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COMMON CONDITIONS AND REGULATIONS IN THE FIELD OF LABOUR IN THE CROSS-BORDER REGION

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1. Analysis of the national systems of qualifications in Romania and Bulgaria - a comparison

National system of qualifications in Romania¹.

Under art.108 Constitution, republished, and having regard to the provisions of Article 340 par. (2) and art. 341 of the Law on national education nr. 1/2011, with subsequent amendments and supplements, as well as those of the Government Ordinance no. 129/2000 on the vocational training of adults, republished, with subsequent amendments and supplements by Decision no. 918/2013 concerning the approval of the national framework of vocational qualifications has been approved the National framework of qualifications, hereinafter referred to as CNC, as laid down in the Annex no.1 of this decision. According to CNC, there are established 8 levels of qualification which may be acquired through the formal system of education and vocational training in Romania and by the recognition of the results of learning acquired through learning in non-formal and informal from the perspective of lifelong learning. Details on forms of education and training of CNC will be made by order of the Minister of National Education.

Annex 1 NATIONAL FRAMEWORK OF QUALIFICATIONS (CNC) in Romania

Qualification levels	Descriptors defining the levels of the National Framework of Qualifications		
	Knowledge*	Skills**	Competences***
Level 1 Results of the learning corresponding to level 1 are	Basic general knowledge	Basic skills needed to perform simple tasks	Work or study under the direct supervision in a structured context
Level 2 Results of the learning corresponding to level 2 are	Basic factual knowledge in a work or study field	Basic cognitive and practical skills required for the use of relevant information for the purpose of enforcing the tasks and solving routine problems through the use of some simple rules and tools	Work or study under surveillance, with a certain degree of autonomy

¹ Regulated by Decision no. 918/2013 on the approval of the national framework of qualifications

Level 3 Results of the learning corresponding to level 3 are	Factual knowledge, knowledge of principles, processes, and general concepts in a work or study field	A range of cognitive and practical skills necessary for the execution of the tasks and problem solving through the selection and application of the methods, tools, materials and basic information	Taking responsibility for the execution of the tasks in a work or study field; the adaptation of own behaviour to circumstances in order to solve the problems
Level 4 Results of the learning corresponding to level 4 are	Factual and theoretical knowledge in large contexts, within a work or study field	A range of cognitive and practical skills necessary to find solutions to specific problems, in a work or study field	Self-management using certain indications in general predictable within situations of work or study, but which can be changed; the supervision of routine activity of other persons, whilst taking a certain responsibility for evaluation and improvement of activities of work or study
Level 5 Results of the learning corresponding to level 5 are	Comprehensive factual and theoretical knowledge, specialized in a field of work or study and awareness of the limits of the knowledge concerned	A broad range of cognitive and practical skills required for the designing of creative solutions to abstract problems	Management and surveillance in situations of work or study, in which the changes are unpredictable; review and development of own performance and others
Level 6 Results of the learning corresponding to level 6 are	Advanced knowledge in the field of work or study, which involves critical understanding of theories and principles	Advanced skills, which denotes the control and innovation, necessary to solve complex and unforeseeable problems in specialized field of work or study	Management of activities or complex technical of professional projects, by taking responsibility for decision-making in unpredictable situations of work or study; taking responsibility for the management of the professional development of individuals and groups
Level 7 Results of the learning corresponding to level 7 are	Very specialized, some of them are at the forefront of the level of knowledge of a field of work or study, as a basis for an original thinking and/or research; critical awareness of knowledge in a field of knowledge and knowledge at the border between different fields	Specialized skills to solve the problems in the field of research and/or innovation, for the development of new knowledge and procedures and for the integration of knowledge in different fields	Management and transformation of situations of work or study which are complex, unpredictable and require new strategic approach; taking responsibility to contribute to the professional knowledge and practices and/or for the revision of the strategic performance of teams

Level 8 Results of the learning corresponding to level 8 are	Knowledge at the most advanced level in a field of work or study and knowledge at the border between different fields	The most advanced and specialized skills and techniques, including the ability of synthesis and evaluation, necessary to solve critical issues of research and/or innovation and to expand and redefine existing knowledge or professional practices	Demonstration of a high level of authority, innovation, autonomy, scientific and professional integrity and a sustained commitment for the development of new ideas or processes in the vanguard of a work or study, including research
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- Within the CNC, knowledge are described as being theoretical and/or factual.

** Within the CNC, skills are described as being cognitive (involving the use of logical, intuitive and creative thinking) or practical (involving manual dexterity and use of methods, materials, tools and instruments).

*** Within the CNC is described from the perspective of responsibility and autonomy.

ANNEX No. 2

CORRESPONDENCE

between the levels of the National framework of qualifications, documents of studies which shall be issued, the type of programs of education and training in Romania by which may be acquired qualification levels and the reference levels of the European Framework of Qualifications (EFQ)

The level of qualification CNC	Documents of studies which shall be released	Issuer/program graduated in the formal system	Beneficiaries	Reference level in CEC
1	Diploma/Certificate of graduation and transcript of records	Educational unit/basic education	Graduates of compulsory general education in accordance with art. 16 of the National Education Law no. 1/2011, with subsequent amendments and additions	1
2	Certificate of qualification and descriptive supplement of the certificate	Educational unit/vocational education with a duration of 6-12 months	Graduates of vocational education with a duration of 6-12 months ended with the certification exam of vocational qualification in accordance with art.33 of Law no. 1/2011, with subsequent amendments and supplements	2

		Educational unit/Vocational training program with a duration of 6- 12 months	Graduates of compulsory general education who do not continue or interrupt their studies and who end up to the age of 18 years a vocational training program with a duration of 6-12 months with exam of certification of professional qualifications in accordance with art.33 of Law no. 1/2011, with subsequent amendments and supplements	
	Graduation/qualification certificate and descriptive supplement of the certificate	Authorized supplier of vocational training of adults vocational training program	Graduates from vocational training programs of which results of learning correspond to this level, completed with certification exam in accordance with article 33 of Law no. 1/2011, with subsequent amendments and supplements	
	Certificate of professional skills /Certificate of qualification and descriptive supplement of the certificate	Assessment centre authorized for the validation of the results of the learning acquired in non-formal and informal contexts	Persons who have acquired professional skills in contexts of non-formal or informal learning corresponding to this level	
	Certificate of qualification and descriptive supplement of the certificate	Authorized provider/apprenticeship program at the workplace	Graduates from apprenticeship programs at the place of work in accordance with article 15 of the Law no. 279/2005 on the apprenticeship at the place of work, republished	
3	Certificate of qualification and descriptive supplement of certificate	Educational unit/vocational education with a duration of more than 12 months	Graduates of professional education with duration of more than 12 months completed with the certification exam of professional qualification in accordance with article 33 of Law no.1/2011, with subsequent amendments and	3

			supplements	
		Educational unit/training through vocational, technological high school	Graduates from the first two years of high school, technological or vocational stream, who have completed the practical training stage with the certification exam of professional qualification in accordance with article 32(3) of Law no. 1/2011, with subsequent amendments and supplements	
	Graduation/qualification certificate and descriptive supplement of the certificate	Authorized provider of vocational training of adults/program of vocational training	Graduates from vocational training programs of which outcomes of learning correspond to this level, completed with certification exam in accordance with article 77 of Law no. 1/2011, with subsequent amendments and supplements	
	Certificate of professional skills/Certificate of qualification and descriptive supplement of the certificate	Assessment centre authorized for the validation of the outcomes of learning acquired in the non-formal and informal contexts	Persons who have acquired professional skills in non-formal or informal learning contexts, corresponding to this level in accordance with article 77 of Law no. 1/2011, with subsequent amendments and supplements	
	Certificate of qualification and descriptive supplement of the certificate	Authorized provider/apprenticeship programs at the workplace	Graduates from apprenticeship programs at the place of work in accordance with article 15 of the Law no. 279/2005, republished	
4	Baccalaureate diploma	Educational unit/training through theoretical, technological, vocational high school	Graduates from secondary education who have promoted the baccalaureate exam in accordance with article 31 of Law no. 1/2011, with subsequent amendments and	4

			supplements	
	Certificate of qualification and descriptive supplement of the certificate	Educational unit/training through technological high school or vocational school	Graduates from secondary education who have passed the examination for the certification of professional qualifications in accordance with articles 44 and 77 of Law no. 1/2011, with subsequent amendments and supplements	
	Graduation/qualification certificate and descriptive supplement of the certificate	Authorized provider of vocational training of adults/vocational training program	Graduates from vocational training programs of whose learning outcomes correspond to this level, completed with certification exam in accordance with articles 44 and 77 of Law no. 1/2011, with subsequent amendments and supplements	
5	Graduation/qualification diploma and descriptive supplement of the certificate	Higher education institution alone or in partnership with providers of vocational training, accredited for this purpose, at which it was held the exam	Graduates of short duration higher education who have promoted the certification exam	5
6	Bachelor's degree, Diploma of engineer, Diploma of urban planner, diploma supplement	Accredited institution of higher education where was held the exam for completion of bachelor's degree studies	Graduates from a program of studies who have promoted the bachelor's degree exam pursuant to article 143(1)(a) of Law no. 1/2011, with subsequent amendments and supplements	6
7	Master's degree and supplement to diploma	Accredited higher education institution	Graduates from a master's degree program of studies who have promoted the exam for completion of studies (dissertation examination) in accordance with article 143(1)(b) of Law no. 1/2011, with subsequent amendments and supplements	7

	Bachelor's degree, supplement to diploma, Architect diploma, supplement to diploma	Institution of higher education accredited	Graduates from a uniform program of studies 1 st and 2 nd cycle) which provides to the graduate, the level of master, who have passed the examination for the completion of studies, corresponding to the professions regulated under article 143(1)(b) of Law no. 1/2011, with subsequent amendments and supplements	
8	Doctor's degree	IOSUD	Graduates from a program of the doctoral studies at university, whose title has been assigned by order of the minister in accordance with article 143(1)(c) of Law no. 1/2011, with subsequent amendments and supplements	8

National system of qualifications in Bulgaria

In respect of the national system of qualifications of Bulgaria, it folds somewhat on the Romanian system of qualifications, but, at European Union level, in Bulgaria we find the following aspects of concern:

- The poor quality of education in Bulgaria, in relation to:

A. the age at which children are brought into the education system (preschool and school age),

(B) the small number of graduates of higher education studies which fail to be absorbed by the local labour market;

C. the use of information technology for segment average age is extremely low;

- The small number of women, compared with Romania and other EU countries of women graduate of higher education;

Under the new law of education in Bulgaria, the Ministry of Education in Bulgaria proposes to determine at national level the total number of hours, but schools will have the autonomy to distribute these hours to the subjects which they consider relevant.

On the basis of this Law, the national educational standards will be created. Some of them concern: preschool education, general education, vocational training, curriculum, civic and intercultural education.

2. How it is concluded an individual employment contract in Romania and Bulgaria?

Conclusion of the individual employment contract in Romania (identical procedure both in Romania and Bulgaria):

1. Conditions of validity

In order to consider valid the conclusion of an individual employment contract the following conditions have to be met:

A. Legal capacity of the person requesting employment

By legal capacity as a natural person it is understood:

- *Lato sensu*, both the ability to use, as well as the ability to exercise;
- *Stricto sensu*, only the ability to use.

Because of the *intuitu personae* nature of the individual employment contract, a natural person may conclude a contract of employment, only if it has legal capacity *lato sensu*.

The person acquires the full capacity to conclude a contract of employment, at the age of 16 years² presuming that starting from this age he/she has the physical and mental maturity required to enter into an employment relationship.

According to the provisions of Article 49(4) of the Constitution, the minimum age of employment is 15 years old (therefore, minors under the age of 15 years cannot be employed as employees). The minors aged between 15 and 16 years have recognized a limited capacity to engage in work, i.e. employing them is possible only with the approval of the parents (both parents), or their legal representatives and only for work corresponding to their physical development and skills, if thus it is not jeopardized their health, development and professional training.

Parental consent must be:

- **Prior** or **simultaneous** to the conclusion of the employment contract;
- **Special**, i.e. to relate to that employment contract;
- **Express**, i.e., to be clear, unequivocal.

In some cases, the age of employment is increased. For example: port workers, professional foster parents, the drivers for the international transport of goods or passengers are employed only from the age of 18 years, and the women who wish to practice as a public guard are engaged only from the age of 21 years. Also, the commitment to heavy, harmful or dangerous de la această vârstă may be made only after the age of 18 years (Article 13(5) of Labour Code).

The provisions of Article 13 of the Labour Code (theoretically) creates the possibility for the conclusion of employment contracts for simple activities, which do not require a special preparation, for example, by means of vocational schools or technical schools or high schools, etc., in which case the age of those concerned will be higher than 16 or even 18 years. It is understood, however, that in the positions (jobs) which require higher education, even if there is the ability to work presumed by law to 16 (15) years of age, for the purpose of acquiring the quality of employee will be higher, usually over 22 years, etc.

² Article 13 of the Labour Code.

(1) The natural person acquires the capacity of employment at the age of 16 years.

(2) The natural person may conclude a contract of employment as an employed person at the age of 15 years, with the agreement of their parents or legal representatives, suitable for his/her activities with the physical development, skills and knowledge, if thus are not jeopardized their health, development and professional training.

(3) The employment of persons under the age of 15 years is prohibited.

(4) The employment of persons placed under judicial interdiction is prohibited.

(5) Employment in heavy, harmful or dangerous jobs can be made after the age of 18 years; such jobs shall be determined by the decision of the Government.

There cannot conclude employment contracts minors under the age of up to 15 years or persons placed under the prohibition because of mental alienation or debility, whereas they do not have the capacity to exercise and therefore they lack the judgment. In addition, the children up to 15 years have no biological capacity for work.

Work permits. The work permit is an official document shall be issued, upon request, to foreigners who meet the conditions laid down by the Romanian legislation with respect to employment and which have applied on the documents for crossing the border the long-stay visa for employment. According to the Law no. 203/1999 concerning work permits of (as amended by Emergency Government Ordinance no. 130/2005 approved by Law no. 377/2005 the work permit shall entitle the holder to be employed in Romania by concluding an individual employment contract on definite period, during the period of validity thereof, to a natural person or legal entity in Romania, or to an authorised representative in Romania of a legal person that has its head office abroad. Long-stay visa for employment is granted to foreigners on the basis of the opinion of the Office for Labour Force Migration and of the Authority for foreigners.

The law regulates several types of work permits, each of them having specified the period of validity.

May be employed without work permit:

- The foreigners who have established, according to the law, the domicile in Romania;
- The citizens of the Member States of the EU, of the States signatory to the Agreement on the European Economic Area, and members of their families;
- Aliens whose access to the labour market in Romania is by means of agreements, conventions or bilateral arrangements;
- Aliens who carry out teaching, scientific or temporary activities requested by the ministries;
- Aliens members of the family of the Romanian citizens.

The employment without a work permit or maintaining employed an alien who does not have valid work permit shall constitute offence and is punishable by fines ranging from lei 5,000 to 10.000.

Prohibition to employment:

May not conclude an employment contract:

- minors under the age of 15 years and,
- persons placed under the prohibition of court because of alienation or oligophrenia.

But there are also possible certain limitations to the legal capacity, called **incompatibilities**³, established by rules with imperative character. Examples of incompatibilities specifically regulated by law:

- a. pursuant to Article 121 and Article 125(1) of the Labour Code, *young people aged up to 18 years* may not provide additional work and night work;
- b. according to Article 125(2) of the Labour Code, *pregnant women, women who have recently gave birth, and those who are breastfeeding*, may not be obliged to provide night work;
- c. *the apprentices* may not provide work carried out under hard, harmful or dangerous conditions, nor additional work or night work;

³ See S. Ghimpu, A. Țiclea, op. cit., p.147.

- d. may not be assigned the functions of *managers*:
- persons convicted (or in the course of penal prosecution or trial) and unreliability of law or by a decision of the court, for one of the offences provided for in some laws⁴ (with an indication of Article 4(3) of Law no 22/ 1969, amended by Law no.54/1994);
 - persons who have not reached the age of 21 years and, in some cases, 18 years of age;⁵
- e. the function of *magistrate* is incompatible with any public or private office, except that of teaching positions in higher education. Judges and prosecutors are forbidden to exercise, directly or by intermediaries, the activities of the trade, as well as participation in the management or administration of commercial companies or civil society or autonomous companies;
- f. the exercise of the profession of *lawyer* is incompatible with (Article 14 of Law no. 51/1995):
1. salaried activity within the framework of other professions than that of lawyer;
 2. the occupations which have adverse effects on the dignity and independence of the profession of lawyer or principles of morality;
 3. the direct exercise of material facts of trade;
- g. according to the *criminal law*:
- may not occupy functions involving the exercise of state authority, and may not occupy a function or practicing a profession by nature of that which was used by the convicted for committing the offence, if the main penalty established is imprisonment of at least 2 years and the Court found that in relation to the nature and seriousness of the offence, the circumstances, the causes and the person of the offender, this punishment is necessary;⁶
 - when the offender has committed the deed due to incapacity, lack of training or other causes which render him/her unfit for the employment of a certain position, or to exercise a profession, trades, or other occupations, it may betaken the safety measure consisting in the prohibition to occupy that function or to exercise that profession, trade or occupation;
- h. according to the provisions of Law no. 188/1999, the quality of *public servant* - the person named in a public office - is incompatible with any other public office, with the exception of the quality of teacher. Also, civil servants may not hold functions in the autonomous companies, commercial companies or in other profit-making units and may not engage in commercial companies with private capital with profit-making activities in connection with the powers and duties incumbent on them from the public functions which they hold (articles 56-57);
- i. although in our legislation was accepted the *accumulation of functions*, by the constitutional rules expressly provided for, the accumulation is not allowed:
- in accordance with Article 105 (1) of the Constitution, “membership of the Government shall be incompatible with the exercise of any other public office authorized, with the exception of the senator or deputy”;
 - the provisions of Article 125(3) and Article 132(2) of the Constitution provide that the magistrate is incompatible with any other public or private office, except that of a teaching profession in higher education. The same prohibition is

⁴ See Article 4 of the Law No. 22/1969

⁵ The same shall apply, Article 3.

⁶ Article 64(1)(a-c; Article 65 and Article 68 of the Penal Code.

provided for by Article 144 of the Constitution, for the office of a Judge at Constitutional Court;

j. *aliens* may not occupy public positions and offices, civil or military, cannot be judges and prosecutors (Article 2(2) of the Law no. 123/2001 concerning the regime of aliens in Romania). The aliens may not be employed as guardian, tourist guide, customs staff, expert and consultant within the institution Advocate of the People or in the Legislative Council and may not be part of the Public Guards Body.

B. Medical examination on the work capacity

In the *Labour Code* it is specified that “a person may be employed only on the basis of a medical certificate which certifies that the person concerned is fit for the provision of that work. Failure to comply with that provision entails the nullity of the individual employment contract” (Article 27(1) and 2 Labour Code.⁷)

The quality of the subject in a legal work relation within which the legal person is obliged to carry out a certain activity for the benefit of the other party, involves the ability to work, in a biological sense or, in other words, the *capacity of work*.

According to the Law no. 319/2006 for the safety and health at work “the employer shall have the duty to employ only persons who, as a result of the medical examination and, where appropriate, after psychological test, skills, correspond to the task of work which they are to carry out and to ensure regular medical and psychological control as the case may be periodically, subsequently employment” (Article 13(j))

In the absence of medical certificate to certify that the person concerned is fit for the provision of that work, the conclusion of the contract is absolutely null and void.

By Law no. 40/2011 were repealed the provisions of paragraph (3) enabling the presentation of medical certificate subsequent the conclusion of the contract, the nullity being so remediable. According to current legislation, so the nullity may no longer be covered. The solution is criticized by legal literature on the grounds that “in the field of the individual employment contract works the *rule of remedy of nullity* within the explicit meaning accredited by the provisions of the Labour Code” according to which, for the nullity the nullity “may be covered by a subsequent meeting of the conditions imposed by law”⁸

Jurisdiction and procedure for the issue of the medical opinion, as well as the penalties applicable to the employer in the case of employment or change of place or the kind of work without medical advice, shall be established by special laws.

⁷ **Article 27**

(1) A person may be engaged in work only on the basis of a medical certificate, which certifies that the person concerned is fit for the provision of that work.

(2) Failure to comply with the provisions of paragraph (1) entails the nullity of the individual employment contract.

(3) Competence and procedure for the issue of the medical certificate, as well as the penalties applicable to the employer in the case of employment or change of job or the kind of work without a medical certificate shall be established by special laws.

(4) Requesting, upon employment, the testing of pregnancy is prohibited.

(5) Upon employment in the fields of public health, food, education and in other areas established by regulatory documents may be requested and specific medical tests.

⁸ Alexandru Athanasiu, Labour Code...,p.16

The special regulatory document governing jurisdiction and procedure for the issue of the medical certificate is the Government Decision no.355/2007.

The request upon employment of pregnancy test is prohibited (Article 27) (4) the Labour Code). This prohibition is in line with that of the Article 10(4) of Law no.202/2002 on equal opportunities for women and men. So being the medical certificate must not look at the state of pregnancy, which would constitute an impediment to such employment.

Upon employment, medical tests may be required for specific areas of public health, food, education, as well as other established by regulatory acts.

Presentation of the medical certificate is *mandatory* in the following situations, too (Article 28):

a) when returning to work after an interruption of more than 6 months, for jobs having exposure to harmful professionals factors, and one year, in other cases;

b) in the case of posting or moving to another job or other activity, if any change occurs in the conditions of employment;

c) at the beginning of the mission, in the case of salaried workers employed by temporary employment contract;

d) in the case of the apprentices, practitioners, pupils and students, in the situation in which they are to be trained on jobs and occupations, as well as in the case of changing the job during training;

e) at regular intervals, in the case of those who work in conditions of exposure to harmful professionals factors, according to the rules of the Ministry of Health and Family;

f) at regular intervals, in the case of those who carry out activities with risk of transmitting diseases and who work in the food sector, zootechnical sector, installations for drinking water supply, in children communities, in sanitary units, according to the regulations of the Ministry of Health and Family;

g) at regular intervals, in the case of those who work in units without risk factors, by medical examinations to be differentiated depending on sex, age and health condition, according to the regulations in collective employment contracts.

C. Employer's legal capacity

May be encountered two situations:

A. The employer is a legal person

Legal person “can have only those rights which correspond to the purpose they established by law, the memorandum of association or the articles of incorporation”. The exercise of the rights and obligations is measured by its organs. Employment and dismissal of staff are possible as follows:⁹

a. in the case of the autonomous companies and trading companies with majority state capital this task is held by the manager;

b. in the case of trading companies with full private capital, the competent body to hire employees and thus to conclude employment contracts may be the chairman of the board of directors or sole administrator;

c. In the case of other legal persons, the competency to conclude the employment contracts belongs to the unipersonal governing body.

⁹ Article 34 of the Decree no. 31/1954 regarding the natural and legal persons.

According to Article 14(2) of the Labour Code the “Legal person may conclude individual employment contract as employer starting from the time of acquiring legal personality”.

Legal person - collective subject by law - , acquires legal personality, a result of its establishment, through the decree of the competent body, as the case may be, for the creation, etc.

For instance, trading companies and cooperative companies become legal persons from the date of the registration with the Trade Register, and the associations and foundations as of the date of the entry in the Register of associations and foundations, etc.

b. The employer is a natural person

In this case:

- If the person for whom is provided the activity is a minor aged between 14 and 18 years, cannot hire the workforce by the conclusion of the individual employment contract, nor with the prior consent of the parent or guardian and tutelary authorities;

- If the owner is a natural person who has reached the age of 18 years and has acquired the full exercise capacity, has also the full capacity to conclude employment contracts (Article 14(3) of Labour Code).

As a consequence, the natural person, in order to acquire the quality of employer, must have reached the mentioned age.

Following the amendment to the Emergency Government Ordinance no.44/2008 on the carrying out of economic activities by authorized natural persons, individual undertakings and family undertakings¹⁰, by the Government Emergency Ordinance no. 46/2011, the authorized natural persons may have the quality of employer without limiting, regardless of the activity performed by employees.

