024[110] incorporated the social conditionality provision into national legislation. As a result, beneficiaries employing day labourers risk having their CAP subsidies – outlined in the CAP Strategic Plan (CSP) 2023–2027 – reduced or withdrawn if they fail to meet the required minimum social and labour standards. While these requirements have already been part of national labour legislation, the novelty lies in the fact that, in the event of non-compliance, agricultural subsidies may now be partly or entirely affected in addition to the usual sanctions, through "an effective and proportionate system of administrative penalties".[111] This risk could prompt a shift in beneficiaries' attitudes towards legal compliance, potentially reducing

108 | Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013.
109 | Ibid. art. 14 (1).
110 | *Hotărâre nr. 1.343 din 30 octombrie 2024 pentru modificarea și completarea Hotărârii Guvernului nr. 1.571/2022 privind stabilirea cadrului general de implementare a intervențiilor aferente sectoarelor vegetal și zootehnic din cadrul Planului strategic PAC 2023–2027, finanțate din Fondul european de garantare agricolă și de la bugetul de stat*, published in the Official Gazette No. 1094, 1 November 2024.
111 | Regulation 2021/2115, art. 14 (3).

irregularities in employment practices, breaches of occupational health and safety rules, and other forms of abuse or exploitation of day labourers.

3. Self-employment in the agricultural sector

In addition to day labourers, the agricultural labour force encompasses other forms of employment, including self-employed individuals (*lucrător independent, lucrător pe cont propriu*). In 2020, 53.9% of them – self-employed individuals representing 15.6% of the working-age population – were engaged in agriculture.[112] While recent data on their exact number is unavailable, self-employment in this sector likely remains significant. In 2023, 82% of self-employed and unpaid family workers – who together accounted for 13% of the employed population – resided in rural areas,[113] indicating that agriculture continues to be a major source of self-employment. In this section of the paper, the legal framework concerning the self-employed stratum of the agricultural labour force will addressed briefly, given the limited literature available on the subject.

3.1. Terminology and definition

According to the definition provided by the National Institute of Statistics, "a self-employed worker is a person who carries out their activity in their own business or individual enterprise without employing any salaried workers, with or without the assistance of unpaid family members."[114] In addition to the key criterion of not having any subordinated personnel performing work in exchange for remuneration, it is important to note that self-employed individuals engaged in agriculture are considered employed only if they own the agricultural production – though not necessarily the land. The production must be either intended, at least in part, for sale or barter, or be exclusively for personal consumption, provided it constitutes a substantial part of the household's total consumption.[115] Therefore, for such activity in agriculture to be classified as employment, the agricultural production must primarily be intended for sale or exchange in kind,[116] or for significant household consumption.

Interestingly, in addition to individual farmers or those working in farming associations, the National Institute of Statistics classifies 'occasional day labourers' – as the term is used – as a subset of the self-employed.[117] As a result, statistics

112 | National Institute of Statistics 2021, 102, 109.
113 | Actmedia 2024.
114 | National Institute of Statistics 2018, 10.
115 | Ibid.
116 | National Institute of Statistics 2022, 12.
117 | National Institute of Statistics 2018, 10.

provided by the Institute on self-employed individuals should be interpreted as including data on day labourers as well. This is problematic in two respects. Firstly, the term itself – 'occasional day labourers' – is redundant and creates a pleonasm, as the status of a day labourer inherently implies an occasional nature. Secondly, and more importantly, as explained in the first part of this paper, there is consensus in the literature, supported by law, that when day labourers perform work for beneficiaries, an employment relationship is established.

In an attempt to justify the inclusion of day labourers within the category of the self-employed, while also advancing the discussion on the definition and legal framework of self-employment, art. 7 of Act No. 227/2015[118] – the Fiscal Code – might offer some support. This provision defines self-employment as any activity carried out by a natural person for the purpose of obtaining income, provided that at least four of the following criteria are met: 1) the natural person has the freedom to choose the location and manner of carrying out the activity, as well as their working hours; 2) the natural person has the freedom to carry out the activity for multiple clients; 3) the inherent risks of the activity are assumed by the natural person performing the activity; 4) the activity is carried out using the personal assets of the natural person performing it; 5) activity is carried out by the natural person through the use of their intellectual and/or physical abilities, depending on the nature of the activity; 6) natural person is part of a professional body/association with the role of representing, regulating, and supervising the profession carried out, in accordance with the special normative acts regulating the organization and practice of the respective profession; 7) the natural person has the freedom to perform the activity directly, with hired personnel, or by collaborating with third parties, in accordance with the law.