D. The consent

Essential condition of the civil legal act, the consent consists in the manifestation of the decision to conclude the legal act¹¹.The consent is also an essential condition for the validity of the employment contract, therefore:

- the parties should express their willingness to conclude an employment contract in a freely, unequivocally way and in full knowledge of the facts;

- for the conclusion of the employment contract, the agreement of the two parties must be reached. On the date of this agreement, the employment contract is deemed to have been concluded (having a consensual character, it is considered to be concluded "solo consensus" without the formal condition).

The conditions of validity of the consent:¹²

- must emanate from a reasonable person,
- be given with the intention of producing legal effects,
- it must be exteriorized (the individual employment contract is concluded in written form, in Romanian, according to the provisions of Article 16, paragraph 1, of the Labour Code);
- the will to be conscious and free,

¹⁰ Published in the Official Gazette of Romania, Part I, no.328 of 25 April 2011, as subsequently amended, including by Law No. 4/2014 (published in the Official Gazette of Romania, Part I, no. 15 of 10 January 2014

¹¹ I. Dogaru, op. cit., p. 153.

¹² Idem, p. 154 and seq.

- the consent not to be affected by vices.

E. Subject matter of the contract

The Civil Code¹³ provides that “the object of the conventions is that to which the parties or only one party undertake obligations”.

In the individual employment contract, each of the two parties undertakes to indemnify themselves indissolubly in relation to the benefit of the other party. The benefit and the consideration form together the subject matter of the employment contract. More specifically, the performance of the work by the employee and the remuneration of the work by the employer is the subject matter of the employment contract.

F. Cause of the contract

The cause of the contract may be defined as an essential condition necessary for the validity of any legal act, which consists in the aim pursued by the party or parties to the conclusion of the contract¹⁴. The aim is given by a succession of representations of what he/she wants to achieve by the conclusion of that act; representations concern the reasons determining a person to conclude the legal act. The provision of work by the employee is the purpose of the employing establishment, and the salary of provided work represents the aim pursued by the person who is employed.

Together with the consent, the cause forms the **legal will**, and will constitute the motivation that determines the assuming of the obligation.¹⁵

Legislation governing the employment contract in Romania:

Labour Code - Law no. 53/2003 updated by:

- Government Emergency Ordinance no. 53/2017 - amending and completing the Law no. 53/2003 - Labour Code, published the Official Gazette No. 644 of 07 August 2017
- Decision No. 261/2016 of the Constitutional Court (published in the Official Gazette no. 511 of 7 July 2016).
- Law no. 57/2016 (published in the Official Gazette No. 283 of 14 April 2016)
- Law no. 176/2016 (published in the Official Gazette No. 808 of 13 October 2016)
- The Law 220/2016 (published in the Official Gazette No. 931 of 18 November 2016)
- The Law no. 467/2006 establishing the general framework for the information and consultation of employees;
- The Law no. 67/2006 on the protection of employees' rights, in the case of transfer of the undertaking, units or parts thereof;
- Law no. 344/2006 on the secondment of employees in the framework of the transnational provision of services;
- Law No. 319/2006 on health and safety at work;
- Order no. 64/2003 on the approval of the framework-model of the individual employment contract.

¹³ By Article 962

¹⁴ I. Dogaru, op. cit., p. 179.

¹⁵ S. Ghimpu, A. Țiclea, op.cit, p. 158.

d. Types of employment contracts;

The Labour Code provides for different types of employment contracts:

- contract concluded for an indefinite period

This type of contract shall constitute the rule, according to Article 12¹⁶ of the Labour Code. This means that, if the parties have not provided anything with regard to the duration of the contract, it shall be deemed to have been concluded for an indefinite period.

- contract concluded on a definite period

This type of contract can be concluded only in certain circumstances, expressly provided for in Article 82¹⁷ of the Labour Code, as amended by the Government Emergency Ordinance no. 65/2005, which was approved by the Law no. 371/2005.

- Home working

In accordance with Article 105 of the Labour Code, shall be deemed to be employees working at home employees who meet at their place of residence, the tasks specific to their position. In order to carry out the job tasks, the employees working at home establish themselves the working hours.

- Temporary agency work

Work through temporary agency work is, according to Article 87 of the Labour Code, the work performed by an employee that, out of the order of the temporary agent, carries out the work in favour of a user.

- part-time contract

Such a contract shall be concluded for the work performed for more than 2 hours per day and 10 hours per week. In accordance with Article 101 of the Labour Code, the employer may employ employees with the work program corresponding to standard part-time work for at least two hours per day, by individual employment contracts of on indefinite or definite period. Such contracts shall be concluded only in written form.

- contract of apprenticeship

The apprenticeship contract has been approved by the Law no. 279/2005, published in the Official Gazette No. 907 of 11 October 2005, law which entered into force on 8 February 2006.

¹⁶ **Article 12**

(1) The individual employment contract is concluded for an indefinite period.

(2) By way of exception, individual employment contract may also be concluded for an indefinite period in accordance with the conditions expressly provided for by law.

¹⁷ **Article 82**

(1) By way of derogation from the rule laid down in Article 12(1), employers have the opportunity to employ in the cases and under the conditions of this Code, the staff employed with individual employment contract.

(2) Individual employment contract on definite period may be concluded only in written form, expressly specifying the duration for which is concluded.

(3) Individual employment contract on definite period may be extended, in accordance with the conditions laid down in Article 83, and after the expiry of the initial period, with the written consent of the parties, for the period for completing a project, program or work.

(4) Between the same parties may be conclude successively no more than 3 individual employment contracts.

(5) Individual employment contracts on definite period concluded within 3 months as of the end of an employment contract on definite period shall be deemed to be successive contracts and may not have a duration of more than 12 months each.

Some of these types of contracts of employment may be combined.

Some of the legal relationships based on which work may be provided:

- relationships based on **civil contracts, concluded under the Civil Code**.

Therefore, there is the possibility of conclusion between the two parties (the provider of the activity and the beneficiary of the activity) of contracts based on Civil Code.

- relationships based on **civil conventions, concluded on the basis of special laws**

- relationships based on a **volunteer contract**

- **employment relationships** between the civil servants

d. **The negotiation of the clauses of an individual employment contract (specific elements, contracting parties, mandatory elements that are common, structure, commencement, suspension, conclusion of the individual employment contract, abusive clauses in the individual employment contract);**

Compared with the collective employment agreement to be concluded between employers and employees, the individual employment contract shall be concluded between a single natural person (employee) and that who employs him/her (can be a legal entity or natural person).

Individual employment contract may be defined as follows: "*that convention under which a natural person called employee undertakes to provide a specific activity for and under the authority of an employer, legal entity or natural person, who in turn is obliged to pay the remuneration, called the salary and to ensure appropriate conditions of business, maintenance of safety and health at work*"¹⁸

In the *Labour Code* is given a more compressed definition of the individual employment contract: it is the contract under which a natural person, hereinafter referred to as the employee, is obliged to provide work for and under the authority of an employer, natural or legal person, for a remuneration called a salary (Article 10).

Remark: we consider a limit of the definition of the individual employment contract given by the *Labour Code*, the fact that there is no mention of the obligations of the employer.

Common mandatory elements, specific elements, contracting parties

Individual employment contract is characterised by the following elements:

1. It is a legal act governed by the principle of **freedom of will**; the parties are free to conclude an employment contract and to determine the unhindered the content.

2. It has only **two parts** (subjects): the employee and the employer (Owner).

3. Is a **bilateral** contract, whereas the parties undertake mutually.

4. Is **consensual**, being sufficient the simple agreement of will of the parties for the viable creation of the contract. Shall be concluded only in written form¹⁰⁰, the condition being *ad probationem* and not *ad validitatem*.

5. Is **onerous and commutative**. Onerous, because each party wants to obtain an advantage, the consideration being known **ab initio** when the contract is

¹⁸ A. Ticlea, New regulatory acts - the *Labour Code* in "Romanian Review of labour law", no. 1/2003, p. 8-9

¹⁰⁰ Art. 16 (1) of *Labour Code*

concluded. Commutative, whereas the obligation of a party is the equivalent of the other.

6. Has a **personal** character, i.e. is concluded *intuitu personae* in consideration of vocational training, skills and competence of the person requesting the employment.

7. It is a contract with **successive execution**, carried out in time. Consequently, in the event of non-execution or inappropriate execution by a part of the obligations arising, the penalty will be **termination**, which has the effect of breach of contract, only for the future - *ex nunc* - and not its resolution - which annuls the contract with retroactive effect *ex tunc*¹⁰¹.

8. Is a **nominate contract**, whereas corresponds to a determined legal operations and is governed by the rules of labour law.

9. Through this contract the person employed assumes the obligation "**to do**" that will be performed in nature.

10. Individual employment contracts **may not be concluded under the suspensive condition** (the birth of the effects would depend on the achievement of an event both future and uncertain) and **cannot be affected by the resolutive condition** (that would cause termination of the contract at a future, uncertain event).

11. By way of exception, individual employment contracts **may be affected:**

- **by an extinctive delay-point** (at the fulfilment of which the contract shall cease for the future, while maintaining the already produced effects) in cases where permitted by law to conclude an individual employment contract on definite period¹⁰²;

- **by a standstill period, but certain** when the individual employment contract is concluded at an earlier date as compared to the start of its effects (ex: the contract of employment is concluded on March 1, knowing for sure that on 15 March the job's holder retires). It is not allowed, however, the conclusion of an individual employment contract affected by a standstill period and uncertain.

In the doctrine¹⁰³, the labour law is granted an intuitive-concrete presentation, in the form of three concentric circles: the law, collective employment agreement and individual employment contract. Individual employment contracts is a source of law materializing the rights and obligations of the parties as provided for in law, as well as in the collective employment agreement. Only by concluding and executing the individual employment contract become applicable to the provisions of the law on legal employment, or the provisions of the collective employment agreement relating to rights and obligations of the employer and employees.

According to Article 11 of the Labour Code "the clauses of the individual employment contract may not contain contrary provisions or rights under the minimum level established by regulatory acts or collective employment contracts".

Negotiation and conclusion of the individual employment contract

1. Conditions of validity

In order to consider valid conclusion of an individual employment contract shall be require the following conditions to be met:

¹⁰¹ S. Ghimpu, A. Ticlea, op.cit., p. 141.

¹⁰² Provisions of Article 83 of the Labour Code.

¹⁰³ See S. Ghimpu, I. T. Ștefănescu, S. Beligrădeanu, Gh. Mohanu, op. cit., p. 171.

D. Legal capacity of the person requesting the employment

By legal capacity as a natural person, it means:

- *Lato sensu*, both the ability to use, as well as the ability to exercise;
- *Stricto sensu*, only the ability to use.

Because of the *intuitu personae* nature of the individual employment contract, a natural person may conclude a contract of employment only if it has legal capacity *lato sensu*.

The person acquires the full capacity to conclude an employment contract at the age of 16 years¹⁰⁴, presuming that at this age he/she has the physical and mental maturity required to enter into an employment relationship.

According to the provisions of Article 49(4) of the Constitution, the minimum age of employment is 15 years old (therefore, minors under the age of 15 years may not be employed as employees). The minors aged between 15 and 16 years have recognized a limited capacity to be employed, i.e. employing them is possible only with the consent of the parents (both parents), or their legal representatives and only to work corresponding to their physical development and skills, if thus are not jeopardized their health, development and professional training.

Parental consent must be:

- **Prior** or **concomitant** with the conclusion of the employment contract;
- **Special**, i.e. to relate to that employment contract;
- **Express**, i.e., to be clear, unequivocal.

In some cases the age of employment is increased. For example : port workers, professionals foster parents, the drivers for the international transport of goods or passengers are employed only from the age of 18 years, and the women who wish to practice as a public guard are engaged only from the age of 21 years. Also, the employment in hard, harmful or dangerous work may be made only after the age of 18 years (Article 13(5)¹⁹ of Labour Code).

Work permits. The work permit is an official document shall be issued, upon request, to foreigners who meet the conditions laid down by the Romanian legislation with respect to employment and which have applied on the documents for crossing the border the long-stay visa for employment. According to the Law no. 203/1999 concerning work permits of (as amended by Emergency Government Ordinance no. 130/2005 approved by Law no. 377/2005 the work permit shall entitle the holder to be employed in Romania by concluding an individual employment contract on definite period, during the period of validity thereof, to a natural person or legal entity in Romania, or to an authorised representative in Romania of a legal person that has its head office abroad. Long-stay visa for employment is granted to foreigners on the

¹⁰⁴ Art. 13 din Codul muncii.

¹⁹ **Article 13**

(1) a natural person who acquires the capacity of employment at the age of 16 years.

(2) the natural person may conclude a contract of employment as an employed person and at the age of 15 years, with the agreement of their parents or legal guardians, suitable for activities with the physical development, skills and knowledge, if such are not jeopardized health, development and training.

(3) The employment of persons under the age of 15 years is prohibited.

(4) The employment of persons placed under judicial prohibition is prohibited.

(5) Employment in heavy, harmful or dangerous jobs can be made after the age of 18 years; such places shall be determined by the decision of the government.

basis of the opinion of the Office for Labour Force Migration and of the Authority for foreigners.

The law regulates several types of work permits, each of them having specified the period of validity.

May be employed without work permit:

- The foreigners who have established, according to the law, the domicile in Romania;
- The citizens of the Member States of the EU, of the States signatory to the Agreement on the European Economic Area, and members of their families;
- Aliens whose access to the labour market in Romania is by means of agreements, conventions or bilateral arrangements;
- Aliens who carry out teaching, scientific or temporary activities requested by the ministries;
- Aliens members of the family of the Romanian citizens.

The employment without a work permit or maintaining employed an alien who does not have valid work permit shall constitute offence and is punishable by fines ranging from lei 5.000 to 10.000.

Interdictions to employment:

May not conclude an employment contract:

- minors under the age of 15 years and,
- persons placed under the prohibition of court because of alienation or oligophrenia.

But there are also possible certain limitations to the legal capacity, called **incompatibilities**¹⁰⁵, established by rules with imperative character.

Examples of incompatibilities specifically regulated by law:

a. pursuant to Article 121 and Article 125(1) of the Labour Code, *young people aged up to 18 years* may not provide additional work and night work;

b. according to Article 125(2) of the Labour Code, *pregnant women, women who have recently gave birth, and those who are breastfeeding*, may not be obliged to provide night work;

c. *the apprentices* may not provide work carried out under hard, harmful or dangerous conditions, nor additional work or night work;

d. may not be assigned the functions of *managers*:

- persons convicted (or in the course of penal prosecution or trial) and unreliability of law or by a decision of the court, for one of the offences provided for in some legi¹⁰⁶ (with an indication of Article 4(3) of Law no 22/ 1969, amended by Law no.54/1994);

¹⁰⁵ See S. Ghimpu, A. Țiclea, op. cit., p.147.

¹⁰⁶ See art. 4 of Law no. 22/1969 on the employment of managers, the provision of guarantees and the responsibility for managing the assets of socialist organizations: ""A person who has been convicted of committing any of the offenses set forth in the annex to this law may not be the manager, even if he has been pardoned.

"A person who is in the process of being prosecuted or prosecuted for committing any of the offenses listed in the Annex may not be employed or transferred to the position of administrator.

"If an amnesty occurs during the criminal prosecution, trial or conviction, the offender who has committed any of the offenses listed in the annex may not be held for two years from the date of the amnesty. The person to whom the penalty has been suspended can not be handled during the trial and 2 years after the expiration of the term.

- persons who have not reached the age of 21 years and, in some cases, 18 years of age¹⁰⁷;

e. the function of *magistrate* is incompatible with any public or private office, except that of teaching positions in higher education. Judges and prosecutors are forbidden to exercise, directly or by intermediaries, the activities of the trade, as well as participation in the management or administration of commercial companies or civil society or autonomous companies;

f. the exercise of the profession of *lawyer* is incompatible with (Article 14 of Law no. 51/1995):

1. salaried activity within the framework of other professions than that of lawyer;

2. the occupations which have adverse effects on the dignity and independence of the profession of lawyer or principles of morality;

3. the direct exercise of material facts of trade;

g. according to the *criminal law*:

- may not occupy functions involving the exercise of state authority, and may not occupy a function or practicing a profession by nature of that which was used by the convicted for committing the offence, if the main penalty established is imprisonment of at least 2 years and the Court found that in relation to the nature and seriousness of the offence, the circumstances, the causes and the person of the offender, this punishment is necessary;²⁰

- when the offender has committed the deed due to incapacity, lack of training or other causes which render him/her unfit for the employment of a certain position, or to exercise a profession, trades, or other occupations, it may betaken the safety measure consisting in the prohibition to occupy that function or to exercise that profession, trade or occupation;

h. according to the provisions of Law no. 188/1999, the quality of *public servant* - the person named in a public office - is incompatible with any other public office, with the exception of the quality of teacher. Also, civil servants may not hold functions in the autonomous companies, commercial companies or in other profit-making units and may not engage in commercial companies with private capital with profit-making activities in connection with the powers and duties incumbent on them from the public functions which they hold (articles 56-57);

i. although in our legislation was accepted the *accumulation of functions*, by the constitutional rules expressly provided for, the accumulation is not allowed:

- in accordance with Article 105 (1) of the Constitution, "membership of the Government shall be incompatible with the exercise of any other public office authorized, with the exception of the senator or deputy";

- the provisions of Article 125(3) and Article 132(2) of the Constitution provide that the magistrate is incompatible with any other public or private office, except that of a teaching profession in higher education. The same prohibition is provided for by Article 144 of the Constitution, for the office of a Judge at Constitutional Court;

j. *aliens* may not occupy functions and public offices, civil or military, cannot be judges and prosecutors (Article 2(2) of the Law no. 123/2001 concerning the

"By" committing the offense "is meant committing any of the acts set forth in the annexed list, which the law punishes as an offense or attempted crime, as well as participation in committing them as an author, instigator or complicit.

¹⁰⁷ Idem, art. 3.

²⁰ Article 64(1)(a-c; Article 65 and Article 68 of the Penal Code.

regime of aliens in Romania).The aliens may not be employed as guardian, tourist guide, customs staff, expert and consultant within the institution Advocate of the People or in the Legislative Council and may not be part of the Public Guards Body.

B. Medical examination on the work capacity

In the *Labour Code* it is specified that “a person may be employed only on the basis of a medical certificate which certifies that the person concerned is fit for the provision of that work. Failure to comply with that provision entails the nullity of the individual employment contract” (Article 27(1) and 2 Labour Code.

Is this nullity remediable? Certainly yes, because if the employee presents the medical certificate after the conclusion of the individual labor contract and the certificate shows that the employee is fit to work, the contract thus concluded remains valid.

The competence and the procedure for issuing the medical opinion, as well as the penalties applicable to the employer in the case of employment or change of the place or manner of work without medical opinion, shall be established by special laws.

Request of pregnancy tests upon employment is forbidden.

Upon employment, medical tests may be required for specific areas of public health, food, education, as well as other established by regulatory acts.

Presentation of the medical certificate is *mandatory* in the following situations, too (Article 28):

a) when returning to work after an interruption of more than 6 months, for jobs having exposure to harmful professionals factors, and one year, in other cases;

b) in the case of posting or moving to another job or other activity, if any change occurs in the conditions of employment;

c) at the beginning of the mission, in the case of salaried workers employed by temporary employment contract;

d) in the case of the apprentices, practitioners, pupils and students, in the situation in which they are to be trained on jobs and occupations, as well as in the case of changing the job during training;

e) at regular intervals, in the case of those who work in conditions of exposure to harmful professionals factors, according to the rules of the Ministry of Health and Family;

f) at regular intervals, in the case of those who carry out activities with risk of transmitting diseases and who work in the food sector, zootechnical sector, installations for drinking water supply, in children communities, in sanitary units, according to the regulations of the Ministry of Health and Family;

g) at regular intervals, in the case of those who work in units without risk factors, by medical examinations to be differentiated depending on sex, age and health condition, according to the regulations in collective employment contracts.

C. Employer's legal capacity

May be encountered two situations:

A. The employer is a legal person

Legal person “can have only those rights which correspond to the purpose they established by law, the memorandum of association or the articles of

incorporation “¹⁰⁹. The exercise of the rights and obligations is measured by its organs. Employment and dismissal of staff are possible as follows:

a. in the case of the autonomous companies and trading companies with majority state capital this task is held by the manager;

b. in the case of trading companies with full private capital, the competent body to hire employees and thus to conclude employment contracts may be the chairman of the board of directors or sole administrator;

c. In the case of other legal persons, the competency to conclude the employment contracts belongs to the unipersonal governing body.

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Legal person - collective subject by law - , acquires legal personality, a result of its establishment, through the decree of the competent body, as the case may be, for the creation, etc.

For instance, trading companies and cooperative companies become legal persons from the date of the registration with the Trade Register, and the associations and foundations as of the date of the entry in the Register of associations and foundations, etc.

B. The employer is natural person

In this case:

- If the person for whom is provided the activity is a minor aged between 14 and 18 years, cannot hire the workforce by the conclusion of the individual employment contract, nor with the prior consent of the parent or guardian and tutelary authorities;

- If the owner is a natural person who has reached the age of 18 years and has acquired the full exercise capacity, has also the full capacity to conclude employment contracts (Article 14(3) of Labour Code).

D. The consent

Essential condition of the civil legal act, the consent consists in the manifestation of the decision to conclude the legal act¹¹⁰. The consent is also an essential condition for the validity of the employment contract, therefore:

- the parties should express their willingness to conclude an employment contract in a freely, unequivocally way and in full knowledge of the facts;

- for the conclusion of the employment contract, the agreement of the two parties must be reached. On the date of this agreement, the employment contract is deemed to have been concluded (having a consensual character, it is considered to be concluded "solo consensus" without the formal condition).

The conditions of validity of the consent¹¹¹:

- must emanate from a reasonable person,

- be given with the intention of producing legal effects,

- it must be exteriorized (the individual employment contract is concluded in written form, in Romanian, according to the provisions of Article 16, (1) ²¹ of the Labour Code);

¹⁰⁹ Article 34 of Decree no. 31/1954 regarding natural and legal persons (repealed by the entry into force of the New Civil Code)

¹¹⁰ I. Dogaru, op. cit., p. 153.

¹¹¹ Idem, p. 154 and the following.

- the will to be conscious and free,
- the consent not to be affected by vices.

Vices of consent are those circumstances affecting the conscious and free nature of the will incorporated into a legal act in such a way that constitute grounds to sanction the act concerned with the relative nullity.

According to the provisions of the Civil Code, are vices of consent the following:

- **the Error**, i.e. false representation of reality in the mind of a party, upon the conclusion of a civil legal act. There is error if the employee shall conclude a contract of employment only because he/she wrongly represented one or more of the essential clauses: the salary, the place of work, etc. If the representation had been correct, the employee would have refused the conclusion of the contract.

- **Deceit** (dolus) or cunning, consists of all the (false) fraudulent manoeuvres used by one of the parties to the conclusion of the civil legal act to mislead the other party and to determine such to conclude the concerned act. Without this error caused, part would have not concluded the legal act. The employee can use cunning at the conclusion of the employment contract, showing the false papers with regard to the qualifications or studies.

Violence - vice of consent consists in the fact to inspire a person, under the influence of the threat, (**metus**) fear of a bad thing to determine him/her to conclude the legal act, which otherwise it could not be concluded.

This vice of consent (violence) receives a theoretical treatment, whereas in practice the conclusion of the individual employment contracts has not proved to be possible.

E. Subject matter of the contract

The Civil Code provides that *“the object of the conventions is that to which the parties or only one party undertake obligations”*.

In the individual employment contract, each of the two parties undertakes to indemnify themselves indissolubly in relation to the benefit of the other party. The benefit and the consideration form together the subject matter of the employment contract. More specifically, the performance of the work by the employee and the remuneration of the work by the employer is the subject matter of the employment contract.

²¹ Art. 16

(1) The individual employment contract is concluded on the basis of the written consent of the parties, in Romanian, prior to the beginning of the activity by the employee. The obligation to conclude the individual contract of employment in written form rests with the employer.

(2) Before the beginning of the activity, the individual employment contract shall be registered in the general register of employees, which shall be sent to the labor inspectorate.

(3) The employer is obliged, before commencement of the activity, to give the employee a copy of the individual employment contract.

(4) The employer is obliged to keep a copy of the individual employment contract for the employees who work in that place.

(5) Work performed under an individual employment contract constitutes seniority.

(6) Unmotivated absences and unpaid leave are deducted from the length of service.

(7) An exception to the provisions of paragraph (6) leave for unpaid vocational training, granted under the conditions of art. 155 and 156.

Amended by Emergency Government Ordinance 53/2017

F. Cause of the contract

The cause of the contract may be defined as an essential condition necessary for the validity of any legal act, which consists in the aim pursued by the party or parties to the conclusion of the contract¹¹³. The aim is given by a succession of representations of what he/she wants to achieve by the conclusion of that act; representations concern the reasons determining a person to conclude the legal act. The provision of work by the employee is the purpose of the employing establishment, and the salary of provided work represents the aim pursued by the person who is employed.

Together with the consent, the cause forms the **legal will**, and will constitute the motivation that determines the assuming of the obligation¹¹⁴.

2. Requirements upon employment

In certain situations, the conclusion of the individual employment contract is conditional on the fulfilment of the following requirements:

1. *The distribution of work* is an administrative act individually covered by sources of law. For example, Law no. 76/2002 on the unemployment insurance system and stimulation of employment, lays down that the agencies for employment have the duty to employ the persons who have the quality the unemployed.

2. *The prior opinion* is regulated by special legal provisions. For example, according to the Government Decision No. 28/2001 is essential the opinion of the Ministry of Culture and Cults for the appointments of the directors of culture centres of Romania in the country and abroad and of diplomatic staff with exclusive duties in the field of culture. Also, for the quality of professional foster parent it is necessary the certification of the Commission for Child Protection (H. G. No. 679/2003).

3. *The conditions of studies* are provided by the law for the assignment to certain functions.

4. *The length of service in the specialty*, as seniority in trade (for workers), or in position (for the other categories of employees) represents a species of seniority in work. The seniority in char or seniority in the juridical specialty representing at their turn species of the seniority in specialty;

5. *The traineeship* is the period of time explicitly regulated by the law necessary to accommodate and improve the professional training of some categories of graduates from higher education, carrying out specific activity specific to the specialty: Examples:

- for the judge, prosecutor, lawyer, notary, bailiff the traineeship has a duration of two years;
- for doctors and pharmacists, the duration of the traineeship is of one year;
- for chartered accountants and certified accountants, the traineeship lasts for three years;

6. *The preliminary verification of the professional and personal skills*¹¹⁵ is required in certain areas of activity prior to conclude individual employment

¹¹³ I. Dogaru, op. cit., p. 179.

¹¹⁴ S. Ghimpu, A. Țiclea, op. cit., p. 158.

¹¹⁵ See C. Belu, Considerations on the rules of the trial period in the new Labour Code, in the Romanian Review of labour law" no. 2/2004, p. 37-31

contracts: the case of the pilots of aircraft, train drivers, electricians for high-voltage lines, etc.

7. *Employment according to the competence.* The requirement of employment on the basis of the competence shall be governed by the Labour Code as follows: "individual employment contract shall be concluded after the preliminary verification of the professional and personal skills of the person seeking employment" (Article 29(1)).

The manner in which is to be carried out the verification are set out in the collective employment agreement applicable, in the status of personnel and in the internal rules.

The information requested, in whatever form, by the employer to the candidate on the occasion of the prior verification of the skills, may not have a purpose other than that to appreciate the ability to occupy the post in question, as well as the professional skills requirement.

The employer may request information in connection with the person of the applicant from his/her former employers, but only with respect to the functions fulfilled by them, and the duration of the employment, and only with prior notification of the person concerned.

The competition or the exam.

Employment of the staff in public institutions and authorities and other budgetary units shall be made only by competition or examination, as appropriate (Article 30 Labour Code).

The existing vacant positions in the job title lists will be available for the contest, in relation to the needs of each unit.

With the publication of the vacant positions will be also published the date and place where the contest will be held, as well as detailed information on the conditions of participation, and the themes for the contest.

The management of the establishment creates a commission for examination to verify compliance with the conditions of participation in the contest, as well as the professional competence of the candidates. The committee shall be formed of the head of the department in which the candidate is to be employed, his/her hierarchical leader, a representative of the trade union and, where appropriate, specialists in specialized higher education, research departments from the ministry or from the other central or local institutions of the coordinating public administration.

The competition shall consist of a written test, an oral test or an interview.

The result of the contest will be recorded in a report signed by all the members of the commission of examination. On the basis of the marks obtained, the Commission will determine the order of the exam success in the contest.

After completing the verification, the unit will display the list of candidates admitted to the contest.

Within 3 days as of the display possible contestations can be made. Contestations shall be investigated and shall be settled by the manager of the unit and shall be communicated to the applicant within 5 days.

Candidates who have succeeded in the contest are obliged come to post within a maximum period of 15 calendar days from the date of taking note. In the case of failure to present at the post within the time limit set, the position is declared vacant, and is to be communicated to the following person declared admitted at the contest, the possibility to be employed in that position.

The conditions for the organization and carrying out of the contest shall be determined by the regulation approved by order of the manager of the specialty central body.

If, at the contest organized in order to obtain employment have not been presented several candidates, employment shall be made by examination.

Trial Period.

In order to verify the skills of the employee, upon the conclusion of the individual employment contract may be set a trial period of not more than 90 calendar days for the functions of execution and of not more than 120 calendar days for management functions.

Checking the professional skills to the employment of persons with disabilities shall be carried out exclusively by way of the trial period of maximum 30 calendar days.

Employment of the graduates of institutions of higher education, at the beginning of their profession, shall be carried out by the establishment of a trial period of not more than 6 months, which shall be considered as the period of traineeship. At the end of the trial period, the employer shall be obliged to issue a certificate which is approved by the Territorial Labour Inspectorate.

Individual employment contract may be terminated both during and at the end of the trial period by written notification at the initiative of any of the parties.

For the duration of the trial period, the employee shall enjoy all the rights and has all the obligations laid down in the labour legislation, in the rules of procedure, in the collective employment agreement applicable, as well as individual employment contract (Article 31 Labour Code).

During of the execution of an individual employment contract only one trial period can be set. By way of exception, the employee may be subjected to a new trial period in the situation in which he/she starts at that employer in a new position or profession, or is to provide the activity in a place of employment with heavy harmful or dangerous conditions.

The trial period shall constitute seniority (Article 32(3) Labour Code).

According to Article 33 of Labour Code: “The period in which there may be made trial successive employments of several persons for the same position is of maximum 12 months”. We believe that this Regulation is inadmissible, whereas, in the spirit of labour law, no person may be employed for a trial period.

Suspension of the individual employment contract:

Legal provisions:

Art.49 of Labour Code

(1) The suspension of the individual employment contract may intervene, by law, by agreement of the parties or unilateral act of one of the parties.

(2) The suspension of the individual employment contract has as effect the suspension of the provision of work by the employee and the payment of salary by the employer.

(3) During suspension may continue to exist rights and obligations of the parties other than those referred to in paragraph 2, if they are provided by special laws, through the collective employment agreement applicable, by individual employment contracts or by internal rules.

(4) In the case of the suspension of the individual employment contract because of the facts attributable to the employee, for the duration of the suspension he/she will not benefit from any rights arising out of the quality of the employee.

(5) Every time during the period of suspension of the contract there is a cause of cessation of law of the individual employment contract, the cause of the cessation by law shall prevail.

(6) In the case of the suspension of the individual employment contract shall be suspended all the deadlines related to the conclusion, amendment, execution or termination of the individual employment contract, except in the case the individual employment contract is terminated.

Art.50

Individual employment contract shall be suspended by law in the following situations:

- a) paid maternity leave;
- b) leave for temporary incapacity for work;
- c) quarantine;
- d) exercise of any office within the framework of an executive, legislative authorities or courts, for the entire duration of the mandate, if the law provides otherwise;
- e) carry out a salaried management position in the trade union;
- f) force majeure;
- g) in the case in which the employee is placed under preventive arrest, in terms of the Code of penal procedure;
- h) from the expiry date of the period for which were issued opinions, authorizations or approvals required for the pursuit of the profession. If within a period of six months the employee has not renewed opinions, authorizations or approvals required for the pursuit of the profession, individual employment contracts shall cease by law;
- i) in other cases expressly provided for by law.

Art. 51

(1) Individual employment contract may be suspended by the initiative of the employee in the following situations:

- a) child raising leave up to the age of 2 years or, in the case of the child with disabilities, up to the age of 3 years;
- b) leave for the care of sick child with the age of up to 7 years or, in the case of the child with disabilities, for intercurrent diseases, up to the age of 18 years of age;
- c) paternity leave;
- d) leave for vocational training;
- e) the exercise of elective functions within the framework of the professional bodies established at central or local level, throughout the entire term of office;
- f) participation in the strike.
- g) annual leave of accommodation

(2) Individual employment contracts may be suspended in a situation of unmotivated absences of the employee, under the conditions laid down by the applicable collective employment agreement, individual employment contract, as well as by the rules of procedure.

(letter of paragraph introduced by the Law 57/2016)

Art.52

(1) Individual employment contract may be suspended on the initiative of the employer in the following situations:

(Declared unconstitutional by the Decision of the Constitutional Court 261/2016)

b) in the case in which the employer filed a criminal complaint against an employee or it was sent to court for criminal deeds incompatible with the position held, up to the final judgment of the court;

c) in the event of temporary interruption or reduction of activity without the end of the employment relationship, for economic, technological, structural or similar reasons;

c)¹ in the case against an employee was taken, in accordance with the conditions of the Code of Criminal Procedure, the measure of the judicial control of the judicial control or on bail, if in its task were laid down obligations which prevent the execution of the contract work, as well as in the case in which the employee is arrested at home, and the content of the measure prevents the execution of the contract of employment;

d) the duration of the secondment;

e) during the suspension by the competent authorities of the opinions, authorizations or certificates required for the exercise of the professions.

(2) In the cases referred to in paragraph (1)(a) and (b) if it is found that the person concerned is innocent, the employee resumes his previous activity and he/she shall be paid, by virtue of the rules and principles of contractual liability, compensation equal to his/her basic salary and other rights which was lacking during the period of suspension of the contract.

(3) In the case of temporary reduction of activity, for economic, technological, structural or similar reasons, for a period exceeding 30 working days, the employer shall have the possibility of reducing the work program from 5 to 4 days per week, with a consequent reduction in the wages, until the remedy of the situation which caused the reduction of the program, after prior consultation of the trade union representative at the level of the unit or the representatives of the employees, as the case may be.

Art. 53

(1) During the reduction and/or temporary interruption of business, the employees involved in the reduced or interrupted activity, who are no longer employed, shall receive an allowance paid from the wage fund, which may not be less than 75 % of the basic salary corresponding to the job, except in the circumstances provided for in Art. 52(3) .

(2) During the reduction and/or temporary interruption referred to in paragraph 1, the employees will be at the disposal of the employer, having anytime the possibility to resume the activity.

Art.54

Individual employment contract may be suspended, by agreement of the parties, in the case of leave without payment for studies or for personal interests.

Of the essence of the individual employment contract are successive benefits which shall be carried out in time. While this contract exists there may occur certain situations which prevent the achievement of the mutual obligations of the parties. To the extent that the failure to perform the obligations under the contract is the result of the transient causes, however, the obligations may be carried out subsequently, a

contract of employment shall be suspended²². It is suspended as regards its main effects - the provision of labour and payment of appropriate wage. The employment contract shall not cease permanently, but it takes place only a suspension of its effects²³.

The institution of the suspension is based on the nature of the bilateral nature and with successive benefits of the individual employment contract. Only in the case of contracts with successive benefits, which shall have effect gradually in time, it is possible to occur the suspension of such effects. In respect of bilateral contracts, which is characterized by mutual obligations of parties and by the interdependence of mutual obligations, the suspension of execution of obligations by one of the contracting parties shall determine the suspension of execution of the mutual obligations and interdependence of the other contracting party. Since the employment contract belongs to the category of those with successive execution, when there will be a temporary disruption in the fulfilment of the benefits which, normally, shall be carried out the subject itself by the employee in employment, we will witness also the temporary cessation of correlative benefits by the employer²⁴.

The suspension of the contract of employment can be generated by external causes to the will of the parties (suspension by law), or, on the contrary, to have the source in their agreement of will, or in the will of only a part, whether the employee, or the employee²⁵. Consequently, there are several cases of suspension, namely: suspension by law, the suspension by mutual agreement of the parties, the suspension by unilateral act of the employee, the suspension by unilateral act of the employer²⁶.

Not in all cases in which the employee does not work it is about the suspension of the contract. Cannot be considered as suspensions of the contract of employment those natural interruptions of work so that the employee be able to restore the labour force and are related to the specific of employment contract.²⁷

The suspension of the individual employment contract has the effect the suspension of the provision of work by the employee and the payment of the salary rights by the employer, may continue to exist other rights and obligations of the parties if they are provided by special laws, through the collective employment agreement applicable, by individual employment contract or by internal regulations (Art. 49 (2) and (3) of the Labour Code). As an exception, in the case of the suspension of the individual employment contract because of the facts attributable to the employee, during the suspension will not benefit from any rights arising from the quality of employee (Art. 49(4) of the Labour Code).

The duration of the annual leave and of other rights may not be influenced by the causes of suspension of the individual employment contract with the exception of those attributable to the employee, under the terms of paragraph 3, they shall be granted in proportion to the work performed during the calendar year concerned.²⁸ These rights must be laid down in special laws, through the collective employment agreement applicable, by individual employment contract or by internal rules.

²² S. Ghimpu, Al. Țiclea, *Dreptul muncii*, ediția a II-a, Editura Lumina Lex, București, 2001, p. 290; Ș. V. Stănoiu, *Suspension of the employment contract*, in the "Romanian Law Review" no. 7/1968, p. 31-40.

²³ I. T. Ștefănescu, *op. cit.*, 1999, p. 190.

²⁴ S. Ghimpu, Al. Țiclea, *op. cit.*, 2001, p. 290.

²⁵ Art. 49 (1) of the Labour Code: „Suspension of the individual employment contract may intervene by law, by agreement of the parties or by the unilateral act of one of the parties.”

²⁶ *Ibidem*, p. 290 and the following.

²⁷ *Ibidem*, p. 290.

²⁸ O. Cazan, From the practice of the Ministry of Labor, Social Solidarity and Family - questions and answers -, in the "Romanian Labor Law Review" no. 1/2004, p. 189.

Replacement of the negatively laid down condition: “unless otherwise provided”, has as its objective to remove the indefinite character in the practice²⁹.

In the case in which the employee, subsequently to the carrying out of the annual leave, benefits from a leave for temporary incapacity of work, there is no legal basis for the reimbursement of the share of the leave allowance concerned for this period.³⁰

According to art. 50 of the Labour Code, **individual employment contract shall be suspended by law** in the following situations:

- a) paid maternity leave;
- b) leave for temporary incapacity for work;
- c) quarantine;
- d) carrying out of compulsory military service;
- e) exercise of any office within an executive, legislative or court authorities, for the entire duration of the mandate, if the law provides otherwise;
- f) carrying out a management position salaried in the trade union;
- g) force majeure;
- h) in the case in which the employee is placed under preventive arrest, in terms of the Code of penal procedure;
- i) in other cases expressly provided for by law.

The contract may be suspended regardless of the existence of the manifestations of will, because of certain circumstances which render impossible carrying out of the work by the employee.

a) Maternity leave. During the period in which the employee shall be in maternity leave the employer may not employ on her position another person with the employment contract on indefinite period, but only for a definite period, up to return to the position of the employee concerned.

(b) temporary incapacity for work. Employees being insured in the public system of pensions and other social insurance rights, according to Law No. 19/2000, are entitled to sick leave (leave for temporary incapacity for work) regardless of whether the temporary incapacity is caused by a common disease or accident outside of work, from an occupational disease or an accident at work. If the employee can not perform work due to a temporary incapacity for work, the suspension of the individual employment contract operates by the rule of law, since this case of suspension is independent of the will of the contracting parties. During the sick leave shall be suspended the provision of the work, and, consequently, the payment of wages, the employee being entitled to an indemnity for temporary incapacity for work which are borne from the State social security budget and/or by the employer, as the case may be.

The suspension of the employment contract lasts up to the recovery of the employee, up to recovery of his/her capacity to work.

c) Quarantine. Employees who are prohibited the continuation of the activity due to the presence of a contagious disease during the established period by the certificate issued by the public health inspectorate, their individual employment contracts shall be suspended by law, because the suspension cause is independent of the will of the contracting parties. As long as it is declared quarantine, being denied access to the workplace, the contract of employment shall be suspended in its main

²⁹ I. T. Ștefănescu, Amendments to the Labor Code, commented, Government Emergency Ordinance no.65/2005, p. 45.

³⁰ *Ibidem*, p. 190.

effects - the provision of labour and payment - employee benefiting from other rights, in first of all of the social security allowance.

d) Military service of concentration or mobilization - as resulting from the corroboration of Art. 50(d) of the Labour Code with Art. 46 of the Law no. 446/2006 on preparing people for defence³¹.

e) Exercise of any office within the framework of an executive, judicial and legislative authorities, if the law provides otherwise. Regulation of this case of suspension is in accordance with the legal provisions governing the incompatibilities in the case of the exercise of a position within the framework of an executive, legislative or court authorities. In the case in which, for certain positions within the executive, legislative or judicial authorities is permitted the accumulation of functions by special law, the suspension of the individual employment contract does not intervene.

In principle, during the exercise of the mandate, regardless of what title, within executive, legislative, or judicial authorities - takes place the suspension by right of the individual employment contract of the contract in question - contract held previously the acquiring of the mandate. By way of exception, the law may provide otherwise. In other words, even acquiring such mandate, individual employment contracts previously existing should remain in force and would continue to have effect.

f) Carrying out a leading position in the trade union, in accordance with Art. 50(f) of the Labour Code and Art.11(1) of the Law 54/2003, of the trade unions.³²

Thus, during the period in which the person chosen in the management body is paid by this union organization, his/her individual employment contract or, as the case may be, employment relation is suspended and holds the office and the place of work previously held, as well as the length of service, respectively in the specialty or in public office held, in accordance with the provisions of the law. On this position can be employed another person only with individual employment contract on indefinite period. The wording of Art. 11(1) of the Law No. 54/2003 on trade union is imperative, and the parties cannot derogate from its provisions.

g) Force majeure³³ shall be defined as a circumstance of external origin, with exceptional character, which is absolutely unpredictable and inevitable³⁴. For an event or a circumstance is qualified as case of force majeure, it is necessary to meet the following three conditions: to be external, unpredictable and inevitable.³⁵

Are considered causes of force majeure: natural disasters (earthquakes, drought, flood, storms); serious crisis of raw materials; difficulties in the supply and transportation; damage to work machinery; work conflicts, etc. Such a situation may be the strike, in relation to the employees who do not participate in the termination of the collective work and with the employer.

The suspension may take place only during the period in which acts that external unpredictable and inevitable circumstances; if there are disagreements, the employee may address the Court, which will decide whether or not the employer abuse of their right.

³¹ Published in the Official Gazette of Romania, Part I, no. 990 of December 12, 2006.

³² Published in the Official Gazette of Romania, Part I-A, no. 73 of February 5, 2003.

³³ Al. Ticlea, A. Popescu, M. Tichindelean, C. Tufan, O. Tinca, *opecod as.*, p. 455.

³⁵ T. Ionascu, E. A. Barasch, *force majeure in the execution of the contract*, and in "economic studies And legal research" No 3/1964, p. 380.

h) In the case in which the employee is placed under preventive arrest³⁶, under the terms of the Code of penal procedure. The arrest does not imply by itself the guilt. Only after completion of the prosecution and judgment, in relation to the solution given, will be determined if the person concerned is guilty or not. If affirmative, the reason for the termination of the contract shall be considered to be imputable. If will be established the innocence, it will not, however, be obliged to the reintegration and not the payment of damages, in the event of breach of contract has occurred after the passage of more than 30 days after the arrest, therefore have been complied with the provisions of the law.³⁷

i) In other cases expressly provided for by law, in which category we exemplify:

- carrying out of the strike - for employees who are not carrying out activity throughout the duration of the strike;

- interruption of activity in construction due to weather conditions. For example, art. 6(1)(c) of the Government Emergency Ordinance no. 99/2000 on measures that can be applied in periods with extreme temperatures for the protection of persons employed³⁸ requires from employers who cannot ensure suitable working conditions to take, in agreement with the representatives of the trade unions or elected representatives of the employees in so far as the collective disruption of working with ensuring continuity activity in places where it may not be interrupted, according to legal provisions;

- In the case of professional foster parent;

- The existence of criminal action against a magistrate;

- Action in court proceedings against the executive directors of trading companies (Article 156(5) of the Law no. 31/1990 concerning trading companies);³⁹

- Employment as public servants within the framework of the consultancy cabinets, the dignitaries. Thus, according to Article 5(3) of the Government Emergency Ordinance no. 32/1998 regarding the organization of the cabinet of dignitaries from central public administration,⁴⁰ In the case of public servants, if the employment within the cabinet of dignitaries is made with the agreement of the institution of origin, then the individual employment contracts concluded with this institution shall be suspended until the return to the position held;

- During the period of holding the quality of judicial assistant, as a representative of the employers' associations or trade unions, within the jury for judgment of work conflicts;

- during the period of the judicial technical expertise, in which case the employees benefit, at their employers, from the which are employed by the time required for carrying out audits, to receive wages, but consistent with the maintenance of other rights conferred by the quality of the employed persons (Article 16(1) and

³⁶ The Universal Declaration of Human Rights art. 11 (1). "Any person accused of committing an act with a penal offence has the right to be presumed innocent until proven guilty will be legally established in the course of a public trial in which have been secured all the guarantees necessary for his defence."

³⁷ A See infra., in Article 61 of the Labour Code.

³⁸ Published in the Official Gazette of Romania, Part I-A, No 304 of 4 July 2000, approved by Law 25/2004 (published in the Official Gazette of Romania, Part I, No 214 of March 11, 2004).

³⁹ Republished in the Official Gazette of Romania, Part I-A, No 1066 of 17 November 2004, as amended and supplemented.

⁴⁰ Published in the Official Gazette of Romania, Part I-A, No 42 of 30 January 1998, as amended and supplemented by the Law No. 198/2005 (published in the Official Gazette of Romania, Part I, No 550 of 28 June 2005).

Article 2 of the Government Emergency Ordinance no 2/2000 on the organization of the work of the technical expertise and judicial view). In this situation, the suspension of the contract shall be continuous or discontinuous, depending on the specific requirements of the implementation of the technical expertise judicial proceedings;⁴¹

- For the duration of the interruption of the collective work as a result of extreme temperatures;

- For the duration of the civil servants are to be elected or appointed for the exercise of any office of public dignity (Article 61(3) and Article 113(3) of Law No 215/ 2001 upon local public administration);⁴²

- In the case of maternal risk leave, governed by the Government Emergency Ordinance no. 96/2003 regarding the protection of maternity in the workplace.⁴³

Suspension determined by the will of the employee is the consequence either of an application or options exercised by him or of a conduct contrary to his obligations, but which is not such as to cause the termination of the employment contract.

In accordance with art.51(1) and (2) of the Labor Code, **individual employment contracts may be suspended from the employee's initiative**, in the following situations:

(A) leave for child raising up to the age of 2 years or, in the case of the child with disabilities, up to the age of 3 years. Persons who, in the last year prior to the date of birth of the child, have achieved within a period of 12 months of professional income subject to tax on income in accordance with the provisions of the Tax Code, the benefits, according to Article 1(1) of the Emergency Ordinance no. 148/2005 concerning the support of the family in order to raise the child, leave for child raise up to the age of 2 years or, in the case of the child with disabilities, up to 3 years, as well as a monthly allowance to the amount of 800 lei (RON). In the situation in which the birth occurs before the due term, the period shall be reduced to the period between the date of birth of the child and the date of birth computed separately, certified by the specialist doctor (Article 4(5) of the methodological requirements of 22 December 2005 for the application of the provisions of the Government Emergency Ordinance no. 148/2005 concerning the support of the family in order to raise the child⁴⁴).

Of the allowance and the incentive for child raise up to the age of 2 years or, in the case of the child with disabilities, up to 3 years, optionally benefit any of the baby's natural parents or one of the persons who have adopted the child, to whom they have entrusted the child in view of the adoption or who have a child in placement or in the placement under an emergency procedure, as well as the person who has been called guardian (Article 5 of the Emergency Ordinance no. 148/2005).