Taking into account the essential attributes of the employment relationship in which day labourers perform work for beneficiaries – such as the inherent subordination; the beneficiary's right to determine the activities to be performed, the place and duration of the work, the right to control how the work is carried out; the *intuitu personae* nature of the relationship; the limitation on the number of working days and consequently the number of beneficiaries – it becomes clear that day labourers are unlikely to meet the majority of the criteria required to be classified as self-employed.

What the statistical institute might instead be considering when classifying 'occasional day labourers' as a subset of self-employed status is that self-employment can apply to the type of work itself performed by day labourers. In other words, unskilled occasional activities may be carried out either within an employment relationship – qualifying the worker as a day labourer under Act No. 52/2011 – or independently, provided the conditions set by Article 7 of the Fiscal Code are met, in which case the worker would be classified as self-employed. Therefore, it is

118 | *Legea nr. 227/2015*, published in the Official Gazette No. 688, 10 September 2015.

not the category of day labourers that constitutes a subset of self-employment, but rather the type of activities – including those in the agricultural sector – that may fall under either legal framework.

3.2. Specific aspects

The legal relationship underpinning the autonomous work of the self-employed presents essential differences from the employment relationship,[119] some of which are already evident from the text of art. 7 of the Fiscal Code.

The first and perhaps most important aspect to highlight is the lack of subordination. Unlike in employment relationships, self-employed individuals enjoy independence in terms of time, place, and organisation of their activity – within limits set by the contract or the nature of the service.[120] As a result, they are on an equal footing with beneficiaries. This also means that they provide their own tools necessary for performing the work,[121] and assume the professional and economic risks associated with the activity.[122] When continuing to consider what is absent, – characteristic of the employment relationship between day labourers and beneficiaries – it becomes clear that the *intuitu personae* feature is lacking. Self-employed individuals may delegate the work they perform, unlike employees who are bound by personal, non-delegable obligations under an employment contract.

Regarding remuneration, or the price of work, this is established for the final result of the activity, which is generally regarded as a whole.[123] Moreover, unlike day labourers who have at least their income tax and social contributions covered – although, as explained in the relevant section of this paper, these contributions represent only a part of those required for employees under the Labour Code – those who work independently and in their own interest are responsible for covering their own mandatory contributions to access benefits such as health insurance, paid leave, and pension entitlements.[124]

A similarity between the activities performed by day labourers and self-employed individuals is that, unlike indefinite individual employment contracts governed by the Labour Code – which represent the main rule – both are typically carried out for a short, but definitively fixed period, on an occasional and temporary basis.[125]

119 | Țiclea and Georgescu 2022, 8.
120 | Ibid.; Roșioru 2017, 41, 45.
121 | Ibid. 45.
122 | Ibid. 47.
123 | Țiclea and Georgescu 2022, 8.
124 | Roșioru 2017, 54.
125 | Ibid. 47, 48.

Due to these attributes, which distinguish self-employment from the fundamental nature of an employment relationship, this type of legal relationship falls outside the scope of labour law.[126]

4. Cooperative employment in the agricultural sector

4.1. The historical roots of cooperative employment

The history of cooperatives in Romania has several roots,[127] as at the time of the movement's spread in the 19th century, the country did not exist in its present form. Nevertheless, it can generally be stated that the cooperative movement has a long tradition in what is today Romania,[128] as among the countries that contributed to the establishment of the first International Cooperative Congress and the International Cooperative Alliance in the 1890–1895 period were representatives from both Romania and Austro-Hungary.[129]

Despite this historical involvement, the problems caused by the underdevelopment of rural areas in Romania also have deep historical roots. Over the last century, Romanian villages have lagged a few steps behind developments in many rural areas of Western Europe, and during the 20th century, some of the existing gaps widened significantly.[130] After the Second World War and the rise to power of the Soviet-type dictatorship, the collectivisation of agriculture was presented – within the economic and political context of the time – as the solution to the problems of the peasantry and as a lever for the development of villages.[131] The collectivisation of agriculture, which took place between 1949 and 1962, laid the foundation for a new rural economic system.