The leave and monthly allowance for child raise up to the age of 2 years or, in the case of the child with disabilities, up to 3 years, are entitled for each of the first three deliveries or, as the case may be, for the first 3 children adopted, given for adoption, brought to a placement or in the placement under an emergency procedure, brought to the guardianship. The duration of parental leave of up to 2 years of age or, in the case of a disabled child, up to 3 years shall be extended appropriately in the

⁴¹ Published in the Official Gazette of Romania, Part I-A, No 26 of 25 January 2000.

⁴² Published in the Official Gazette of Romania, Part I-A, No 204 of 23 April 2001, as amended and supplemented.

⁴³ Published in the Official Gazette of Romania, Part I-A, No 750 of 27 October 2003, as amended.

⁴⁴ Published in the Official Gazette of Romania, Part I, no. 7 of 4 January 2006, as amended and supplemented by the Government Decision no. 53/2006 (published in the Official Gazette of Romania, Part I, No. 57 of 20 January 2006).

event of overlapping of two or three situations giving rise to such entitlement and shall be granted single indemnity (Article 6 paragraph 1-3 of the Emergency Ordinance 148/2005).

The applicant must meet the following conditions cumulatively:

(A) is a Romanian citizen, foreign citizen or stateless persons;

(B) has, in accordance with the law of the place of residence, domicile or residence on the Romanian territory;

(C) living together with the child/children for which they are applying for rights and takes care of the growth and its/their care.

Leave for raising the child shall be granted, on request, by the natural or legal persons, hereinafter called employers where carry out their activities the persons benefiting from this right.

Payment of the allowance for child raise up to the age of 2 years or, in the case of the child with disabilities, up to 3 years shall cease, according to Article 11 of the Emergency Ordinance no. 148/2005, with the day following the date on which:

(A) the child has reached the age of 2 years and 3 years in the case of the child with disabilities;

(B) death of the child took place.

Payment of the allowance for child raise is suspended in accordance with Article 12(1) of the Emergency Ordinance no. 148/2005, starting with the month following the month in which:

a) the beneficiary is revoked on the parental rights;

b) the beneficiary is removed, according to the law, the exercise of guardianship

c) the beneficiary shall no longer fulfils the conditions laid down by law for child entrust for adoption;

d) the beneficiary no longer fulfils the conditions laid down by law, with a view to maintaining the measure of placement;

e) the beneficiary executes a penalty involving deprivation of liberty or is in preventive arrest for a period longer than 30 days;

f) the child is aborted or is admitted in a public or private healthcare establishment;

g) the beneficiary deceased.

Payment of the allowance for child raise shall be suspended from the day following the date on which the beneficiary obtains professional income subject to tax on income.

In the situation in which the beneficiary no longer fulfils the conditions required, the payment of compensation to leave for child raise shall be suspended from the day following the date on which those conditions are no longer met.

The resumption of the rights of the suspended payment shall be made at the request, as of the month following the month in which the application is lodged;

b) leave for child care up to 7 years old or, in the case of the child with disabilities, for intercurrent disorders, up to the age of 18 years old;

c) paternal leave. Paternal leave shall be granted in order to ensure the effective participation of the father in the care of the new-born (Article 1(1) of the Law no. 210/1999 concerning paternal leave)⁴⁵. Newborn baby's father is entitled once for a paternal leave 5 working days and in the situation in which the newborn baby's father

⁴⁵ Published in the Official Gazette of Romania, Part I, no. 654 of 31 December 1999.

has obtained the certificate of graduation of the puericulture course, the duration of the paternal leave is 15 working days.

Paternal leave shall be granted upon request, and in the first 8 weeks after the birth of the child, justified by the certificate of birth, resulting in the quality of a father of applicant (Article 3(2) of the Law no. 210/1999). The allowance for paternal leave shall be paid from the wage fund of the unit and is equal to his basic salary corresponding to the related period;

d) leave for vocational training;

e) exercise of elective functions within the framework of the professional bodies established at central or local level, throughout the entire mandate;

f) participation in the strike. During the strike, the employment contract shall be differently suspended for the employees in different situations:

- for those who participate in the strike, the employment contract is suspended by the employee's initiative, according to art. 51 (f) of the Labor Code.

- for those who do not participate in the strike but are objectively unable to work, the contract is suspended by law, according to art. 50 (i) of the Labor Code.

When the continuation of the work is impossible, the contract will be suspended, but if the strike is declared illegal, non-participating employees who have not been able to work could claim compensation equal to the salary they were deprived of during the strike from those who voluntarily ceased work;

g) in the case of the employee with unmotivated absences, under the conditions laid down by the applicable collective labor agreement, individual employment contracts, as well as by the rules of procedure (Article 51(2) of the Labor Code).

The amendments made to Article 51 of the Labor Code by repealing (g) and the introduction of the paragraph 2 are likely to lead to some confusion:

- the previous regulation, respectively g), does not establish an employee's right to be absent unmotivated. The legal text establishes the legal consequence of the unjustified absences consisting in the suspension of the individual employment contract (on the employee's initiative).

- in the case of unjustified absences, the individual employment contract can not be suspended, as it is stated in the legal text, but is always suspended. On the other hand, always, unmotivated absences constitute disciplinary offense and the employer may disciplinarily sanction the employee concerned.⁴⁶

During the suspension of the employment contract on the employee's initiative there may be other rights and obligations of the parties if they are provided by special laws, by the applicable collective labor agreement, by the individual labor contract or by the internal regulation. Under these circumstances, the employee benefits from the length of service as well as from the other rights arising from his / her capacity as an employee, with the exceptions I have set out above, concerning the illegal strike and unjustified absences⁴⁷.

In accordance with art.52(1) of the Labor Code, **individual employment contracts may be suspended on the initiative of the employer** in the following situations:

a) during the prior disciplinary research. The suspension on the duration of the research prior disciplinary measures, in accordance with the provisions of the law. In accordance with Article 267(1) of the Labor Code, under the sanction of the

⁴⁶ Al. Ticlea, A. Popescu, M. Tichindelean, C. Tufan, O. Tinca, *op. cit.*, p. 457.

⁴⁷ Al. Ticlea, A. Popescu, M. Tichindelean, C. Tufan, O. Tinca, *op. cit.*, p. 457.

absolute nullity, no measure, except in the case of written warning may not be willing before carrying out a pre-disciplinary research. On the same line, the disciplinary sanction of the termination of the employment contract applies after the preliminary disciplinary investigation of the offense, the obedience of the employee and the verification of his claims made in the defense.

The employer has the possibility to suspend the contract of the person concerned for as long as the disciplinary investigation takes place. If the employee turns out to be innocent, he will resume his activity, and if he is guilty, the employment contract may be suspended (Article 264 paragraph 1 letter b of the Labor Code) or it may be disciplinarily terminated (Article 264, paragraph 1, f) of the Labor Code).

If the employee is still employed and the employer's intention in this respect is not unequivocal, it is considered that a tacit revocation of the decision to suspend his contract has taken place and will be entitled to the salary corresponding to the work performed;

b) as disciplinary sanction. Art. 264(1)(b) of the Labor Code provides for a case of suspension of the contract of employment, having regard to disciplinary character. During the maximum period of 10 days the employee is not allowed to provide work, getting no salary;

c) in the case in which the employer filed a criminal complaint against an employee or it was sent to court for criminal deeds incompatible with the position held, up to the final judgment of the courts⁴⁸. Of course, if the unit has not made a criminal complaint and no employee was sent to court for criminal deeds, there are no grounds for the suspension of the individual employment contract, even if the employee is under criminal investigations, but not for the deeds in connection with the position. Also, if the employee is investigated in connection with other deeds this is not equivalent to "sending to court for criminal deeds".

Although the criminal acts are provided by law, and the incompetence of the employee who has committed the criminal offense with the position held within the unit sometimes results from the legal provisions, the suspension of the individual employment contract is based on the employer's will. If the employee's incompatibility with the position does not result from the legal provisions, the employer is solely entitled to assess whether the employee becomes incompatible with the job by committing the criminal offense. The question of whether or not the criminal act is incompatible with the post is solved on a case-by-case basis in relation to the job duties and the responsibility of the person concerned.

If the employee has been sued for such an act (independently of the employer's complaint), it appears that not the employer with whom the employee who has committed certain criminal offenses is in the employment relationship is the injured party, but another legal or natural person, who notified the criminal investigation body, which also led to the prosecution. Of course, it is possible to make an ex officio notification.

If the employer has made a criminal complaint against the employee, he will be able to decide to suspend his individual employment contract from the moment the complaint is filed. If another natural or legal person was the one who notified the criminal investigative body or the complaint was made ex officio, the employer may decide to suspend the employment contract only when the employee is sued.

The suspension lasts up to:

- The definitive conviction of the person concerned;

⁴⁸ Al. Țiclea, A. Popescu, M. Țichindelean, C. Tufan, O. Ținca, *op. cit.*, p. 456.

- Payment or termination of the criminal trial decided by the criminal court.

Taking the measure of the suspension of the individual labor contract, in the case provided in par. 1 lit. c, "the employer does not rule on the employee's guilt or innocence, nor on his / her criminal responsibility, these being issues whose resolution falls within the sphere of activity of the judicial bodies. An employer may only file a criminal complaint against the employee if he has sufficient data and evidence that he has committed a criminal offense incompatible with his or her job, requesting the competent authorities to resolve the case. In this situation or when he becomes aware of the suing of the employee for the same deed, he may take the measure of suspension. The measure of suspension shall last until the judgment is finally passed and therefore provisional. The employee shall not be prevented from employment within the period of suspension of the employment contract to another establishment or office other than the one with which is incompatible the deed which constitutes the subject matter of the prosecution";⁴⁹

d) in the case of temporary interruption of the activity, without termination of employment, especially for economic, technological, structural or similar reasons⁵⁰. In case of temporary discontinuation of activity, without termination of employment, especially for economic, technological, structural or similar reasons, the payment to employees of the indemnity equal to 75% of the basic salary during this period is made only if the interruption of the activity is not imputable and only if, within that period, it is at the disposal of the employer who may order the resumption of work at any time. The indemnity of 75% of the basic salary corresponding to the occupied employment, established in the situation regulated by art. 53, must, according to art. 159 par. 3, the second sentence, shall be at least equal to the national gross salary guaranteed in the payment;

e) during the secondment. The secondment, as a temporary measure, to assume, in all cases, the change of place of work and sometimes the kind of work. As it results from the name, the secondment involves the temporary change of employer and the passage in another collective employment agreement. During the period of the posting, the contract of employment concluded with the first employer shall be suspended in its main effects, being partially assigned and for a definite period of the second employer (to which the person is detached).

The employee whose innocence has been proven, will resume activity envisaged above and will be compensated not only in the case of suspension in c) but also of a) (for the duration of the research prior disciplinary measures, in accordance with the provisions of the law) and b) (when applied to disciplinary sanction referred to in Article 264(1)(b) - suspension of the individual employment contract for a period which may not exceed 10 working days).⁵¹

As a general rule, as a result of suspension of the contract, the staff member shall receive an allowance in lieu of wages (temporary incapacity for work, maternity,

⁴⁹ Decision No 24/2003 on the referral of unconstitutionality shall the provisions referred to in Article 40(2)(d), Article 52(1)(c), Article 53(1), Articles 69, 70, 71, 129, 164 and 223 of the Labor Code, published in the Official Gazette of Romania, Part I-A, no. 72 of February 5, 2003.

⁵⁰ Article 10, point 2 of the Convention of the International Labor Organization no. 168 of 1988 on the promotion of employment and protection against unemployment, ratified by Romania through Law no. 112/1992 (published in the Official Gazette of Romania, Part Ia, No 302 of November 25, 1992): Any Member State should endeavor to extend the protection of the Convention, under preconditions, to the following: b) suspension or reduction of earnings, due to a temporary suspension of work, without termination of the employment relationship, especially for economic, technological, structural or similar reasons.

⁵¹ I. T. Ștefănescu, *Modificările ...*, loc. cit., p. 48-49.

the enforcement of the penalty in the workplace, etc.) or indemnification (if it is found not guilty as a result of suspension from office pursuant to Article 52(2) in conjunction with Article 52(1)(c) of the Labor Code). Exceptionally, the person concerned receives salary (in the hypothesis of the pursuit of a secondment, or the exercise of a salaried position in the trade union, etc.).

The suspension of the employment contract shall determine, as a rule, reprogramming the annual leave.

Most cases of suspension of the employment contract result in the benefit of the length of service and of the contribution period⁵²; of course, when the employee is guilty (unmotivated absences, suspension from office as a disciplinary sanction, execution of the punishment at the workplace) does not benefit from length of service and the respective period is not taken into account in calculating the contribution period.

In principle, during the period of suspension, another person may be employed on that post but only with a fixed-term employment contract.

In the case of a contest of cases of suspension of the contract, the first of them must be considered as the cause.

During the suspension, certain cases constitute legal obstacles to the termination of the employment contract (sick leave, maternity leave), while others represent the possible prelude to its dissolution (absenteeism, suspension from office according to Article 52, paragraph 1, letter a) or b) of the Labor Code, etc.).

During the period of suspension of the employment contract, the employee does not work, as a hypothesis he can not be the victim of an accident at work or he can not benefit of protective equipment, hygienic-sanitary materials, and the period of suspension is not included in the useful life of the equipment thing.

The individual labor contract may be suspended, by agreement of the parties, in the case of unpaid leave for studies or for personal interests (Article 54 of the Labor Code).

The two parties - the employee and the employer - may, by their will, amend certain obligations that arose as a result of the conclusion of the employment contract. Nothing precludes them from agreeing, for a certain period of time, that the employee will no longer perform the work, so for that period, the contract will be suspended. This arrangement may take place during the performance of the contract (in the case of unpaid leave) or even at the time of the conclusion of the contract where the employee can give his agreement in principle to any subsequent changes to the employment contract (for example, school or a training course).

Where the law is silent, which only grants the possibility of suspension by consent of the parties, causes of suspension are as follows:

- the period during which the employee is removed from the work place being sent to attend a school or a vocational training course, according to art. 194 par. 3 of the Labor Code;

- unpaid leave: the employee's request for unpaid leave appears as an offer and the approval of the employer is the acceptance, both of which lead to the conclusion of the will agreement and therefore the conclusion of the agreement;

- Reserving the post or the chair in cases where the teacher has certain responsibilities as an employee at public authorities.

Suspension of the individual labor contract by agreement of the parties intervenes if the parties agree to grant unpaid leave. Employees can benefit from this

⁵² I. T. Ștefănescu, *op. cit.*, 2003, p. 480-481.

leave, under Art. 148 of the Labor Code, to solve personal situations. From the corroboration of the two texts, it appears that the solving of some personal situations also includes studies (supporting baccalaureate examinations, admission to higher education institutions, university, diploma, doctoral admission examinations, PhD examinations, supporting the PhD thesis). The duration of unpaid leave shall be determined by the applicable collective labor agreement or internal regulation. If the individual employment contract is considered to be suspended by agreement between the parties, even if the collective labor contract provides for the annual duration of unpaid leave and this limit is not violated, the employer is not obliged to give him leave. Otherwise, unpaid leave would be a case of suspending the individual employment contract on the employee's initiative. In this case, during the suspension of the employment contract there may still be other rights and obligations of the parties if by special laws, by the applicable collective labor agreement, by the individual employment contract or by the internal regulation, is not stipulated otherwise. The suspension period does not constitute a contribution period nor is it assimilated to it.

Termination of the individual employment contract

Labor relations which were born through the completion of an individual contract of employment will be ended by the **termination** of the contract.

In the current speech are used terms of "termination" and "dissolution" a contract of employment, in equivalent manner.

In a strictly legal expression, these terms may not be synonyms, whereas termination of the contract of employment has a wider scope than the dissolution of the employment contract, the latter being one of the possibilities of cessation.

According to Article 55⁵³ of Labour Code, the modes of termination of the individual labor contract are as follows:

- termination by right;
- termination as a result of the parties' agreement on the date agreed by them;
- Termination as a result of the unilateral will of one of the parties, in the cases and under the limiting conditions provided by the law.

A. Cases of termination by law of the individual employment contract are laid down in Article 56 of Labour Code:⁵⁴

a) on the date of death of the employee or of the employer the natural person, as well as in case of dissolution of the employer legal person, from the date when the employer ceased to exist according to the law;

b) on the date of the irrevocable stay of the court's decision to declare the death or the prohibition of the employee or of the employer the natural person;

⁵³ **Article 55**

Individual employment contracts may be terminated as follows:

- a) termination by right;
- b) termination as a result of the parties' agreement on the date agreed by them;
- c) termination as a result of the unilateral will of one of the parties, in the cases and under the limiting conditions provided by the law.

⁵⁴ *Article 56 paragraph 1 letter c amended by Law 12/2015): at the cumulative fulfilment of standard age conditions and the minimum retirement contribution period; at the time of the communication of the pension decision in the case of the third degree invalidity pension, the partial anticipated pension, the anticipated pension, the old-age pension with the reduction of the standard retirement age; at the date of communicating the medical decision on the work capacity in the case of 1st or 2nd degree of invalidity;*

c) *at the time of cumulative fulfilment of standard age conditions and the minimum retirement contribution; at the time of the communication of the pension decision in the case of the third degree invalidity pension, the partial anticipated pension, the anticipated pension, the old-age pension with the reduction of the standard retirement age; at the date of communicating the medical decision on the work capacity in the case of 1st or 2nd degree of invalidity;*

d) as a result of the finding of the absolute nullity of the individual labor contract, from the date when the nullity was established by agreement of the parties or by a final court decision;

e) as a result of the admission of the request for reintegration into the position occupied by the employee of an unlawfully dismissed person or for unintentional reasons, from the date of the final decision of the reintegration court;

f) as a result of the criminal conviction with the execution of the punishment at the place of work, from the date of issuing the execution warrant;

g) from the date of withdrawal by the competent authorities or bodies of the approvals, authorizations or attestations necessary for the exercise of the profession;

h) as a result of the prohibition of the exercise of a profession or a position, as a measure of complementary or complementary punishment, from the date of the final decision of the court ordering the interdiction;

i) on the date of expiry of the term of the individual labor contract concluded for a determined period;

j) withdrawal of the consent of parents or legal representatives in the case of employees aged between 15 and 16 years.

For situations referred to in c) - j), the determination of the case of cessation by right shall be made within 5 working days from its intervention, in writing, by decision of the employer, and shall be communicated to the persons in these situations within 5 working days.

E. Termination of the individual employment contract by mutual agreement of the parties

By the regulation provided in art. 55 lit. b of C. Work - which is the basis for the termination of the individual employment contract by agreement between the parties - the application of a general principle of law contained in the Civil Code has been applied: "The legally established conventions have the power of law between the Contracting Parties. They may be revoked by mutual consent or by causes authorized by law. " The employment contract was born through the understanding of the parties and may be terminated by their agreement. The agreement must be achieved by the concurrent consent of both parties, expressed unequivocally (precisely, expressly and explicitly)¹²².

As with the conclusion of the contract, the written form of the agreement on termination of the individual employment contract is advisable. The employer must receive for analysis an eventual request or other manifestation indicating the clear intention of the employee to cease the legal employment relationship¹²³.

¹²² Idem, p. 110.

¹²³ A. Ticlea (collectively), op. cit., P. 488

F. Termination of the individual employment contract at the initiative of the employer.

According to the Labor Code, the cases of dissolution of the individual employment contract at the initiative of the employer bear the generic name of *dismissal*. Therefore, dismissal is the termination of the individual employment contract at the initiative of the employer.

The dismissal may be individual or collective and, depending on the grounds, dismissal may be made for reasons related to the employee or dismissal for reasons not related to the employee.

a) collective dismissal

According to art. 68 of the Labor Code, collective dismissal is the dismissal ordered from one or more reasons not related to the employee, within a period of 30 calendar days of a number:

a) at least 10 employees, if the dismissing employer has between 20 and 100 employees;

b) at least 10% of the employees if the dismissing employer has between 101 and 300 employees;

c) at least 30 employees, if the dismissing employer has at least 300 employees.

It is forbidden to dismiss the employees based on:

a) gender, age, social background, family status, ethnicity, race or people, sexual orientation, political choices or religious beliefs, disability, membership, or trade union activity;

b) for exercising, in accordance with the law, the right to strike and trade union rights (Article 59⁵⁵).

In the case of collective dismissal, the employer has the following obligations:

- initiate consultations with the trade union or, where appropriate, employee representatives on methods and means to avoid collective dismissal or to reduce the number of affected employees and mitigate the consequences by taking social measures in particular, support for retraining or retraining of employees targeted for dismissal;

- make available to the trade union or, as the case may be, to the employees' representatives all relevant information in relation to collective dismissal in order to make their proposals (Article 69⁵⁶ of the Labour Code).

⁵⁵ **Article 59**

It is prohibited to the dismissal of employees:

It is forbidden to dismiss the employees based on:

(a) gender, sexual orientation, genetic characteristics, age, nationality, race, color, ethnicity, religion, political option, social origin, disability, family status or responsibility, membership or trade union activity;

b) for exercising, in accordance with the law, the right to strike and trade union rights.

⁵⁶ **Article 69**

(1) If the employer intends to make collective dismissal, he has the obligation to initiate, in due time and for the purpose of reaching an agreement, under the conditions stipulated by law, consultations with the trade union or, as the case may be, with the representatives of the employees, on at least:

a) methods and means of avoiding collective dismissal or reducing the number of employees to be made redundant;

b) mitigation of the consequences of dismissal by resorting to social measures aimed at, inter alia, support for retraining or retraining of dismissed workers.

(2) During the consultations, according to par. (1) In order to allow the trade union or employees' representatives to make proposals in a timely manner, the employer has the obligation to provide them with all relevant information and to notify them in writing of the following:

The employer has the obligation to notify in writing to the trade union or, as the case may be, to the employees' representatives the intention to collective redundancy.

Notification of collective dismissal intention shall include:

- a) number and categories of employees employed in the unit;
- b) the reasons for the dismissal;
- c) the number and categories of employees who will be affected by the dismissal;
- d) criteria considered according to the law and / or collective labor agreements for determining the order of priority for dismissal (these criteria apply for the separation of the employees after the evaluation of the achievement of the performance objectives);
- e) measures taken to limit the number of redundancies;
- (f) measures to mitigate the consequences of dismissal and compensation to be granted to employees subject to dismissal;
- g) the date from which the redundancies will take place;
- h) the term within which the representative union in the unit or, as the case may be, the representatives of the employees may make proposals for avoiding or diminishing the dismissals.

On the date when the employer communicated the notification to the trade union, it has the obligation to communicate it to both the territorial labor inspectorate and the territorial employment agency.

The trade union or, where appropriate, the employees' representatives may propose to the employer measures to avoid or reduce dismissals within 10 calendar days of receipt of the notification. In such a case, the employer has the obligation to respond in written and motivated to the submitted proposals, within 5 calendar days from their receipt.

New employments after the collective dismissal

Within 45 calendar days from the date of dismissal, the employee dismissed by collective redundancy has the right to be re-assigned to the post re-established in the same activity without the examination, competition or probation period.

If the same activities resume during the mentioned period, the employer will send to the employees who have been dismissed from the positions whose activity is

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- a) the total number and categories of employees;
 - b) the reasons for the dismissal envisaged;
 - c) the number and categories of employees who will be affected by the dismissal;
 - d) the criteria envisaged, according to the law and / or collective labor agreements, for determining the priority order for dismissal;
 - e) measures taken to limit the number of dismissal;
 - (f) measures to mitigate the consequences of dismissal and compensation to be granted to redundant workers, in accordance with the applicable legal provisions and / or the collective labor agreement;
 - g) date from which or when the dismissal will take place;
 - h) the term within which the trade union or, as the case may be, the representatives of the employees may make proposals for avoiding or reducing the number of the dismissed employees.
- (3) The criteria set out in paragraph (2) lit. (d) applies to employee appraisal after the assessment of the achievement of the performance objectives.
- (4) The obligations stipulated in par. (1) and (2) shall be maintained irrespective of whether the decision determining collective dismissal is taken by the employer or an undertaking which has control over the employer.
- (5) Where the decision determining collective dismissal is taken by an undertaking which has control over the employer, it can not rely on the failure to comply with the obligations set out in paragraph (1) and (2), that the undertaking concerned has not provided it with the necessary information.

resumed under the same conditions of professional competence a written communication informing them about the resumption of the activity.

Employees have a maximum of 5 calendar days from the employer's date of communication in order to express their written consent to the job offered.

In case the employees who have the right to be re-hired do not express their consent in writing within this period or refuse the work offered, the employer can make new employments on the vacancies.

b) Individual dismissal

Individual dismissal is ordered by the employer by means of a provision for a particular employee, respecting the following circumstances where dismissal is forbidden:

- a) during the temporary incapacity for work, ascertained by a medical certificate according to the law;
- b) during the suspension of the activity as a result of the establishment of the quarantine;
- c) during the period when the wounded woman is pregnant, insofar as the employer became aware of this fact prior to the issue of the dismissal decision;
- d) during maternity leave;
- e) during the leave for raising and caring for the child up to 2 years of age and, in the case of the disabled child, until the age of 3 years;
- f) during the leave for the care of a sick child up to the age of 7 years or, in the case of a disabled child, for intermittent conditions up to the age of 18;
- g) during the performance of an eligible position in a trade union body, unless the dismissal is ordered for a serious disciplinary offense or for repeated disciplinary misconduct by that employee;
- h) during the holiday period.

Apart from these prohibitions, Art. 21 from O.U.G. no. 96/2003 (amended by Law 25/2004) provides that it is forbidden for the employer to order the dismissal (even in the case of public employees) and in the following situations:

- the employee is pregnant, or has recently given birth (the first 6 months) or is breastfeeding;
- the employee is on maternity leave.

These prohibitions do not operate if the dismissal is determined by reasons arising from the judicial reorganization, bankruptcy or dissolution of the employer.

- The dismissal for reasons attributable to the employee

Employer may order dismissal for reasons related to the employee in the following situations (Article 61⁵⁷):

⁵⁷ **Art. 61**

The employer may order redundancy for reasons related to the employee in the following situations:

- a) if the employee has committed a serious misconduct or repeated deviations from the labor discipline rules or from the ones stipulated in the individual labor contract, the applicable collective labor contract or the internal regulation as a disciplinary sanction;
- b) if the employee is preventively arrested or arrested at home for more than 30 days, under the Criminal Procedure Code;
- c) if, by decision of the competent bodies of medical expertise, the physical and / or psychical unfitness of the employee is observed, which does not allow him / her to fulfill the duties corresponding to the occupied job;
- d) if the employee does not correspond professionally to the place of employment.

a) if the employee has committed a serious misconduct or repeated deviations from the rules of labor discipline or from the ones stipulated in the individual employment contract, the collective labor contract or the internal regulation, as a disciplinary sanction. The Labor Code can not define or enumerate serious deviations, but they can be determined, in particular, by internal regulations and collective labor agreements, depending on the specificity of each employer's work. We exemplify situations in court practice as serious violations that justified the disciplinary dissolution of the individual employment contract:

- stealing products and alienating them;
- carrying out identical activities under unfair competition conditions;
- drinking alcoholic beverages during the service, or being intoxicated;
- absent from work for a long time;
- the use of physical force on strictly personal grounds.

When deviations are not serious, the condition is to be repeated and to express the attitude of the person as perseverance in committing the offense.

b) if the employee is preventively arrested for more than 30 days, under the Criminal Procedure Code. The reason for the dismissal is the need to prevent harmful effects for the employer through the absence of more than 30 days of the employee who does not fulfil his obligation to perform the work. If the innocence of the person in custody is proved, the unit is not obliged to either reintegrate or compensate him, since he has ordered dismissal under legal conditions. However, the person concerned may claim damages for the abusive arrest.

c) if, by the decision of the competent bodies of expertise, the physical and / or psychological unfitness of the employee is found, which does not allow him / her to fulfil his / her attributions corresponding to the occupied job;

d) if the employee does not correspond professionally to the job he / she occupies (examples: low quality works, repeated scrap, failure to comply with the norm, refractory attitude towards the instructions received, etc.).

If the dismissal occurs for one of the reasons mentioned under b) -c) -d), the employer is obliged to issue the decision for dismissal within 30 calendar days from the date of finding the cause of the dismissal.

Where the dismissal occurs because the employee has committed a serious misconduct or repeated deviations, the employer has the obligation to issue the dismissal decision only in compliance with the provisions of Art. 247-252 of C. Work. The preliminary investigation procedure is also mandatory in the case of dismissal for professional misconduct.

The decision is made in writing and, under sanction of absolute nullity, must be substantiated in fact and in law, and include clarifications on the term and the court to which it can be challenged (art. 62⁵⁸ alin. 3 of Labour Code).

The dismissal for professional misconduct may be ordered only after the employee has been assessed in advance according to the assessment procedure established by the applicable collective labor agreement or by the internal regulations.

⁵⁸ **Art. 62**

(1) If the dismissal occurs for one of the reasons provided in art. 61 lit. b) -d), the employer has the obligation to issue the decision for dismissal within 30 calendar days from the date of finding the cause of the dismissal.

(2) If the dismissal occurs for the reason provided in art. 61 lit. a), the employer may issue the dismissal decision only in compliance with the provisions of art. 247-252.

(3) The decision shall be given in writing and, under sanction of absolute nullity, shall be substantiated in fact and in law, and shall include details on the period within which it may also be challenged before the court seized.

If the dismissal is ordered for physical or mental unfitness or for professional misconduct, as well as for the re-integration of the unlawfully dismissed person, the employer has the obligation to propose to the employee other vacancies in the unit, compatible with the professional training and the capacity workplace established by the occupational health physician.

If the employer does not have such vacancies, he / she has to request the support of the Territorial Employment Agency in order to redeploy the employee, corresponding to the professional training or, as the case may be, the work capacity ascertained by the medical practitioner, and will notify the employee of the solutions proposed by the agency.

The employee has 3 working days from the employer's job vacancy announcement or the solutions proposed by the Agency to express his or her consent to the new job offered.

If the employee does not express his / her consent within the 3-day working day and after the case has been notified to the territorial employment agency, the employer may order the dismissal of the employee.

In the case of redundancy for physical or mental unfitness, the employee benefits from a compensation, determined by collective labor contract or individual employment contract, as the case may be.

- Dismissal for reasons which are not attributable to the employee

This method of dismissal results from the abolition of the post occupied by the employee himself (and not the abolition of posts such as the one occupied by the person concerned, as in the previous regulations) for reasons unrelated to his person. Examples: as a result of economic difficulties, technological transformations, or reorganization of activity (the post is no longer in the organizational chart).

Job dissolution must be effective and have a real (difficult) and serious cause (aiming at improving the job).

In the case of individual redundancies due to economic difficulties, technological changes or reorganization of the activity, the employer has the obligation to propose the redistribution of the employees, according to the law.

Employees can benefit from active measures to combat unemployment and compensation.

For example, in Article 67 of Labour Code *"employees dismissed for reasons that are not related to their person benefit from active measures to combat unemployment and may be eligible for compensation under the conditions provided for by law and the collective employment agreement applicable to"*.

2. Right to notice

Persons dismissed for physical or mental unfitness found by competent bodies, or dismissed for professional misconduct, and dismissed for reasons not related to the employee, shall have a minimum of 20 working days notice. If people considered inappropriately professional are in probation, they do not benefit from this notice.

If, during the period of notice, the individual employment contract is suspended, the notice period shall be suspended accordingly, unless the employee is on leave for vocational training.

In the situation in which the notice period individual employment contracts is suspended, the period of notice shall be suspended, except in the case in which the employee is on leave for vocational training.

3. Terms of dismissal

The Labor Code sets the deadlines within which redundancy must be ordered:

- according to art. 252 par. (1) Disciplinary dismissal shall be ordered by the employer within 30 calendar days from the date of acknowledgment of the disciplinary offense but not later than 6 months from the date of the act;

- according to art. 62 par. 1, in the case of dismissal for preventive arrest, physical or mental disability or professional incompetence, the employer has the obligation to issue the decision for dismissal within 30 calendar days from the date of finding the cause of the dismissal.

In the other cases of dismissal, the Labor Code does not set deadlines.

4. The decision of dismissal

According to the doctrine¹²⁴, the dismissal decision represents the act of unilateral will by which the employer orders the termination of the individual employment contract in the cases and under the conditions stipulated by the law. The written form of the dismissal decision is a condition of validity.

The content of the dismissal decision is governed by the Labor Code in different texts:

- Article 62, paragraph 3, contained in the section on "dismissal for reasons related to the person of the employee" states: "the decision is to be made in writing and, under sanction of absolute nullity, must be substantiated in fact and in law and include clarification of the time at which it can be challenged and the court to which it is challenged";

- Article 76, paragraph 1, contained in the "Right of notice" section, stipulates that the decision to dismiss is to be communicated in writing and must contain,

- a) the reasons for the dismissal;

- b) the length of the notice;

- c) the criteria for determining the order of priorities, according to art. 69 par. 2 lit. d, only in the case of collective redundancies;

- d) the list of all the available jobs in the unit and the term in which the employees will opt to take up a vacant job, under the conditions of art. 64;

- art. 252 par. 2, considers the decision by which the employer orders the disciplinary sanction, including disciplinary dissolution of the individual employment contract, and states that, under the sanction of absolute nullity, the decision obligatorily includes:

- a. description of the act constituting a disciplinary offense;

- b. specification of the provisions of the staff regulations, the internal regulation, the individual labor contract or the applicable collective labor contract, which have been violated by the employee;

- c. the reasons for which the defense formulated by the employee during the preliminary disciplinary investigation has been removed, or the reasons why, under the conditions provided by art. 251 paragraph 3 the research was not carried out;

- d. the legal basis on which the disciplinary sanction is applied;

- e. the term in which the sanction may be challenged;

- f. the competent court to which the sanction may be challenged.

¹²⁴ A. Țiclea (collectively), op. cit. , p. 510

These texts being complementary should be understood and applied in conjunction. For example, in the case provided by art. 74 par. 1 (with reference to the dismissal for reasons not related to the employee) the dismissal decision must include the mention of the term in which the disputed court may also be challenged. By indicating the term and the competent court, it is opted, in accordance with the spirit of the law, for the text more favourable to employees and, moreover, the most "legally weak " is given information about his right to appeal.

According to art.252 par. In the case of work, the decision shall be handed over to the employee, with a signature of receipt or, in the case of refusal of receipt, by registered letter at the domicile or residence communicated by him.

If, during the period of notice, the individual employment contract is suspended, the notice period will be suspended accordingly, unless the employee is absent, as stated above.

According to art.77 of Labour Code, the dismissal decision shall take effect from the date on which it was communicated to the employee.

5. Revocation of dismissal decision

Where the employer finds that the dismissal decision is untenable or unlawful, it may in principle withdraw it, since the dismissal decision is not a judicial (irrevocable) act. If there is an employment dispute to resolve the appeal against the dismissal decision, the revocation of the decision will result in the cessation of the case (the appeal being void) if the revocation decision fulfils the following conditions:

- comes from the body which was competent to issue the decision to dismiss;
- it is written in writing, with registration number, employer's signature and stamp;
- operates for reasons of unlawfulness and / or thoroughness.

6. Legislation which regulates the employment contract in Bulgaria

6.1 GENERAL CONSIDERATIONS ON THE LABOR LAW OF THE EUROPEAN UNION CITIZENS IN THE AREA OF THE EUROPEAN UNION.

As a EU national, any citizen, including Romanian citizens, have the legal right to work - for an employer or as a self-employed worker - in any [country of the European Union](#) **without needing a work permit** .

Exception - Currently, Croatian nationals are still facing temporary restrictions on work in the [European Union](#).

It is important to remember that during the activity on the territory of Bulgaria, Romanian citizens (and, in general, the citizens of the European Union) **have the right to live on the territory of Bulgaria** - subject to [certain conditions](#). The aspects which the Romanian citizens have to take into account in such a situation are the following:

- **Benefits** of employees (illness, maternity/paternity, pensions, accidents and occupational diseases, death benefits, unemployment, early retirement, family, etc.)
- **The place where the tax** must be paid.

For cases where Romanian citizens work in Bulgaria, but live in Romania and return daily or at least once a week to their country of origin, it is considered that they

carry out a **border or cross-border travel** according to EU law (these being called cross-border or border workers).

In this situation, it is important to check: what impact will such an activity have for cross-border or border workers on **their social security**: [health](#), [unemployment](#), [family benefits](#), [retirement](#), as well as the place where they will have to pay [taxes](#) during their stay in Bulgaria.

When temporarily working or living in Bulgaria (residence), they will receive social protection **either from the country of origin or the host country**.

As a migrant worker (employed or self-employed) in Bulgaria and generally in a EU country - - you must register with the social security system of the host country.

In this situation, both the workers and the persons in their care will then benefit from the Bulgarian social security system. **Benefits** related to illness, family, unemployment, pensions, accidents and occupational diseases, early retirement and death will be determined by local laws.

Qualification periods

In Bulgaria, the benefits to which the Romanian workers are entitled may depend on how long they have previously paid contributions. Thus, it will be taken into account all the periods that the Romanian citizen worked on the territory of Bulgaria or all the contributions they paid in other EU countries, as if they were covered throughout that country.

6.2 SHORT OVERVIEW OF THE LABOUR MARKET IN BULGARIA

In 2018, Bulgaria's economy entered a more advanced phase of expansion, with growth gradually shifting from consumption to investment. According to preliminary data, real GDP increased by about 3.5% during the year. Real wages increased, and also the household incomes and confidence, thus boosting private consumption. Both public investment and, to a lesser extent, private investment have contributed to GDP growth. The public consumption has also increased, mainly due to the increase of the wages and the costs of intermediate consumption. At the same time, regional disparities have increased and are already hampering the country's competitiveness. Production and revenues in Bulgaria were very unevenly distributed. The southern regions offered better conditions for investment. There were significant regional disparities in both the socio-economic indicators and in terms of unemployment and employment rates. This also explained the concentration of investment and better infrastructure in the South West and South-Central region. In these regions, rising capital has attracted skilled people in high value-added sectors, while in the rest of the country employment growth has been concentrated in lower value-added sectors.

The first hundred companies with the highest number of employees in Bulgaria created 9,000 new jobs in 2018. Sector analysis shows that, for another year, new jobs were created mainly in the industry, with just under half of them in the field of armaments. This demonstrates the leading role of export-oriented companies. The other sectors that expanded their staff were retail and outsourcing.

6.3 CONDITIONS OF ENTRY AND RESIDENCE SCHEME FOR CITIZENS WHO WANT TO WORK ON THE TERRITORY OF BULGARIA

Romanian citizens do not need a visa to travel to Bulgaria.

The entry into Bulgaria of any Romanian citizen and, in general, any EU citizen is allowed with the valid passport or Identity Card.

In order to verify the conditions for entering and settling on the territory of Bulgaria, it is recommended to consult the official information provided by the Bulgarian authorities:

- Ministry of Foreign Affairs of Bulgaria
- Bulgarian Embassy in Bucharest

Romanian citizens wishing to work in Bulgaria do not need a work permit. They have the obligation to register their residence with the local authorities within 48 hours. Proof of registration of the residence is requested by the employer.

The Ministry of Foreign Affairs recommends the Romanian citizens who intend to stay for a long time on the territory of this State to address the diplomatic mission of Romania and to announce their presence in the region, communicating their personal details so they can be contacted in emergencies.

6.4 ACCESS TO THE LABOUR MARKET IN BULGARIA OF ROMANIAN CITIZENS

4.1. Access to the labor market

There are no restrictions for Romanian citizens who want to work in Bulgaria. Romanian citizens enjoy all rights granted to Bulgarian citizens on the local labor market, as citizens of the European Union.

Institutional framework:

4.2. General aspects in respect of the right to work in Bulgaria: Romanian citizens wishing to work in Bulgaria must know the main provisions of the labour law in this country. Therefore, it is advisable to inform in advance the National Agency for Employment (ANOFM) in Bucharest or the county agencies for Employment (AJOFM) in the county residence cities where they have their domicile.

In order to work in Bulgaria, Romanian citizens do not need a work permit. However, obtaining the right of residence is mandatory.

The residence permit is issued by the National Police (with responsibilities in this area), within 3 months after entering the territory of this country. After the first 3 months of residence, you can obtain the long-term residence permit (valid for a period of 5 years) if you are employed or self-employed, have health insurance and prove that you can maintain yourself or take vocational training courses.

The employment visa is not required.

Recognition of professional qualifications: EU has created a system for the recognition of professional qualifications. Within this system, a distinction is made between regulated professions (professions for which certain qualifications are required by law) and professions that are not legally regulated in the host Member State.

The European Commission has created a set of tools to ensure greater transparency and recognition of qualifications for academic and professional purposes:

European Qualifications Framework (EQF, CEC): The main purpose of the framework is to create a link between the different national qualification systems in order to facilitate the recognition of diplomas. And employers will be able to use CEC to better understand and compare qualifications acquired in other countries.

National Academic Recognition Information Centers (NARIC): At the initiative of the European Commission in 1984, a network of national NARIC

academic recognition information centers provides advice on academic recognition of study periods abroad. Located in all EU Member States and countries in the European Economic Area, NARIC plays an important role in the recognition of qualifications. European Credit Transfer System (ECTS): This system aims to facilitate the recognition of study periods abroad. This offers the possibility of transferring the results between different educational institutions and offers flexible ways to obtain a diploma.

The European Commission's database on regulated professions includes a searchable list of regulated professions in the Member States, EEA countries and Switzerland, as well as contacts and information on competent authorities.

6.5 HOW TO FIND A JOB IN BULGARIA

Job seekers can browse for jobs available on the EURES portal (European Job Mobility Portal), on the website of the Employment Agency (under the "Job market" section) and on the Bulgarian micro EURES website <http://eures.bg>.

Both national websites provide jobseekers with information about future job openings, which they can attend if they wish.

After they arrived in Bulgaria, Romanian citizens and in general citizens of the European Union (EU), the European Economic Area (EEA) and the Swiss Confederation can register and apply for employment through the network of job centers.

In order to register and look for a job through the network of 107 local job centers, they are required to produce a certificate indicating the address in which they live in Bulgaria (issued by the Directorate of Migration at the local police department of the Regional Internal Affairs Directorate (RDVR).

The following documents are required for registration at the Job Center:

- a. Identity document
- b. a document attesting the level of studies completed,
- c. a document attesting to previous work experience,
- d. a license to practice a certain profession (where applicable).

The documents attesting the completion of a level of education and of any qualifications obtained and the license to practice a certain profession must be legalized in the issuing country.

Information, consultations and mediation services are offered to all registered job seekers. It can be obtained by phone at: +359 2 980 87 19 (Employment Agency Information and Services Center) or at O gency website

The site provides information (but only in Bulgarian) about registered private agencies that provide job placement intermediation services and temporary employment agencies that provide job seekers with an alternative path to employment (job intermediaries lists private employment legally operating in Bulgaria are available under "Private intermediaries"; a list of registered temporary employment agencies is available under "Temporary employment agencies").

Bulgarian EURES advisers will be able to provide job seekers with information in English, German or French. In accordance with Bulgarian law, the services offered to job seekers by the employment agencies are free.

The use of specialized online portals has gained in popularity as an alternative way to look for a job in Bulgaria. Another alternative way to get employment is to look for a job on the corporate sites of the companies themselves, especially those working in the IT sector.

6.6 WORKING CONDITIONS IN BULGARIA. RECOGNITION OF DIPLOMAS AND QUALIFICATIONS

The importance of transparency and mutual recognition of diplomas is a crucial element for the free movement of workers.

The possibility of gaining recognition of someone's qualifications and competences can play a key role in deciding to start work in another EU country. It is therefore necessary to develop a European system that guarantees mutual acceptance of professional competences in different Member States. Only such a system will ensure that the lack of recognition of professional qualifications will become an obstacle to the mobility of workers in the EU.

Main principles for the recognition of professional qualifications in the EU

As a basic principle, every EU citizen should be able to practice their profession in any Member State. Unfortunately, the practical implementation of this principle is often hampered by national requirements for access to certain professions in the host country.

In order to overcome these differences, the EU has created a system for the recognition of professional qualifications. In terms of this system, a distinction is made between regulated professions (professions for which certain legal qualifications are required) and professions that are not legally regulated in the host Member State.

The European Union has taken important steps towards achieving the transparency of qualifications in Europe:

- Increased cooperation in vocational education and training, with the intention of combining all instruments for the transparency of certificates and diplomas, into a single, easy-to-use tool. This includes, for example, the European CV or Europass trainings.

- Develop concrete actions in the field of recognition and quality in vocational education and training.

Overcoming the differences between education and training systems across the EU

The education and training systems in the EU Member States still show substantial differences. The latest enlargements of the EU, with different educational traditions, have increased this diversity even more. This requires the establishment of common rules that guarantee the recognition of competences.

To overcome this diversity of national qualification standards, educational methods and training structures, the European Commission has presented a series of tools aimed at ensuring greater transparency and recognition of qualifications for both academic and professional purposes.

6.7 EUROPEAN QUALIFICATIONS FRAMEWORK

The European Qualifications Framework is a key priority for the European Commission in the process of recognizing professional competences. The main objective of the framework is to create links between the different national qualification systems and to guarantee a smooth transfer and recognition of diplomas.

European Credit Transfer System (ECTS) - The European credit transfer system aims to facilitate the recognition of study periods abroad. Introduced in 1989, it works by describing an educational program and attaching credits to its components. It is a key complement to the highly valued Erasmus student mobility program.

Europass - Europass is a tool to ensure transparency of professional skills. It is composed of five standardized documents

1. a CV (Resume),
2. a language passport,
3. certificate supplement,
4. diploma supplements and
5. a Europass-Mobility document.

The Europass system makes skills and qualifications clear and easy to understand in different parts of Europe. In each country of the European Union and the European Economic Area, Europass national centers have been created as the main contact points for people who want information about the Europass system.

It is advisable for Romanian citizens and EU/EEA citizens to get acquainted with the living and working conditions in Bulgaria before arriving in the country. Accommodation arrangements must be made in advance. For settlement purposes, it is necessary to consider the fact that the country has not yet acceded to the European Economic and Monetary Union (Euro Zone), and the national currency is the Bulgarian Lev (1 BGN = EUR 1.95583). Foreign currencies are exchanged with banks and foreign exchange offices in all major cities.

If a foreign national has family members who wish to attend a Bulgarian school, it is important that the correct documentation to allow entry into Bulgarian schools is checked and obtained prior to arrival in Bulgaria (see section “Finding a school”).

If a citizen of another Member State wishes to travel to Bulgaria taking their pet with them, the animal must travel on an individual pet passport, which is based on a standard European template with the number of identification (electronic microchips), any distinctive features, name and address of the owner, and a record of all vaccinations and deflation treatments.

If a foreign national wants to work in Bulgaria but no employment contract has been concluded upon arrival in the country, it is possible to register it personally with the National Agency for Employment (DBT) at the place of residence where their address is recorded. The following documents are required for registration: an Identity Card or passport, a certificate of registration of the address in the Republic of Bulgaria and a residence permit. In order to be eligible to look for a job and receive job offers, applicants must provide documents attesting to the level of completed studies or professional qualification or specialization, a license to exercise a profession, as appropriate, and documents attesting to work experience. They should be authenticated in the issuing country.

Foreign nationals must obtain a European Health Insurance Card (EHIC) before leaving for Bulgaria in order to be able to use the services of Bulgarian medical institutions in the event of a medical emergency free of charge. Otherwise,

they should pay the costs of medical treatment and then request reimbursement, the reimbursement being made by the country in which they are insured.

A person wishing to be assisted and treated by a general practitioner must obtain a form from the National Health Insurance Fund that allows them to choose and register with a general practitioner in their area. To do this, you must first obtain an identity document of a foreign national (LNCh) from the Migration Directorate of the Ministry of Internal Affairs. The completed form is then presented to the selected general practitioner. Anyone wishing to work in the country as an independent professional (trader, freelancer, craftsman, farmer, etc.) must first check the requirements for registration with the National Revenue Agency (NRA) and the relevant room.