The near-total elimination of private ownership of agricultural land brought about structural changes in social and economic relations of the village world, which were replaced by new relations inspired by the model already functioning in the USSR.[132] Naturally, the imposition of these new economic relations did not occur without resistance and the brutal intervention of state institutions. In many respects, the process of collectivisation marked the beginning of the disappearance of the traditional peasant world, as private property was replaced by the collective form of ownership.

126 | Ibid. 41, 45.
127 | For a thorough analysis of cooperative ownership, the producer cooperative system, and their post-socialist afterlife in Hungary, see: Csák and Hornyák 2024; Prugberger 1997.
128 | Manta 2017, 99.
129 | Lonergan 2020, 4.
130 | Mihalache 2020, 89.
131 | Kideckel 1982, 320–340.
132 | Șandru 2005, 45–65.

After the regime change in 1989, issues related to the retrocession of agricultural land and the privatisation of economic entities inherited from the communist period monopolised the public debate and polarised the Romanian society. In the context of these debates, little room was left for analysing the situation of rural communities and identifying levers of intervention to support their development.[133] At the same time, "the agricultural production cooperatives had directly or indirectly bankrupted themselves (through lack of use and maintenance), destroying local or regional investments, including those in agricultural infrastructure (cereal silos, irrigation systems, etc.) [...]. One of the fundamental deficiencies of Romanian agriculture and of cooperatives was the absence of an adequate strategic program for the management and development of the economy in general, and agriculture in particular."[134]

4.2. Legal background

The foundation for the revival of the Romanian cooperative movement – and, within it, agricultural cooperatives – was laid through the creation of a legal framework in the first half of the 2000s. At the end of December 2004, Act No. 566 on agricultural cooperatives[135] entered into force, followed in February 2005 by Act No. 1 on the organisation and functioning of cooperatives.[136] These two acts have defined the legal framework for agricultural cooperative activity for the past two decades. In the context of the Covid-19 pandemic, the legislator introduced an additional act to the general legal framework to support cooperative members. Under Ministerial Order No. 190/2021[137] of the Ministry of Agriculture and Rural Development, members of agricultural and craft cooperatives benefited from a series of tax concessions.

The entry into force of the legislation has given a strong impetus to the agricultural cooperative movement, as illustrated by the fact that "[i]n the period January 1st 2005 – August 31st 2021, more than 2700 agricultural cooperatives were registered in Romania. The rate of annual registrations of agricultural cooperatives in the National Trade Register Office (*Oficiul Național al Registrului Comerțului*) varied considerably. While until 2015 this had an almost linear evolution, from 2016 onwards it began to fluctuate, culminating in a significant increase in 2021. The causes of this increase are related to the financing and fiscal facilities available to agricultural cooperatives and their members, the experience gained through the

133 | Mihalache 2020, 91.
134 | Bercu et al. 2020.
135 | *Legea nr. 566/2004 a cooperației agricole*, published in the Official Gazette No. 1236, 22 December 2004.
136 | *Legea nr. 1/2005 privind organizarea și funcționarea cooperației*, republished in the Official Gazette No. 368, 20 May 2014.
137 | *Ordinul nr. 190/1.157/1.460/2021 pentru stabilirea criteriilor şi modalităţilor potrivit cărora membrii cooperatori şi cooperativele agricole beneficiază de scutirile prevăzute la art. 76 alin. (1) lit. b), e) şi e1) din Legea cooperaţiei agricole nr. 566/2004*, published in the Official Gazette No. 1039, 1 November 2021.