6.8 Annexes - LEGISLATIVE FRAMEWORK:

1. **Regulation (EC) No. 619/2008 883/2004** of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with EEA and Switzerland relevance);

2. **BULGARIAN LABOUR CODE** - In force as of 01/01/1987 Prom. SG. number 26 of April 1, 1986, prom. SG. number 27 of April 4, 1986, amend. SG. number 6 of January 22, 1988, am. Sg. March 21, March 13, 1990, Am. Sg. 30 of April 13, 1990, amendment no. Sg. No. 94 of November 23, 1990, am. SG. number 27 of April 5, 1991, amendment. SG. no. 32 of April 23, 1991, amendment no. Sg. 104 of December 17, 1991, Am. Sg. No. 23 of March 19, 1992, amendment no. SG. no. 26 of March 31, 1992, amended. Sg. No.88 of October 30, 1992, Am. Sg. No. 100 of December 10, 1992, Am. Sg. No. 69 of August 4, 1995, Suppl. SG. number 87 of September 29, 1995, completed. Sg. No. 2 of January 5, 1996, completed. Sg. No. 12 of February 9, 1996, completed. Sg. No. 28 of April 2, 1996, amendment no. SG. number 124 of December 23, 1997; SG. number 22 of February 24, 1998, am. Sg. No. 52 of May 8, 1998, Am. Sg. No. 56 of May 19, 1998, Am. Sg. No. 83 of July 21, 1998, completed. Sg. No. 108 of September 15, 1998, am. SG. number 133 of November 11, 1998, am. SG. number 51 of June 4, 1999, supplemented. Sg. No. 67 of July 27, 1999, amended. SG. number 110 of December 17, 1999, am. SG. no. 25 of March 16, 2001, amendment no. SG. number 1 of January 4, 2002, amendment no. Sg. No. 105 of November 8, 2002, Am. Sg. No. 120 of December 29, 2002, am. SG. no. 18 of February 25, 2003, am. Sg. No. 86 of September 30, 2003, as amended. Sg. No. 95 of October 28, 2003, amendment no. Sg. No. 52 of June 18, 2004, am. Sg. No. 19 of March 1, 2005, amendment no. SG. no. 27 of March 29, 2005, amended. Sg. No. 46 of June 3, 2005, amended. SG. no. 76 of September 20, 2005, amendment no. Sg. No.83 of October 18, 2005, amendment no. Sg. No. 105 of December 29, 2005, am. Sg. No. 24 of March 21, 2006, as amended. Sg. No. 30 of April 11, 2006, amendment no. Sg. No. 48 of June 13, 2006, am. SG. no. 57 of July 14, 2006, amended. Sg. No. 68 of August 22, 2006, amended. Sg. No. 75 of September 12, 2006, amended. Sg. No. 102 of December 19, 2006, Am. Sg. No. 105 of December 22, 2006, amended. SG. number 40 of May 18, 2007, am. SG. number 46 of June 12, 2007, am. Sg. 59 of July 20, 2007, amended. Sg. No. 64 of August 7, 2007, amended. Sg. No. 104 of December 11, 2007, as amended. Sg. No. 43 of April 29, 2008, amendment no. Sg. No. 94 of October 31, 2008, as amended. Sg. No. 108 of December 19, 2008, amended. SG. no. 109 of December 23, 2008, amended. SG. no. 35 of May 12, 2009, amended. SG. number 41 of June 2, 2009, am. Sg. No. 103 of December 29, 2009, fine. SG. no. 15 of February 23, 2010, fine. Sg. No. 46 of June

18, 2010, am. Sg. No. 58 of July 30, 2010, am. SG. number 77 of October 1, 2010, amendment no. SG. number 91 of November 19, 2010, amendment no. SG. number 100 of December 21, 2010, am. SG. no. 101 of December 28, 2010, fine. SG. No. 18 of March 1, 2011, am. Sg. No. 33 of April 26, 2011, am. SG. number 61 of August 9, 2011, amend. Sg. No. 82 of October 21, 2011, am. SG. number 7 of January 24, 2012, amendment no. and dop. Sg. Issue 15 of February 21, 2012, Am. Sg. No. 20 of March 9, 2012, am. and dop. Sg. No. 38 of May 18, 2012, Am. Sg. No. 49 of June 29, 2012, am. Sg. No. 77 of October 9, 2012, completed. Sg. No.82 of October 26, 2012, Am. SG. number 15 of February 15, 2013, completed. Sg. No. 104 of December 3, 2013, completed. SG. number 1 of January 3, 2014, am. and dop. SG. number 27 of March 25, 2014, am. and stopper. Sg. No. 61 of July 25, 2014, Am. and dop. SG. number 54 of July 17, 2015, amendment no. SG. number 61 of August 11, 2015, fine. and dop. SG. number 79 of October 13, 2015, am. and dop. Sg. No. 98 of December 15, 2015, Am. SG. number 8 of January 29, 2016, amend. no. and stopper. SG. number 57 of July 22, 2016, amend. no. SG. number 59 of July 29, 2016, amendment no. and stopper. Sg. No. 98 of December 9, 2016, Am. and stopper. Sg. No. 105 of December 30, 2016, Am. Sg. No. 85 of October 24, 2017, Am. Sg. 86 of October 27, 2017, amended. Sg. No. 96 of December 1, 2017, amendment no. and stopper. Sg. Dec.102 of December 22, 2017, Am. and dop. SG. number 7 of January 19, 2018, amendment no. SG. number 15 of February 16, 2018, amendment no. and dop. SG. number 30 of April 3, 2018, amendment no. and dop. Sg. No. 42 of May 22, 2018, Am. and dop. SG. number 59 of July 17, 2018, amendment no. SG. number 77 of September 18, 2018, amendment no. SG. number 91 of November 2, 2018, amendment no. and dop. SG. No. 92 of November 6, 2018

Chapter 1.

GENERAL PROVISIONS – Subject matter and purpose

Art. 1. (1) This Code regulates the labour relations between the employee and the employer, as well as other relations directly related to them.

(2) (new, SG no.2/1996) The relations in the labour force insurance are established only as labour relations.

(3) (Previous paragraph 2 - SG no. 2/1996, amended, SG no. 25/2001, in force since 31/03/2001). This Code aims to ensure freedom and protection of fair and decent working conditions and social dialogue between the State, workers, employees, employers and their organizations in order to address their labour relations and their immediate relations.

Social dialogue

Art. 2. (new - SG 25 of 2001, in force 31/03/2001.) of the Bulgarian Labor Code - the State regulates labor relations and directly related, security relations and standard issues, after consultation and dialogue with the living employees, the employers and their bodies.

3. **SOCIAL SECURITY CODE** (amended, SG no. 67/2003) - In force as of 01/01/2000 - No. 103 of December 28, 2017, Am. and dop. SG. number 7 of January 19, 2018, amendment no. and dop. SG. number 15 of February 16, 2018; SG. number 16 of February 20, 2018, amended SG. number 17 of February 23, 2018, amended.

Art. 1. (Supplemented, SG no. 1/2002, in force as of 1/01/2002, SG 67/03) This code regulates the public relations regarding:

- State social insurance for general illness, work accident, occupational disease, maternity, unemployment, age limit and death;
- supplementary social security, which includes:

- (a) mandatory supplementary old-age and survivors' pension insurance;
- (b) (modification -. SG 56 of 2006, 01/01/2007) efficient optional supplementary pension insurance funds for optional supplementary pension insurance for age limit, disability and death or in optional supplementary pension insurance funds by the old professional systems;
- (c) voluntary supplementary unemployment insurance and / or professional qualifications.

4. ORDER No. 4 of 11/05/1993 regarding the documents that are necessary for the conclusion of an employment contract

Issued by the Minister of Labour and Social Protection, prom., SG, no. 44 of May 25, 1993, amended and supplements, no. 99 of 12.12.2017

Art. 1. (1) (Previous article 1, SG no. 99/1917) *In order to conclude an employment contract, you need:*

1. an identity document, which is returned immediately;
2. the document of acquired education, specialized training, qualification, academic or study title, when required for a job or employment for the applicant;
3. proof of experience in the specialty in which the job or work for which the person requests is obliged to have such a service;
4. the document for the medical examination at the initial entry into work and after the termination of the employment contract for a period of work greater than 3 months;
5. a conviction certificate in case a law or a normative act requires the authentication of a judicial past;
6. permission of the labour inspector if the person is not 16 years old or is between 16 and 18 years old.

(2) (new, SG no. 99/1917) When the document provided in par. letterd 2 of the higher education abroad, the administrative body that an employer is required to request proof of its recognition through official channels.

Art. 2. The employer may request the presentation of documents other than those specified in art. 1, if it is provided for or derives from a law or other normative act.

Art. 3. Those mentioned in art. 1 documents are also required in the case of a work relation based on selection and competition.

Generally, regulated professions are those professions that you cannot practice unless you have a certain diploma that gives access to the profession, if you have passed a series of specific exams (such as those organized by the State) and/or if you have registered in a professional organization.

If your profession is regulated in [EU country](#) where you want to practice it, you may need to get recognition of your professional qualifications in that country.

How to use the database of regulated professions:

- Select the EU country where you received the qualification and the EU country you want to work in
- Look for the profession's name in your native language

If the profession you want to practice does not appear, it may not be regulated in that country.

If you do not find any information about your profession in the database, you can contact one of the contact points for the recognition of professional qualifications from the country you want to work in⁵⁹. Advisers can help you understand the rules that apply to you.

For the recognition of professional qualifications associated with certain professions - lawyer, air traffic controller, pilot etc., specific EU rules apply.

5. ORDER No. 5 of 20 April 2006 on ensuring health and safety at work for workers who have a fixed-term or temporary employment relationship

Issued by the Minister of Labour and Social Policy, promulgated, the Official Gazette, no. 43 of May 26, 2006, amended and supplemented, no. 19 of 26/02/2013

Section I General provisions

Art. 1. The Order lays down additional requirements to ensure healthy and safe working conditions for workers who have a temporary employment relation.

Art. 2. The Order applies:

1. in all the companies and places provided in art. 2 of the Law on health and safety at work, for employees employed on a fixed-term contract basis:

- (a) for a fixed period;
- (b) until the completion of a particular job;
- (c) the replacement of a worker who is absent from work;
- (d) to carry out temporary, seasonal or short-term works and activities;
- e) (new, SG no. 19 of 2013) for the work in office, which is carried out through competition;

f) (new, SG no. 19 of 2013) for a certain mandate;

2. (amended, SG 19 of 2013) in all companies, workers and employees, sent by companies providing temporary work.

Art. 3. (1) Employers who employ employees on a temporary employment contract and undertakings employing workers sent by a temporary employment enterprise shall be required to ensure healthy and safe working conditions and the same degree of protection against the production risks of all employees.

(2) In carrying out the activity of ensuring healthy and safe working conditions, the persons referred to in par. 1 are obliged to comply with all the requirements of the legislation in the field of health and safety at work.

Section II - Specific provisions

⁵⁹ Bulgaria

Directorate for “Academic Recognition and Regulated Professions”

(Assistance Center for Bulgaria)

National Center for Information and Documentation /

Национален център за информация и документация

B-dul. 1125 София / София

BULGARIA / BULGARIA

- Mr. Kostadin Tonev, Director: Tel / Tel: +359 2 817 38 62, +359 2 817 38 54
- Fax / Fax: +359 2 971 31 20
- E-mail: reg_prof@nacid.bg
- Website: <http://nacid.bg/sites/qual>

Art. 4. (1) Before starting the work, the persons provided in art. 3, par. 1 are required:

1. to provide employees with information about:
 - (a) the risks to their health and safety, as well as the measures taken to eliminate, reduce and control these risks;
 - (b) the professional qualifications or skills required to carry out the work;
 - (c) the medical examinations required by Ordinance no. 3 of 1987 regarding the preliminary and periodic medical examinations of the workers;
2. to provide the workers with the appropriate training or training regarding the health and safety at the workplace, according to the specific of each job and their qualifications and professional experience.

Art. 5. (amended, SG 19 of 2013) The persons mentioned in art. 3, par. 1 are obliged to provide their own medical supervision account for workers in temporary or temporary work under the Ordinance No. 3 of 1987 regarding mandatory preliminary and periodic medical examinations of workers.

Art. 6. (the modification -. SG 19 of 2013). In order to organize the implementation of activities related to the protection against occupational risks and the prevention of these risks, the persons mentioned in art. 3, par. (1) inform the officials and specialized departments of the company, as well as the employees who work temporarily.

Art. (1) (Printed, SG 19 of 2013) The companies, the workers and the employees, sent by the companies that provide temporary work, are obliged in advance to:

- (1) determine the type of work and temporary jobs;
2. (amended, SG no. 19/2013) notify the company that provides temporary works on the specific characteristics of the job, the occupational risks and the professional qualification required.

(2) (Amended by SG no. 19/2013) Employer of temporary work:

1. to provide information on the conditions provided in par. 1 of the employees involved;
2. (amended, SG 19 of 2013) includes in the employment contract the conditions stipulated in par. 1.

(3) (new, SG 19 of 2013) The information provided in par. letter d 2 is sent by:

1. The Internet, with electronic signature, if the user company has a universal electronic signature certificate or an explicitly authorized person who holds a universal electronic signature certificate;
2. a recommended letter with acknowledgment of receipt.

Art. 8. (modification -. SG 19 of 2013.) Users Companies of the workers sent by the companies providing temporary work are responsible for fulfilling their obligations to ensure healthy and safe working conditions.

7 ORDER No. 7 of 23/09/1999 on the minimum requirements for health and safety at work and work equipment - Issued by the Ministry of Labour and Social Policy and the Minister of Health, promulgated, the Official Monitor, no. 88 of 8/10/1999, in force from 9/01/2000, amend. 48 of 13/06/2000, in force since 1/01/2003 - amended. 52 of 8/06/2001, amend. and supplements, no. 43 of May 13, 2003 (*), amendment no. 37 of 4/05/2004, in force since 5/11/2004, amend. and supplements, no. 88 of 8/10/2004, in force on 5/11/2004, no. 40 of 18/04/2008, no. 24 of 12/03/2013, amend. 95 of 29/11/2016, in force on 1/03/2017.

GENERAL PROVISIONS

Art. 1. (1) This Regulation lays down the minimum requirements for health and safety at work:

1. at any workplace;
2. when using work equipment.

(2) The present ordinance applies to all companies and places where works are carried out according to art. 2 of the Law on Health and Safety at Work (HSPA).

(3) This Ordinance is applied in accordance with the specific regulations regarding the protection of health and safety at the work, regulating the requirements for the following jobs:

1. in transport used outside the company and in the means of transport;
2. on temporary or mobile workplaces;
3. in the mining industry;
4. fishing vessels;
5. in fields, forests and other places that are part of agricultural and forestry enterprises and are located outside the headquarters and on the territory of the enterprise.

(4) (New, SG 43/03) This Ordinance also applies to persons who carry out independent activities.

Art. 2. The employer shall ensure that the requirements of this Regulation apply to the workplace, the working process and the use of the work equipment provided.

Art. 3. (1) In addition to the obligations provided in the Law on equipment for health and safety, the employer:

1. (Supplemented, SG no. 43/2003, no. 40 of 2008) will inform the workers and / or their representatives about the safety and health at work for all the measures related to the protection of health and safety, which are and will be taken at the workplace and in the use of the work equipment. The information must be easy to understand for the workers concerned;

2. (Supplemented, SG no. 40/2008) consults with the workers and/or their representatives on the safety and health at the work and offers opportunities for their participation in all matters related to this regulation.

Art. 4. In the organization and conduct of the work activity, the requirements of this ordinance, the normative acts regarding the safety and health at work for the different productions, activities, types of work and work equipment and for fire safety are fulfilled.

3. SETTLEMENT OF LABOUR LITIGATIONS IN BULGARIA:

Employment contracts may be terminated by the employer or employee, with or without notice.

Employee repatriation expenses are borne by the employer or employee.

- *National health system:*

Health care in Bulgaria is organized and administered by the Ministry of Health. The National Health Insurance House / CNAS / regulates the contributions for health services. Health insurance contributions are mandatory.

- *Other useful information:*

The Romanian Embassy in Sofia has no attaché on labour issues.

Local authorities with competence in the field of labour and social security: Detailed information on work in the Republic of Bulgaria can be obtained from the Employment Agency: <http://www.az.government.bg/>.

Also, the Romanian citizens can also address the Directorate for Protection of the Rights of Romanian Citizens Working Abroad within ANOFM, e-mail: dprs@ajofm.anofm.ro.

Other useful links:

- a. Ministry of Foreign Affairs of Bulgaria - <http://www.mfa.bg/index.php>
- b. Bulgarian Embassy in Bucharest - <http://www.mfa.bg/embassies/romania>
- c. Ministry of Labour and Social Policy - <http://www.mlsp.government.bg/bg/index.asp>
- d. Ministry of Health - www.mh.government.bg/
- e. National Health Insurance House - www.nhif.bg
- f. Employment Agency - <http://www.az.government.bg/>

4. MEDICAL SYSTEM IN BULGARIA

Medical insurance is mandatory in Bulgaria.

The insurance policies must be concluded in Romania, as there is no possibility to conclude them in Bulgaria.

It is advisable for Romanian citizens wishing to work in Bulgaria to obtain health insurance or obtain a European Health Card before working in Bulgaria.

In case of illness or accident of work accident and not only of a Romanian citizen in the territory of Bulgaria, during a temporary stay, the form E112 or *European health insurance card* will give you access to the necessary medical care.

This card will allow you to receive the necessary medical assistance during your temporary stay in Bulgaria.

It is advisable to conclude also an additional *medical insurance*, valid in the country of destination Bulgaria, but also in the transit countries. Based on such optional insurance, Romanian citizens have access to emergency services from both the public and private health systems (depending on the type of insurance policy). At the conclusion of such insurance, check the details of the partner of the insurance company in the country of destination and of transit.

Life insurance it has proved beneficial for the families of the deceased as a result of accidents or because of illness.

In the European Union and implicitly in Bulgaria, there is no need for special vaccinations.

Please note that the official holidays of the Republic of Bulgaria for 2018 - 2019 are as follows:

- January 1 - New Year (free day)
- March 3 - Liberation Day of Bulgaria (free days March 3 and 4)
- April 26-29 - Easter (holidays)
- May 1 - Labour Day (free day)
- May 6 - St. Gheorghe, Bulgarian Army Day (free day)
- May 24 - Bulgarian Education and Slavonic Writing Day (free day)
- September 6 - Day of the Union of the Principality of Bulgaria with Eastern Rumelia (free day)
- September 22 – Bulgaria's Independence Day (free days September 22 and 23)
- December 24 - 26 - Christmas (free days)

3. Atypical forms of employment (the need for relaxation of the labor relations in the current social context) - individual employment contract on indefinite period, work through temporary agent, contract of apprenticeship at the place of work, the individual employment contract at home, etc.

Employment means, in principle, the conclusion of a legal relation of work. Legal relation most frequently encountered is based on the **individual employment contract**. In this case, there is an employer and an employee, between whom a contract has been concluded, whereby the second one provides, for the benefit of the former, paid work.

According to art. 10 of the Labor Code, the individual employment contract is the contract under which a natural person, called an employee, undertakes to perform the work for and under the authority of an employer, the natural or legal person, in return for a remuneration called salary.

The Labor Code provides for different types of employment contracts:

- The contract is concluded for an indefinite period

This type of contract shall constitute a rule, according to Article 12⁶⁰ of the Labor Code. This means that, if the parties have not provided for nothing with regard to the duration of the contract, it shall be deemed to have been concluded for an indefinite period.

- contract concluded on a definite period

This type of contract may be terminated only in certain circumstances, expressly provided for in Article 82⁶¹ of the Labor Code, as amended by the Government Emergency Ordinance no. 65/2005, which was approved by the Law no. 371/2005:

- a) Replacing an employee in case of suspension of the contract or employment, except that the employee involved in the strike.

***Example:** During the period in which an employed benefit of leave for child raise up to the age of 2 years, the employer may qualify for the duration determined another person to take temporary powers.*

- b) Temporary increase of the activity of the employer

⁶⁰ **Article 12**

(1) Individual employment contracts shall be concluded for an indefinite period.

(2) By way of exception, individual employment contracts may be concluded for the duration determined in accordance with the conditions expressly provided for by law.

⁶¹ **Article 82**

(1) By way of derogation from the rule laid down in Article 12(1), employers have the opportunity to engage in the cases and under the conditions of this Code, the staff employed by individual contract of employment relationship.

(2) individual employment contracts on duration may be terminated only in written form, specifying the express request of the duration for which ends.

(3) individual employment contracts on specified period may be extended, in accordance with the conditions laid down in Article 83, and after the expiry of the initial period, with the written consent of the parties, for the period from the completion of the project, scheme or a work.

(4) between the same parties may conclude successively more than 3 individual contracts of employment relationship.

(5) individual employment contracts on definite period concluded within 3 months of the end of a fixed-duration contract of employment shall be deemed to be contracts in succession and may not have a duration of less than 12 months each.

***Example:** In the summer, a company whose scope of activity is the distribution of soft drinks concludes a large number of commercial contracts that it can not honor except by employing additional staff. During the course of these contracts, the company may opt for the conclusion of contracts on definite period.*

c) Carrying out activities with seasonal nature

***Example:** During the cold weather season, a specialized company rents equipment intended for winter sports. For the pursuit of such activities, the company will be able to conclude contracts of employment for the period December - March.*

d) in the situation in which it is concluded on the basis of laws issued for the purpose of enhancing the temporarily certain categories of persons without employment, etc.

***Example:** A unit that has the object of building civil engineering contracts with the local town hall a work that consists of building an underground passage. In order to carry out the work, the construction company employs people who are looking for a job, benefiting from the facilities granted according to Law no. 76/2002 on the unemployment insurance system and the stimulation of employment.*

e) for hiring a jobseeker who, within 5 years from the date of employment, fulfils the retirement conditions for the old age;

f) to occupy an eligible position in trade unions, employers' organizations or non-governmental organizations, during the term of office.

***Example:** Employment contract of the leader of the trade union is suspended for the duration of their mandate. In the same period, he will be employed as an employee of the organization of trade unions and paid from its funds.*

g) hiring pensioners who, under the law, can accumulate the salary with the pension;

h) in other cases expressly provided for by special laws or for the carrying out of works, projects, programs, under the conditions established by the collective labor contract at national or branch level.

- Working at home

In accordance with Article 105 of the Labor Code, shall be deemed to be employees to work at home employees who meet at their place of residence, the specific tasks of the function. In the fulfilment of the task devolving upon them, employees to work at home you establish themselves the work program.

- Work through a temporary work agent

Work by temporary work agent is, according to art. 87 of the Labor Code, the work done by a temporary employee who, from the disposition of the temporary worker's agent, provides work in favour of a user.

- part-time work contract

Such a contract is concluded for work performed more than 2 hours per day and 10 hours per week. According to art.101 of the Labor Code, the employer can employ employees with a part-time work schedule of at least two hours a day, through individual work contracts for indefinite or definite duration. Such contracts shall only be concluded in writing.

- the apprenticeship contract

The Apprenticeship Agreement was approved by Law no. 279/2005, published in the Official Gazette no. 907 of 11 October 2005, which entered into force on 8 February 2006.

According to art. 4(1) of the Law no. 279/2005, the apprenticeship contract is an employment contract of a particular type, concluded for a definite period, on the basis of which an individual, called apprentice, undertakes to prepare professionally and to work for and under the authority of a legal or natural persons called employer, who are obliged to ensure payment of salary and all the conditions necessary for professional training.

Some of these types of employment contracts can be combined.

Example: It is possible to conclude a part-time contract for a fixed period, or a fixed-term contract concluded by a temporary labor agent, work at home can be done either on the basis of a contract of employment for an indefinite period and on a work contract concluded on definite period, etc.

The legal relationships under which work is done are not limited to those based on the individual employment contract. They are numerous and diverse. Not all involve a job. Some are part of the labor relations category, others are civil legal relationships, some are based on a contract, some are not, some are governed by labor law, others are not. Begin by identifying the type of legal relationship under which you work or under which you work on the work done by another person.

Some of the legal relationships under which work can be done:

- Relationships based on **civil contracts, concluded under the Civil Code.**

Example: *It may be the case of the work performed by the installer called to carry out a repair, or by the person carrying out a topometric activity, performs a control, a measurement, a check.*

These activities are to be carried out on the basis of simple service contracts concluded under the Civil Code and not registered with the Territorial Labor Inspectorate. Their conclusion does not confer on the service provider the quality of the employee and none of the rights that would result from that quality. The Beneficiary will not have to pay social security contributions to which an employer is bound. The legal relationship is one of civil law, not labor law.

Thus, there is the possibility of concluding contracts based on the Civil Code between the two parties (the one who performs the activity and the one for whose benefit it is provided).

As a result of the amendment of the Labor Code by Government Emergency Ordinance no. 55/2006, published in the Official Gazette no. 788 of September 18, 2006, employment contracts may also be concluded for shorter periods of 2 hours /

day. This means that a large number of civil conventions are transformed into individual employment contracts.

Law no. 571/2003 - The Fiscal Code also refers to this category of activity when it provides for the withholding of the tax corresponding to the income "from activities carried out on the basis of civil contracts / conventions concluded according to the Civil Code". It is an explicit recognition of the validity of these civil contracts.

- Relationships based on **civil conventions, concluded on the basis of special laws**

Example: The methodological norms regarding the organization and functioning of the owners' associations, approved by the Government Decision no. 400/2003, modified by the Government Decision no. 1.386 / 2003 and by the Government Decision no. 781/2006, provide in art. 22 that "the activity of property management and financial management is ensured either by natural persons engaged in individual employment contracts or by civil service rendering conventions, or by legal entities, by management contracts, according to the decision of the general meeting of owners ". We draw attention to the fact that this is a normative act after the Labor Code.

e. But many regulatory acts prior to the Labor Code, which refer to the conclusion of civil service-provision conventions, are still in force: Government Ordinance no. 66/2000, republished, regarding the organization and exercise of the profession of industrial property counsellor; Government Emergency Ordinance no. 83/2000 regarding the organization and functioning of the practice rooms for the public services related to the medical act; Law no. 184/2001 regarding the organization and the exercise of the profession of architect, etc.

- Relationships based on a **Volunteer contract**.

The regulation of this type of activity can be found in the Volunteering Law no. 195/2001, modified by the Government Ordinance no. 58/2002. It is unpaid work done in the public interest. Unfortunately, our legislation does not provide for significant tax benefits for the person providing this type of activity, as set out in other legal systems, which makes voluntary work at present not frequently performed.

- **Relations between the civil servants**

Civil servants are not employees, their work is not regulated by the Labor Code but by Law no. 188/1999 on the Statute of civil servants, modified by Law no. 251/2006, published in the Official Gazette no. 574 of July 4, 2006, as well as by certain special statutes, applicable to certain categories of civil servants.

In addition to the legal relationships mentioned above, there are other types of legal relationships on which labor can be performed.

Example: Work can be performed by the self-employed, by a natural person authorised to carry out economic activities, by cooperative members, by clerical staff, etc., in different legal grounds. It shall also lay down the legal relationship between the associate and the trading company, in the case of a contribution in the industry.

4. Rights and obligations of the employee of the individual employment contracts;

Rights of salaried employees/employees

The quality of employee gives the person certain rights, and at the same time assumes a certain behaviour, compliance with certain obligations. In general, the rights and obligations of employees are governed by the Labor Code but for certain

categories of staff are also provided by the professional or disciplinary statutes. They can also be specified in collective labor agreements and internal regulations.

According to art.37 of the Labor Code, the rights and obligations regarding the employment relations between the employer and the employee are established, according to the law, by negotiation, within the framework of collective labor agreements and individual employment contracts. However, the contractual freedom of the parties to the individual employment contract is restricted, in the sense that the availability of the renunciation, the trading or the limitation of the rights that are recognized by law to the employees at the conclusion and negotiation of the contract is diminished.

"Rights recognized by law" means the rights established by regulatory acts, but also by collective labor agreements, the fundamental rights of employees. Other rights may be traded by employees ⁶².

The rights of employees established by the Labor Code.

Thus, according to Article 39(1) of the Labor Code⁶³ "employee has, in the main, the following duties:

- a) the right to remuneration for work;⁶⁴
- b) the right to daily and weekly rest;⁶⁵
- c) the right to annual leave;⁶⁶
- d) the right to equality of opportunities and treatment;
- e) the right to dignity at work;
- f) the right to safety and health at work;
- g) the right of access to vocational training;
- h) the right to information and consultation;
- i) the right to take part in the determination and the improvement of the conditions of employment and the working environment;
- j) the right to protection in the event of dismissal;
- k) the right to collective and individual bargaining;
- l) shall be entitled to participate in the collective action;
- m) the right to constitute or to join a trade union."

With respect the rights sanctioned by the text as we mention the following:

1.1 Right to equality of opportunities and treatment (subparagraph (d) of Article 39(1) of the Labor Code).

The Labor Code in Articles 5 and 6 take the principle of equal treatment⁶⁷ and non-discrimination⁶⁸ of the general provisions of the Constitution (Article 16(1) and

⁶² I. T. Ștefănescu, *Considerations on the application of Art. 38 of the Labor Code*, in "Dreptul" no. 9/2004, p. 79-83.

⁶³ The provisions of Article 39(1) of the Labor Code include the principles set out in Article 6 of the Labor Code according to the which: "(1) Any employee providing work benefit of working conditions appropriate to the work carried out, social protection, health and safety at work, as well as compliance with dignity and conscience, without any discrimination.

(2) To all employees who work are recognized the right to equal pay for equal work, the right to collective bargaining, the right to the protection of personal data, as well as the right to protection against illegal dismissal."

⁶⁴ The salary is treated in chapter 7.

⁶⁵ Work and rest time are treated distinctly in chapter 8.

⁶⁶ The same shall apply.

⁶⁷ A See on this law: I. T. Ștefănescu *Considerations relating to Law no.202/2002 on equality of opportunities between women and men, with special regard on the scope of work*, in "The Romanian Review of labor law" no.2/2002, p.9-14; M. Volonciu, *Notifications, complaints and grievance against*

Article 41(4), and summarizes the provisions of other normative acts (Decree of the government no. 137/2000 on preventing and punishing all forms of discrimination⁶⁹ and Law no. 202/2002 on equal opportunities between women and men⁷⁰), as well as a series of international standards⁷¹, adapted to the particularities of social relations of work. Equality of treatment works as regards both employees and employers.

Equal treatment works both for employees and for employers.

Every employer must not discriminate his / her own employees for any reason at the conclusion, execution, modification, suspension and termination of the employment contract, but neither the territorial organizations of trade unions, by group of units, branches or at national level they have to treat their employers or their associations differently. The same behaviour is also required for employers or employers' associations to trade union organizations.

In turn, public authorities (Employment Agency, Labor Inspectorate, ministries, etc.) have to treat from the same equality positions - without any discrimination, employees and employers, their organizations, not to benefit some and discriminate against others.⁷²

However, ensuring equal treatment, whether they are employees or employers, does not necessarily mean uniformity, not taking into account the special features of the specific requirements.⁷³

1.2. Right to dignity at work

According to Article 1(3) of the Constitution of Romania: "Romania is the rule-of-law state, democratic and social, in which human dignity, the citizens' rights and freedoms represent supreme values and shall be guaranteed".

The right to work derives from this constitutional law and is established in Article 6(1) and Article 39(1)(e) of the Labor Code. It is proclaimed by several international documents: Universal Declaration of Human Rights⁷⁴, the

the measures of discrimination based on sex criterion, in "The Romanian Review of labor law" no. 1/2003, p. 27-32.

⁶⁸ A See the issue of the bill, s. Beligradeanu, *Impact of the decree of the government no. 137/2000 on preventing and punishing all forms of discrimination on the labor law*, in "right" no. 1/2001, p. 3-22.

⁶⁹ Published in the Official Gazette of Romania, Part I-A, No 431 of 2 September 2000, as approved with amendments to Law no. 48/2002 (published in the Official Gazette of Romania, Part I, no. 69 of 31 January 2002), as amended and supplemented subsequently, including by the Law no. 27/2004 (published in the Official Gazette of Romania, Part I, No 216 of March 11, 2004).

⁷⁰ Republished in the Official Gazette of Romania, Part I-A, No 150 of 1 March 2007.

⁷¹ Convention No. 111 of 1958 on Labor Discrimination and the Exercise of the Occupation, ratified by Romania by Decree No. 284/1973 (published in the Official Bulletin no. 81 of June 6, 1973); The International Covenant on Social and Cultural Economic Rights; Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms; Directive 76/207 / EEC of 9 February implementing the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; Optional Protocol of 6 October 1999 to the International Labor Organization Convention on the Elimination of All Forms of Discrimination Against Women, ratified by Law no. 283/2003 (published in the Official Gazette of Romania, Part I, No. 477 of 4 July 2003)

⁷² A See also the national action plan for combating discrimination, approved by Government Decision no. 1258/2004 (published in the Official Gazette of Romania, Part I, No. 775 of 24 August 2004).

⁷³ I. T. Stefanescu, *the Treaty of labor law*, p. 89-90.

⁷⁴ Adopted by the United Nations on 10 December 1948. Article 12 - "No one shall be subjected to arbitrary interference in his personal life, in his family, at his home or in his correspondence, or in the

international Pact on the rights of the economic, social and cultural, European Social Charter revised.⁷⁵

The necessity of establishing and safeguarding the right to dignity at work stems from the specific subordination relation to the labor relations. The employer has the right to give orders, instructions, to determine the employee's job duties and to control the fulfilment of these tasks, but in their exercise the employer must respect the fundamental rights of the employees.

Sexual harassment⁷⁶, moral harassment, discrimination for any reason represent violations of dignity in work. There are other actions whereby the employer may violate the right to dignity. Any abuse of malpractice, malfeasance, insulting employee behavior, any behavior governed by the intention to intimidate the employee, and unjustified criticism of the employee, all the more so as these criticisms occur to all colleagues, without giving the right to reply, made in order to humiliate the employee is a violation of this right. The physical destruction of the employee's work in front of all his colleagues, the maintenance of the same salary of an employee with higher education as that of an employee with secondary education with the obvious intention to place the employee with higher education in a situation of inferiority is a violation of human dignity⁷⁷.

Art. 39 (1) (e) and (f) of the Labor Code cover only partially the moral harassment of employees and only in cases where harassment has led to illnesses that can be proved with medical documents; not the situation where employees are subjected to harassment, but without worsening of the state of health, such as, for example, the situation of the moral degradation of labor relations. The person who considers himself the victim of moral harassment has at his disposal the procedural means specific to labor conflicts. With respect to the burden of proof, Art. 287 of the Labor Code. Thus, in the case of moral harassment, the employee who considers himself to be harassed will present the elements of fact susceptible of moral harassment, and the employer will prove that his actions are not harassment and that his decision is justified by objective elements, foreign to any harassment.⁷⁸

1.3. Right to safety and health at work

The right to safety and health at work of the employee corresponds to the correlated obligation of the employer to ensure the safety and health at work of the employees established by the provisions of art. 171 of the Labor Code.

Safety and health at work is defined by art. 5 letter n) of Law no. 319/2006 on health and safety at work⁷⁹ as "the set of institutionalized activities aiming to ensure the best conditions in the process of work, the protection of life, physical and mental integrity, the health of workers and other persons participating in the work process"⁸⁰.

affairs of honor and its reputation. Everyone has the right to protection of the law against such interference or interference."

⁷⁵ Ratified by Romania by Law No. 74/1999 (published in the Official Gazette of Romania, Part I-A, No 193 of 4 May 1999).

⁷⁶ See also E. Tanislav, E. Tanislav jr., *The crime of harassment of the employee. Proposals of "lege ferenda"* on the aggravating form, in "Romanian Labor Law Review" no. 1/2003, pp. 65-67.

⁷⁷ C. Gilcă, *Dignity at work*, in "Romanian Labor Law Review" no. 2/2004, p. 71-73

⁷⁸ C. Moral Gilca, *Sexual harassment at the workplace*, and in "The Romanian Review of labor law" no. 1/2005, p. 105.

⁷⁹ Published in the Official Gazette of Romania, Part I, no. 646 of 26 July 2006.

⁸⁰ "Health and safety at work" and "social protection of work" are synonymous.

The development of the production activities is conditioned by the provision of the best conditions for the work process, the defense of life, physical and mental integrity, the health of workers and other people participating in the work process. It involves the prevention of all or any measures taken or envisaged at all stages of the work process in order to avoid or mitigate occupational hazards, information, consultation, participation and training of workers and their representatives and all other measures designed to ensure the achievement of these conditions.

Measures to ensure health and safety of work are taken either before the start of production or service activities, or they are taken in the stage of technological endowment.

Employers are required to obtain authorization to work from the point of view of safety and health at work prior to commencement of any activity (Article 3 of the Government Decision No. 1425/2006 approving the Methodological Norms for the application of the provisions of the Law on Safety and Health at Work No.319/2006 ⁸¹). It is not authorized, according to the provisions of the methodological norms for the application of the provisions of the Law on safety and health at work no. 319/2006, the natural persons, the family associations and the legal entities for which the authorization of the official, including from the point of view of safety and health at work, is performed on the basis of Law no. 359/2004 on the simplification of the formalities for the registration in the trade register of natural persons, family associations and legal persons, their fiscal registration, as well as the authorization of the functioning of legal persons⁸² (Article 4 of Government Decision 1425/2006) ⁸³.

The rules on health and safety at work apply in all sectors of activity, both public and private, employers, workers and workers' representatives (Article 3 of Law 319/2006).

Employee means "a person employed by an employer, according to law, including students, pupils during practice, as well as apprentices and other participants in the work process, except for persons providing domestic work" (Article 5 (a) of Law No 319/2006). Other participants in the work process are "persons in the enterprise and / or unit, with the employer's permission, during the pre-qualification period of the professional skills for employment, the persons who provide community-based activities or volunteer activities, and the unemployed during the period of participation in a form of vocational training and the persons who do not have an individual employment contract concluded in written form and for whom it is possible to prove the contractual provisions and the benefits provided by any other means of proof "(Article 5 letter c) Law No. 319/2006).

⁸¹ Published in the Official Gazette of Romania, Part I, no. 882 of October 30, 2006.

⁸² Published in the Official Gazette of Romania, Part I, no. 839 of 13 September 2004, as amended. According to art. 15 par. 1 lit. b of Law no. 359/2004 (1): "For the purpose of issuing the registration certificate containing the unique registration code or, where applicable, of the certificate of enumeration, the single office of the Trade Register Office attached to the tribunal shall have the obligation to submit , at the time of the application for registration and the supporting documents, the type-specific declaration signed by the associates or the administrators, resulting, as the case may be, from the fact that: the legal person fulfils the conditions of operation provided by the specific legislation in the field of prevention and extinction fire protection (PSI), sanitary, veterinary, environmental and occupational safety, for the activities specified in the type declaration.

⁸³ Article 4 1 of the Law no. 319/2006 Exemption from the provisions of art. 3 par. (1) cases where the inherent features of certain specific activities in public services, such as armed forces or the police, as well as disasters, floods and civil protection measures, are in conflict with this law.

Employer is a "natural or legal person who is in employment or work relationship with the worker concerned and who has the responsibility of the enterprise and / or the unit" (Article 5 letter b of Law 319/2006).

The Labor Code⁸⁴, in conjunction with Law no. 319/2006 establishes mandatory measures for the protection of health and safety at work. The mandatory measures to ensure health and safety at work have the purpose of ensuring the right of employees to safety and health at work, as expressly enshrined in the provisions of Art. 39 par. 1 lit. it's from the Labor Code.

Under its own responsibility, the employer will take the necessary measures to protect the safety and health of employees, including occupational risk prevention, information and training, as well as the implementation of the organization of labor protection and the means necessary for it (Article 173 1 of the Labor Code).

The Labor Code establishes in Art. 171 par. 5⁸⁵ that occupational safety and health measures can not, in any case, give rise to financial obligations for employees.

1.4. The right of access to professional training

Article 32 of the Constitution enshrines the right to education. According to par. 1 the right to education is ensured through compulsory general education, through high school and vocational education, higher education, and other forms of instruction and training.

Employee training, according to art. 188 of the Labor Code has the following main objectives:

- a) adapting the employee to the requirements of the job or the job;
- b) obtaining a professional qualification;
- c) updating the specific knowledge and skills of the post and the workplace and improving the vocational training for the basic occupation;
- d) professional reconversion caused by socio-economic restructuring;
- e) acquiring advanced knowledge, modern methods and procedures necessary for carrying out professional activities;
- f) preventing the risk of unemployment;
- g) promotion and career development.

This can be done in the following forms:

- a) participation in courses organized by the employer or by the providers of vocational training services in the country or abroad;
- b) professional adaptation periods to the requirements of the job and the job;
- c) internships and specializations in the country and abroad;
- d) apprenticeship organized at the workplace;
- e) individualized training;
- f) other forms of training agreed between the employer and the employee (Article 189 of the Labor Code).

⁸⁴ Art. 171 par. 1 and par. 2, art. 173 par. 1, art. 175, art. 176 para. 1, art. 177 paragraph 1, par. 2 and par. 3 and art. 182.

⁸⁵ In accordance with art. 21 of the O.I.M. no. 155 (1981) on the safety and health at work of workers.

1.5. The right to information and consultation⁸⁶

Law no. 467/2006⁸⁷ establishes the general framework for information and consultation of employees. In units with more than 20 employees at the start of the information procedures, employers, according to art. 5 par. 1 of the Law no. 467/2006, have the obligation to inform and consult the representatives of the employees about:

a) the recent evolution and likely evolution of the business and the economic situation of the enterprise;

(b) the situation, structure and likely pattern of employment within the undertaking and any anticipated anticipatory measures, in particular where there is a threat to employment;

(c) decisions which may lead to important changes in the organization of work, contractual relations or employment relationships, including those covered by the Romanian legislation on specific information and consultation procedures for collective redundancies and the protection of employees' rights in the event of the transfer of the enterprise.

The consultation takes place, according to par. 2 of art. 5 of the Law no. 467/2006 ,:

a) at a time, in a manner and with appropriate content, to enable employees' representatives to properly examine the issue and develop a point of view;

b) at a relevant level of representation of the management and representatives of the employees, depending on the subject discussed;

c) Based on the information provided by the employer and the point of view that employees' representatives have the right to formulate;

(d) so as to enable employees' representatives to meet with the employer and obtain a reasoned response to any point of view they can formulate;

e) to negotiate an agreement on decisions which may lead to important changes in the organization of work, contractual relations or employment relationships, including those covered by Romanian legislation on specific procedures for information and consultation in the case of collective redundancies and the protection of employees' rights , in case of transfer of the enterprise.

The right to information and consultation is not uniformly regulated in the case of employees. This right has the obligatory duty of the employer to inform the employees about the working conditions and the elements concerning the development of the working relations, the obligation to communicate to the employees the economic and financial situation of the periodic unit and the obligation to consult the employees in due time on the decisions which are likely to substantially affect their interests, the obligation to inform them about vacancies and so on.

The law provides for example that the Internal Rules must be posted at the employer's premises. That regulation sets out the tasks assigned to each component part of the undertaking, as well as the two-way relations between those parties, namely the factors of responsibility in each of the component parts, are detailed in their duties and the rights and obligations deriving therefrom . It is therefore the first way of informing employees about working conditions and the elements concerning the development of working relations.

⁸⁶ See Article 21 of the European Social Charter reviewed, ratified by Romania by Law No 74/1999 (published in the Official Gazette of Romania, Part I-A, No 193 of 4 May 1999).

⁸⁷ Publicată în Monitorul Oficial al României, Partea I-a, nr. 1.006 din 18 decembrie 2006.

Employees must also know exactly the risks and dangers posed at work and the right way to act to avoid accidents or illnesses.

The stipulation that the employer is obliged to communicate to the employees the economic and financial situation of the periodic unit, the period established by the collective labor agreement, is consistent with the role of the collective bargaining in the field of labor relations. Since there may be no collective labor agreements in certain units, it is necessary for such situations to include clauses on the periodicity in question in the single collective labor agreement at national and branch level⁸⁸. The provisions of paragraph 2 letter d of art. 39 of the Labor Code "does not oblige the employer to communicate information of a professional or confidential nature, which is likely to prejudice the activity of the unit. The obligation of communication refers to general data regarding the economic and financial situation of the unit, information to be published and the periodical balance sheet to be published in the Official Gazette of Romania, precisely to ensure the observance of market economy principles and the requirements of fair competition employees have a legitimate interest in knowing the economic and financial situation of the unit in which they work, and thus can appreciate the stability of working relationships, the prospects of achieving their rights and how they should act in order to protect their common interests with those of their employer "⁸⁹.

Employee consultation can be done individually or collectively - through their representatives or trade union leaders.

In this respect, Law no. 54/2003 on trade unions states that they have the right to be consulted on the draft normative acts in the matter, to receive information about the labor protection in order to negotiate collective agreements, to defend the employees who have suffered an accident at work or a professional illness, etc. Nothing stops the trade unions from bringing - possibly even negotiating - concrete proposals to improve working conditions with regard to: setting up access ways; provision of passage gauges; building of stairs, platforms, fencing; improving lighting and ventilation; screens and protection guards; combating noise and trepidation; limit switches, etc.

1.6. The right to take part in the determination and the improvement of the conditions of employment and the working environment

The obligation to permanently ensure the technical and organizational conditions envisaged in the development of the working norms and the appropriate working conditions is the responsibility of the employer.

The employer has the obligation to take the necessary measures to ensure normal working conditions, harm reduction, prevention of occupational accidents or illness. The parties (the employer and the employees) must have mandatory consultations to find the most effective measures to improve working conditions. When establishing these measures, the basic principle is man and his health, not material compensation.

In addition to personal opinions - whether expressed or not by the employee - in order to improve working conditions, there is also a legal framework in which the

⁸⁸ I. T. Ștefănescu, *op. cit.*, p. 44.

⁸⁹ Decision of the Constitutional Court no. 24/2003 on the unconstitutionality of the provisions of art. 40 par. (2) lit. d), art. 52 par. (1) lit. c), art. 53 par. (1), Art. 69, 70, 71, 129, 164 and 223 of the Labor Code, published in the Official Gazette of Romania, Part I, no. 72 of 5 February 2003.

determination and improvement of working conditions and the working environment is taking place: the Occupational Safety and Health Commission.

1.7. The right to protection in the event of dismissal

Labor law provides for many situations where the employee has the right to protection:

- dismissal of employees can not be ordered in the cases provided by art. 60 of the Labor Code;

- prior hearing in the event of dismissal for professional misconduct and for disciplinary reasons (Article 63 of the Labor Code);

- if the dismissal is ordered for the reasons set out in art. 61 lit. c) and d), as well as if the individual labor contract has ceased to exist pursuant to art. 56 lit. f), art. 64 of the Labor Code provides that an employer is obliged to propose employee and other vacancies in the unit compatible with training or, where appropriate, with working capacity established by occupational health doctor. If the employer does not have vacancies, it is obliged to seek support territorial agency employment jobs for redistribution employee, appropriate training and, where appropriate, work capacity determined by your occupational health and will communicates to the employee the solutions proposed by the Agency.

- in the case of redundancy for physical or mental unfitness, the employee is compensated, under the conditions laid down in the applicable collective labor agreement or in the individual labor contract, as the case may be.

- according to art. 67 of the Labor Code, employees dismissed for reasons not related to their benefiting from active measures to combat unemployment and eligible for compensation under the law and the applicable collective agreement.

- persons dismissed pursuant to art. 61 lit. c) and d) of art. 65 and 66 shall be entitled to a notice of not less than 15 working days.

- as a protective measure in the event of dismissal, the Labor Code provides that dismissal disposed in breach of the procedure provided by law is hit by absolute nullity (Article 76).

1.8. The right to collective and individual bargaining

The Labor Code establishes, at Art. 37, that the rights and obligations regarding the employment relations between the employer and the employee are established by law, by negotiation, in the framework of collective labor agreements and individual labor contracts.

Like any contract, the collective labor contract also requires the autonomy of the social partners to conclude, applying the principle of civil liberty in the sense that neither party can impose on the other, unilaterally, a legal relationship and the content of this report.

By concluding the collective agreement, labor law becomes a negotiated right of conventional origin created by employers and employers according to the economic and social conditions, as well as the interests of the two parties.