implementation of projects that stimulated the establishment and development of cooperatives, and the favourable legislative framework."[138] Despite this progress, it is noted that "[c]onceptually speaking, Romanian cooperatives are still at the beginning of their operation, even though we compare them with the European ones which have been functioning on the same principles for decades. [...] Act No. 566/2004 represents the initial moment from which the process of reconsolidating agricultural cooperatives in Romania began."[139]

4.3. Terminology

According to Act No. 1/2005, agricultural cooperative societies are associations of natural persons established for the purpose of jointly exploiting the agricultural land owned by cooperative members, carrying out land improvement works collectively, jointly using machinery and equipment, and collectively exploiting agricultural products. Similar legal definitions exist for fisheries and forestry cooperatives as well. The cooperative principles are widely regulated, including the principle of voluntary and open association, the principle of democratic control of cooperative members, the principle of economic participation of cooperative members, the principle of autonomy and independence of cooperative societies, the principle of education, training, and information of cooperative members, the principle of cooperation among cooperative societies, and the principle of concern for the community.

Any natural person over the age of 16 may become a cooperative member. This corresponds to the age set by the Labour Code for entering into an employment contract without requiring parental consent.

Article 33 states that three types of relationships may exist between the cooperative society and the cooperative member: 1) patrimonial, materialised by the obligation of the cooperative member to deposit shares and/or in-kind contributions; 2) employment, applicable to cooperative members contributing both labour and capital, on the basis of either an individual employment contract or an individual employment agreement, as the case may be, concluded with the cooperative society to which the member belongs; and 3) cooperative trade, concerning the supply of products and services carried out by the cooperative member for the cooperative society as an independent economic operator.

4.4. The specificity of cooperative employment

The issue of cooperative employment is scarcely discussed by Romanian labour law scholars. Țiclea, for example, in his treatise on labour law, only mentions with regard to cooperatives that "these companies are run by persons who have solely

138 | Dobay 2023, 135–143.
139 | Bercu et al. 2020.

the status of cooperators, a dual status of cooperators and employees, or are exclusively employees."[140]

According to the Act on cooperatives, in the case of cooperative societies, the employment relationships of cooperative members may be regulated by a special act, which, in the case of agricultural cooperatives, is Act No. 566/2004. However, this act merely sets the framework for cooperative employment. Article 18 states that there may be an employment relationship between the agricultural cooperative and the cooperator member, based either on an individual employment contract or an individual employment agreement, but cooperative members are not obliged to work within the agricultural cooperative. On the other hand, the act also allows for the employment of cooperative members, specialists, and other persons based on an employment contract, under the conditions laid down by law and the statutes.

Under these circumstances, the question remains open: what is the legal nature of the relationship between the cooperative and the member who works within it, and what is the difference between the contract and the individual employment agreement?

It is our view that a clear distinction must be made between the situation in which the cooperative acts as an employer, employing labour on the basis of individual employment contracts – where the employment relationship between the parties is governed by labour law, primarily the Labour Code – and the situation involving individual employment agreements. Țop, for example, highlights the complex nature of these relationships based on employment agreements, stating that "such an agreement gives rise to a complex legal relationship, since the acquisition of membership in a cooperative creates a plurality of legal relationships inextricably linked to each other, legal employment relationships, on the one hand, and legal patrimonial relationships deriving from the statutory obligations to make a social contribution and to subscribe, upon joining the cooperative, the membership fee and the social share in cash."[141] Ștefănescu, meanwhile, points out that these employment relationships "are not analysed within the framework of labour law" and proposes the creation of a separate branch of law – cooperative law.[142]

It is also worth noting the opinion of the Argeș Territorial Labour Inspectorate (*Inspectoratul Teritorial de Muncă Argeș*), which in 2022 issued a clarification regarding the legal nature of employment relationships in the case of individual employment agreements. They consider that "[t]he cooperative legal relationship is a complex legal relationship that includes, when the cooperator is also an employee, patrimonial, labour and social participation components. In

140 | Țiclea 2013, 35.
141 | Țop 2022, 38.
142 | Ștefănescu 2017, 34–36.

summary, the employment relationships of cooperative members are essentially different from the employment relationships established under the provisions of the Labour Code. The main difference lies in the fact that the legal employment relationship is based on the individual employment contract, while the cooperative legal relationship is based on an association agreement. Article 104 (2) of Act No. 1/2005 expressly stipulates that associations of cooperative societies, county and national unions of cooperative societies may agree on internal rules and regulations on the basis of and within the limits of the legal provisions laid down in the statutes, decisions, rulings and other normative acts issued by the competent authorities. Thus, employment relations are regulated by the internal rules of the cooperative, issued within the limits of the legal provisions [...]. In conclusion, after a probationary period, the cooperative member concludes an individual employment agreement. It is a contract of indefinite duration, on the basis of which a natural person, having the status of cooperator, undertakes to perform work for and under the authority of a cooperative, in return for remuneration (salary). Consequently, we consider that the employment relationships of cooperative members in cooperatives of all types [...] are not analysed within the framework of labour law." [143]

The main conclusion to be drawn is that the cooperative itself plays a key role in shaping the parameters of the employment relationship within cooperatives. However, as practical examples illustrate, despite the emphasis on the autonomy of the cooperative employment relationship, it is in many respects similar or even identical to the employment relationship regulated by the Labour Code, which is established by the conclusion of an employment contract. The parties clearly occupy the classic subordinate positions of employer and employee, with the cooperative, as employer, retaining the power to issue instructions. Furthermore, individual employment agreements also resemble, both in their definition and content, the provisions of labour law applicable to individual employment contracts.[144] However, in defining rights and obligations, although labour law and its minimum standards can serve as a model, the will of the parties – primarily the cooperative as the employer – may be expressed much more broadly. For instance, "[s]ince there is no obligation to grant a guaranteed minimum wage or to comply with a work schedule established by an employment contract, the method of granting rights for the work performed is the one agreed for the activity carried out by the cooperative member, according to the provisions of Act No. 1/2005."[145]

143 | Inspectoratul Teritorial de Muncă Argeş 2022.
144 | UCECOM 2023.
145 | Mornea 2023, 11–12.

5. Summary and conclusions

In our study, we have examined employment-related issues in the Romanian agricultural sector, which holds particular importance due to the large number of individuals engaged in this field.

Our analysis has begun with the recognition that, given the specificities of the sector in question, working in this area requires tailored regulatory approaches that may be more appropriate than the typical employment relationship governed by an employment contract. Accordingly, we have directed the focus of our analysis toward three distinct forms of employment: day labour, self-employment, and cooperative employment.

The regulation of day labour in Romania has undergone significant changes over the past decade. The primary objective has been to enhance the transparency of this employment form by introducing an electronic registration system, while simultaneously ensuring a higher level of protection for the worker through more precise regulation. Weighing the advantages and disadvantages, we believe that, in many respects, this form of employment is indeed better aligned with the needs of the agricultural sector than traditional employment. However, it is of utmost importance that labour law protection be extended as comprehensively as possible in this case, too. We therefore assess the direction of regulation as positive, although it would be desirable to further shift the parameters towards a higher level of protection in a number of areas.

In the case of self-employment, we observed that general rules apply, and labour law and social security protection are implemented within a precise framework.

The issue of employment in cooperatives is, however, quite complex. The cooperative itself may act as an employer and conclude individual employment contracts under the conditions set out in the Labour Code. However, cooperative members work under so-called employment agreements, which are not precisely regulated under cooperative law. Their relevance is underlined by Article 16 of Act No. 1/2005 on cooperatives, which states that cooperative societies shall be obliged to carry out the activities provided for in the constitutive act exclusively with the cooperative members, unless otherwise provided in the constitutive act. The content of the working agreements available to cooperative members is essentially determined by the will of the parties, but the cooperative plays a special role in defining the regulatory framework for this type of occupation in its statutes. In practice, we observe that cooperatives rely on the provisions of the Labour Code as their primary source of inspiration in drafting employment regulations and the content of such agreements.

In conclusion, several specific forms of agricultural employment exist in Romania, offering alternatives to the traditional employment relationship based on individual employment contracts. In our view, future regulatory developments

concerning these alternative forms should focus on the enhancement of worker protection to the highest possible standard. Encouragingly, progress in this direction is already noticeable.

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