The clauses of each collective agreement have normative value; they form a right of their own labor for those who conclude it. The collective labor contract not only regulates the rights and obligations of the parties, but also the harmonization of some interests of employees and employers, the promotion of fair employment relations that will ensure the social protection of employees, the prevention or elimination of labor conflicts, or avoiding strikes.

The collective labor contract is concluded as a result of negotiations between the social partners - employers and employees. Through this negotiation, the content of the legal employment relationship is established, the rights and obligations of both parties in the work process are based.

Unlike the Law no. 130/1996 which stipulates the obligation of negotiation only at the level of the units with more than 21 employees, art.3 par. 1 of the Labor Code, without distinction, has a general character, that collective bargaining is mandatory, unless the employer has less than 21 employees art.236 par. 2.

Therefore, it may be appreciated that he made an implicit amendment of Law no.130 / 1996 through the Labor Code, negotiation becoming mandatory at any national level, branches of activity, groups of employers and employers with at least 21 employees.

We believe that such a solution is required based on a logical and systematic interpretation. Indeed, the respective text of the Labor Code is contained in Article 236 which deals with negotiation in general (at any level). Thus, in paragraph 1 is defined the collective labor contract, one of its parts being employer or employers' organization. However, it is known that such an organization is part of a contract concluded at a superior level with the unit. Paragraph 3 concerns the equality of the parties to the collective agreement, and paragraph 4 stipulates that such contracts concluded in compliance with the legal provisions are the law of the parties.

1.9. The right to participate in the collective action

Collective actions are trade union-specific actions, strikes, demonstrations, etc. Article 43 of the Constitution enshrines the right to strike in par. 1: "Employees are entitled to strike for the protection of professional, economic and social interests."

The Romanian legislator recognizes the right of employees to strike as the most violent form of conflict resolution for the defense of their own interests⁹⁰.

The interests defended by the strike are limited by the law to professional, economic or social interests.

Although it appears as an individual prerogative, exercise of the right to strike can only be achieved by a decision taken by the collectivity of employees. Therefore, the right to strike is not only the exercise of an individual right, but also has a strong configuration of collective law.

So the strike has two great features⁹¹:

- constitutes a collective and voluntary cessation of work. This feature should be understood, first of all, by the fact that the strike declaration must meet the adherence of the required number of employees to decide to stop the work;
- the strike can only be declared during conflicts of interest.

The conduct of an employer's employees over the strike that takes place in the unit where they work is to be freely chosen by them.

It is forbidden in this respect any constraint, regardless of whom it will come, to the employee to make him or not to strike.

The right to strike can not be banned or limited to employees only under certain conditions expressly provided for by the law and only for certain professional categories, as follows: judges, police prosecutors, civil servants from the National Administration of Prisons on mission, etc.).

Although the law forbids the categories of personnel listed to strike, its provisions do not explicitly prohibit the triggering of conflicts of interest between

⁹⁰ Ș. Beligrădeanu, *The right to strike and its exercise in "Dreptul"* no.6/1990, p.17.

⁹¹See Al. Țiclea, A. Popescu, Marioara Țichindelean, C. Tufan, O. Ținca, *op. cit.*, pag.778.

these categories of personnel and those units⁹², which can only be settled through conciliation, mediation and / or arbitration. Since the provisions on the strike ban are exceptional, they have to be interpreted restrictively.

Considering the freedom to participate in the strike, there is the opinion⁹³ according to which the work may be terminated and the employees of some compartments who did not participate in the strike, but with the same claims for which the legal conditions of the strike were fulfilled strike.

The right to strike is a fundamental right recognized by all employees regardless of the employer (individual, legal person, commercial company, national company, etc.) to whom they work.

The general framework that the Labor Code provides for legal employment relationships does not make it possible to detail all the aspects that define the strike. In this respect, the legislator refers to the special law (Law no.168 / 1999 on the solution of the labor conflicts⁹⁴) regarding the exercise of the right to strike, the strike organization, its initiation and deployment, the pre-strike procedures, suspension and termination strike and all other strike related issues.

If there is no union in the unit or it does not cover all employees, the decision to declare the strike is taken by secret vote by the employees of the unit or subunit, as well as by those who have the same profession or profession, that is, the group that are in the labor conflict.

In the doctrine are mentioned as cases of illegal strike, the following situations: when the strike was triggered to solve a conflict of rights and not interests, when the strike is aimed at achieving political goals, the case of the strike triggering during the collective labor contract, the case triggering the strike in violation of legal formalities such as declaring the strike before the conciliation stage or after the arbitration or mediation has been agreed. The illegal character of the strike can also be taken into account when its purpose is to prejudice the employer.⁹⁵

1.10. The right to constitute or to join a union

In order to defend their rights and promote their professional interests, employees can join in *trade union organizations*, and employers in *employers' associations*, who by virtue of law have the status of *social partners*.

The right of association in trade unions derives from the general law of association provided by art. 37 of the Constitution, according to which "citizens can freely associate themselves in political parties, trade unions and other forms of association" (paragraph 1). In the same sense, art. 2, par. 1 of the Law no. 54/2003 states that "persons employed ... have the right to constitute trade union organizations and to join them". This means that the trade unions are founded on the trade union freedom that trains, as a consequence, the union pluralism.

The right of association in trade unions is a principle of labor relations on the grounds that trade unions, being the organizational framework through which the employees' unit of action is ensured, are one of the two social partners in the labor process. According to the law, trade unions, as organizations established for the purpose of defending and promoting the professional, economic, social, cultural and

⁹² See Al. Athanasiu and L. Dima, *Labour law, University course*, All Back Publishing House, Bucharest, 2005, p.344.

⁹³ See I. T. Ștefănescu, *Treaty on labour law*, vol. II, Lumina Lex Publishing House, Bucharest, 2003, p.287-288.

⁹⁴ Published in the Official Gazette of Romania, Part I, no.582 of November 29, 1999, as amended by Government Emergency Ordinance no.138 / 2000 (published in the Official Gazette of Romania, Part I, no. 479 of 2 October 2000) with amendments and completions by Law no. 219/2005 (published in the Official Gazette of Romania, Part I, No. 609 of 14 July 2005);

⁹⁵ See O. Tinca, *op.cit.*, p.229-230.

sports interests of their members, have the right, in order to achieve this purpose, to use specific means such as negotiations, dispute settlement procedures mediation or conciliation, petition, protest, rally, demonstration and strike.

The most eloquent expression of their activity is the conclusion of collective labor agreements⁹⁶.

But the association of employees and employers intervenes not only to satisfy the dialogue between the two parties but also to facilitate relations with other natural and legal persons, including public authorities (ministries, government, etc.).

2. Obligations of employees

a) Employees' obligations, as well as their rights, are laid down in the Labor Code, and for some areas of activity and for certain categories of personnel in special normative acts, including collective labor agreements and internal regulations.

b) According to art.39 par. 2 of the Labor Code: "The main duties of the employee are the following:

c) a) the obligation to carry out the labor norm or, as the case may be, to fulfill the duties assigned to him according to the job description;

d) b) the obligation to observe the discipline of work;

e) c) the obligation to observe the provisions of the internal regulation, in the applicable collective labor contract, as well as in the individual labor contract;

f) d) the duty of loyalty to the employer in the performance of his / her duties;

g) e) the obligation to observe the work safety and health measures in the unit;

h) f) the obligation to observe the secret of service. "

2. 1. The obligation to carry out the workload or, as the case may be, to fulfil the tasks incumbent upon it in accordance with the job description

This obligation of the employee corresponds to the correlative rights of the employer⁹⁷ stipulated by letter b and d of art. 40 paragraph 1 of the Labor Code:

The right to determine the appropriate attributions for each employee, under the terms of the law and / or the applicable collective labor contract, concluded at national level at the level of branch or group of units and the right to exercise control over the manner of performance of service tasks. The employer is entitled under the subordinate report to determine the appropriate attributions for each employee. Even if the text does not explicitly state it, the employer must also take into account the clauses of the collective labor contract in his / her establishment, if any⁹⁸.

The workload expresses the amount of work required to carry out operations or work by an appropriately qualified person who works at normal intensity under the conditions of certain technological and work processes. The norm of work includes the productive time, the time for interruptions imposed by the process, the time for legal breaks in the work program (art.126 of the Labor Code).

⁹⁶ I. T. Ștefănescu, *op. cit.*, p.97.

⁹⁷ See O. Tinca, Position of the employer in relation to his / her employee or individual employment contract, in "Romanian Labor Law Review", no.2 / 2004, p. 48-55

⁹⁸ I. T. Ștefănescu, Amendments to the Labor Code, commented, Emergency Ordinance no. 65/2005, Lumina Lex Publishing House, Bucharest, 2005, p.43-44

The work standard is an instrument of the employer in contractual relations with its employees. It serves to specify the rights and obligations of the two parties:

- the right of the employer to require workers to work for a certain amount of time or to produce a certain quantity of products and to oblige the latter to satisfy the request;

- Employee's right to require the company's management to pay the appropriate remuneration for the results of his / her work done in a given time and the obligation of the management of the unit to honor that right⁹⁹;

Workloads are set to ensure a normal work pace, an intensity of muscular or intellectual effort and a nervous tension that leads to excessive employee fatigue.

The activity of normalization of work refers to all categories of employees, according to the specific of each one's activity and is based on the norms of labor normalization: it is carried out as a continuous process, constantly consistent with the changes taking place in the organization and the level of technical endowment of labor .

Within the productive units, the way of work is determined in concrete terms either by working loads (for productive and indirect productive staff) or by job descriptions¹⁰⁰. The workload is grafted on specific requirements of professional qualification and the specificity of a particular technological process. In this way, regardless of its form (time norm, production norm, staff norm, scope of attributions, etc.), the labor norm specifies a technological process - it defines the type of work itself (not only the quantity of labor) ¹⁰¹.

In organizations, control activity ¹⁰² allows senior authorities to determine whether or not the institution as a whole has achieved its objectives through its ongoing work. This is done after a pertinent assessment, based on well-formulated and concretely specified criteria. Identifying deficiencies, observing the stages in the implementation of specific organizational programs and policies, determines decisions that are likely to correct the state of affairs.

From the provisions of art.129 of the Labor Code, it results that for the applicability of the labor norms the agreement of trade unions or representatives of employees is necessary, this agreement being a compulsory, binding opinion¹⁰³.

With regard to the unconstitutionality of the provisions of Article 129 of the Labor Code, which would violate the provisions of Article 40, paragraph 1 and Article 134, paragraphs 1 and 2. The constitution of Romania, on the grounds that the obligation of the trade unions to request the elaboration of labor norms violates rights and duties of the employees, the Constitutional Court held that the obligation imposed on the employer to request the agreement of the unions or the review of the labor norms is not contrary to the constitutional provisions mentioned, but on the contrary they are based on the provisions of Article 9 of the Constitution. Also, the Constitutional Court has argued that the legal text invoked is in harmony with the provisions of art. 8 pct.11 lit. c of the International Covenant on Economic, Social and Cultural Rights, according to which the States Parties to the Covenant undertake to ensure the right of trade unions to freely exercise their activity, without any

⁹⁹ Al. Ticlea, A. Popescu, C. Tufan, M. Tichindeleanu, O. Tinca, op.cit., p.44.

¹⁰⁰ I. T. Stefanescu, op.cit., vol.II, p.406

¹⁰¹ Ibidem.

¹⁰² For details on monitoring employees regarding internet use at work, see: Al. Ticlea, Treaty, 2006, p. 401-403; B. Manelea, Aspects of Workplace Monitoring with respect to Internet Usage in "Roman Pandetele", no. 5/2004, p.240

¹⁰³ Al. Ticlea, A. Popescu, C. Tufan, M. Tichindeleanu, O. Tinca, op.cit., p. 420

limitations other than those provided for by law, and which constitute necessary measures in a democratic society in the interests of national security or public order or to protect the rights and freedoms of others¹⁰⁴. Employers must lay down the rules of work so as to provide a normal working rhythm, intensity of the muscular or intellectual effort and a nervous breakdown that do not lead to excessive fatigue of employees.

2.2. The obligation to comply with the labor discipline and the provisions contained in the rules of procedure, in the collective employment agreement applicable, as well as individual employment contracts

Order and discipline in work is a necessity for any work process because it conditions the normal and efficient performance of the work done.

Inner order can be considered as the application of the rule of law in the achievement of legal employment relationships¹⁰⁵.

The discipline of labor is an indispensable means for the realization of the inner order, and the accomplishment of the inner order is a result of the application of the discipline of labor within any unit¹⁰⁶.

During the execution of the employment relationship a certain order, a certain discipline is required. That order that must be fulfilled during the performance of the social working relations, the order resulting from the employee's observance of the obligations that come within the content of the labor legal relationship. It's what we call work discipline. Consequently, observing the discipline of work means respecting all the obligations resulting from the law (in a broad sense), from the internal regulations, collective labor or the individual labor contract, thus ensuring the order necessary for the good organization of the work process.

In this respect, it was stated in the doctrine¹⁰⁷ that the obligation to comply with the provisions of the internal regulation, the applicable collective labor contract and the individual employment contract is an integral part of the obligation to observe the labor discipline.

2.3. The obligation of loyalty to the employer in the execution of his/her duties and the obligation to comply with the company secrecy

The duty of loyalty and the obligation to respect service secrecy lawfully establish, by linking them, the non-compete obligation and the obligation of confidentiality¹⁰⁸.

The employment relationship established between the employee and the employer due to the personal intuition of the individual labor contract implies a special confidence of the employer in his / her employee. This trust corresponds to a

¹⁰⁴ Decision no.24 of 22.01.2003 (published in the Official Gazette of Romania, Paetea I. No. 72 of 5 February 2003)

¹⁰⁵ Ceterchi and collective, Theory of State and Law, Didactic and Pedagogical Ed. Bucharest, 1967, p.493; M Luburici, The Notion of Law and Public Order in the Theory and Practice of the Courts / in "New Justice" No.1 / 1961, p.19).

¹⁰⁶ Gh. Filip, C. Badea, Considerations on the notion of internal order, in the "Romanian Labor Law Review" no.1/2002,p.80

¹⁰⁷ I. T. Stefanescu, Labor Law, vol.I. Ed. Lumina Lex, Bucharest, 2003, p.391.

¹⁰⁸ Ibidem

loyalty obligation on the part of the employee¹⁰⁹. The duty of loyalty is a component of the discipline of labor¹¹⁰ and it is a primary duty of the employee during the performance of his individual employment contract to refrain from committing any act or thing that could harm the interests of the employer either through competition or through lack of discretion regarding confidential (secret) information concerning the employer, technical, economic, managerial, commercial, etc., to which they have permanent or occasional access through the activity they carry out¹¹¹.

Prior to the start of the legal employment relationship, but especially during the work, the employee comes in contact with a range of information that enjoys certain levels of protection. The information is classified as follows:

- information the disclosure of which constitutes an offense, attracting criminal and automatic liability, disciplinary liability, independent of the existence of an explicit confidentiality of secrecy;
- information the disclosure of which constitutes disciplinary offense, even if the confidentiality of such information has not been stipulated;
- information the disclosure of which is prohibited only in the case of express contractual provision;
- insecure information that is accessible to the public.

Secret information the employee becomes aware of during the performance of the individual employment contract can not be disclosed even after termination of the contract, whether or not there is a contractual clause in this respect. To protect the interests of the employer Art. 196 par. (1) of the Criminal Code provides: "The disclosure without right of data by the person to whom they have been entrusted or by whom they have become aware by virtue of their profession or function, if the deed is likely to cause harm to a person, shall be punished by imprisonment from 3 months to 2 years or by fine ".

2.4. The obligation to comply with safety and health at work¹¹²

According to Law no. 319/2006, the employer has general obligations, including:

- the obligation to ensure the safety and health of workers in all aspects of work;
- the employer has the obligation to take the necessary measures to: ensure the safety and health protection of workers, prevent occupational hazards, inform and train the workers;
- the employer has the obligation to implement all the measures provided by art. 6-7 of the Law no. 319/2006.

5. Rights and obligations of the employer in the individual employment contracts,

The rights of the employer:

¹⁰⁹ I. T. Stefanescu, op. Cit., P. 417; R. Dimitriu, Obligation of loyalty in labor relations, Ed. Tribuna Economica, Bucharest, 2001, p.12; I. T. Stefanescu, O. Macovei, B. Vartolomei, The correlation between the loyalty obligation and the non-competition clause inserted in the individual employment contract, in "Dreptul" nr.11 / 2005, p.88 and subsequent.

¹¹⁰ I. T. Stefanescu, op. cit., p.417

¹¹¹ Ș Beligrădeanu, I. T. Stefanescu, Labor Law Dictionary, Lumina Lex Publishing House, Bucharest, 1997, p.116

¹¹² See infra. C VII.

According to par.1 of art. 40 of the Labor Code, the employer mainly has the following rights:

- (a) establish the organization and operation of the establishment;
- b) establish the appropriate attributions for each employee, under the terms of the law and / or the applicable collective labor agreement, concluded at national level, at branch or group of units;
- c) to make binding provisions for the employee, subject to their legality;
- d) to exercise control over the performance of the service duties;
- e) to establish the commission of the disciplinary deviations and to apply the appropriate sanctions, according to the law, the applicable collective labor contract and the internal regulation.

Regarding the employer's rights we make the following remarks: ¹¹³

a) The activity of a unit as a whole represents the synthesis of activities at each job. So the rational organization of the workplace - which is the basic link of production - is of great importance for the scientific organization of the whole production process of the unit, including all the jobs involved in the different products. At the same time, the efficiency of the work, on the whole of the unity, is concretized in the summation of the results obtained at each job.

b) The Employer is entitled, based on the subordination relation, to determine the appropriate attributions for each employee. Even if the text does not say it expressly, the employer must also take into account the clauses of the collective labor agreement in his / her establishment, if any¹¹⁴.

The workload is an instrument of unit management in contractual relations with employees in that unit. It serves to specify the rights and obligations of the two parties:

- the right of the entity to require employees to do a certain amount of work or produce a certain quantity of goods within a specified time, and the latter's obligation to meet that demand;

- Employee's right to require the company's management to pay him the appropriate remuneration for the results of his work in a given time and the obligation of the management to assert that right.

Workloads are set to ensure a normal work pace, an intensity of muscular or intellectual effort, and nervous tension that does not lead to excessive employee fatigue.

The workload activity refers to all categories of employees, according to the specific activity of each one and is based on the workload techniques: it is carried out as a continuous process, constantly in accordance with the changes in the organization and the level of technical endowment of work.

c) During the performance of the employment relationship a certain order, a certain discipline is required. That order that must exist during the performance of social work relationships, orders arising from the employee's compliance with the legal obligations that come within the content of the legal employment relationship. It's what we call work discipline. Consequently, observing the discipline of work means respecting all the obligations resulting from the law (in a broad sense), from the internal regulation, the collective labor contract or the individual employment

¹¹³ Al. Ticlea, A. Popescu, M. Tichindelean, C. Tufan, O. Ținca, Labor Law, Rosetti Publishing House, Bucharest, 2004, p. 419-423; See also O. Ținca, Position of the employer in relation to his employee under the individual labor contract, in the "Romanian Labor Law Review" no. 2/2004, p. 48-55.

¹¹⁴ I. T. Ștefănescu, *Amendments to the Labor Code, commented*, O.U.G. no. 65/2005, Lumina Lex Publishing House, Bucharest, 2005, pp. 43-44.

contract, thus ensuring the order necessary for the proper development of the work process.

d) In organizations, control activity allows senior authorities to determine whether or not the institution as a whole has achieved its objectives through its work. This is done after a pertinent assessment, based on well-formulated and concretely specified criteria. Identifying deficiencies, non-observance of the stages in the implementation of specific organizational programs and policies, determines decisions that are appropriate to correct the state of affairs.

The obligations of the employer

Employer recovered, according to art. 40 par. 2 of the Labor Code mainly the following obligations:

a) to inform the employees about the working conditions and the elements regarding the development of the working relations;

b) to ensure permanent the technical and organizational conditions envisaged in the elaboration of the working norms and the appropriate working conditions;

c) to give employees all the rights deriving from the law, from the applicable collective labor contract and from the individual labor contracts;

d) to communicate periodically to the employees the economic and financial situation of the unit, except for sensitive or secret information, which, by disclosure, is liable to prejudice the activity of the unit. The frequency of communications is established by negotiation in the applicable collective labor agreement;

e) to consult with the trade union or, as the case may be, with employees' representatives on decisions likely to substantially affect their rights and interests;

f) to pay all the contributions and taxes in his charge, as well as to withhold and pay the contributions and taxes due by the employees, according to the law;

g) to set up the general register of employees and to operate the records provided by the law;

h) to issue, upon request, all documents certifying the applicant's employment status;

i) ensure the confidentiality of the personal data of the employees.

Regarding the employer's obligations, we mention¹¹⁵:

a) Obligation to inform employees about working conditions and the elements concerning the development of working relations

The law provides for example that the Internal Rules must be posted at the employer's premises. That regulation sets out the tasks assigned to each component part of the undertaking, as well as the two-way relations between those parties, namely the factors of responsibility in each of the component parts, are detailed in their duties and the rights and obligations deriving from it. It is therefore the first way of informing employees about working conditions and the elements concerning the development of working relations.

Employees must also know exactly the risks and dangers posed at work and the right way to act to avoid accidents or illnesses.

Law no. 467/2006 establishes the general framework for information and consultation of employees. Employers based in Romania with at least 20 employees have the obligation to inform and consult employee representatives, according to art. 5 of the Law, regarding:

a) the recent evolution and likely evolution of the business and the economic situation of the enterprise;

¹¹⁵ Al. Țiclea, A. Popescu, M. Țichindelean, C. Tufan, O. Ținca, *op. cit.*, p. 423-437.

(b) the situation, structure and likely pattern of employment within the undertaking and any anticipated anticipatory measures, in particular where there is a threat to employment;

(c) decisions which may lead to important changes in the organization of work, contractual relations or employment relationships, including those covered by the Romanian legislation on specific information and consultation procedures for collective redundancies and the protection of employees' rights in the event of the transfer of the enterprise.

b) Obligation to permanently ensure the technical and organizational conditions envisaged in the elaboration of the working norms and the appropriate working conditions.

The employer has the obligation to take the necessary measures to ensure normal working conditions, harm reduction, prevention of occupational accidents or illness. The parties (the employer and the employees) must have mandatory consultations to find the most effective measures to improve working conditions. When establishing these measures, the basic principle is man and his health, not material compensation.

c) The stipulation that the employer is obliged to communicate to the employees the economic and financial situation of the periodic unit, the period stipulated in the collective labor agreement, is consistent with the role of collective bargaining in the field of labor relations. Since there may be no collective labor agreements in certain units, it is necessary for such situations to include clauses on the periodicity in question in the single collective labor agreement at national and branch level¹¹⁶..

d) Obligation to consult with the trade union or, as the case may be, employees' representatives on decisions which are likely to substantially affect their rights and interests.

According to Law no. 54/2003 on trade unions, in order to achieve the purpose for which they are constituted, trade unions have the right to use specific means such as: negotiations, dispute settlement procedures through mediation, arbitration or conciliation, petition, protest, rally, demonstration and the strike, according to their own statutes and under the conditions provided by law.

e) Obligation to set up the general register of employees and to operate the records provided by the law.

Government Decision no. 161/2006 on the compilation and completion of the General Register of Employees¹¹⁷ establishes the methodology for drawing up and completing the general register of employees' records, the records that are being carried out, as well as any other elements related thereto. According to par. 2 and 3 of art. 2 of the Government Decision no. 161/2006, each employer has the obligation to set up a general register of employees' records and to submit it to the labor inspectors at their request, and in the case of employers who have established branches, agencies, representatives or other such units without legal personality, to whom they have delegated the competence of recruiting staff by concluding individual employment contracts, having their delegation and the competence to set up the register¹¹⁸.

¹¹⁶ I. T. Ștefănescu, *op. cit.*, p. 44.

¹¹⁷ Published in the Official Gazette of Romania, Part I, no. 172 of 22 February 2006.

¹¹⁸ Section I.2. of the Annex to the Order of the Minister of Labor, Social Security and Family no. 20/2007 on the approval of the procedure for transmission of the electronic register of employees in electronic format: "Entities without legal personality of employers - branches, agencies, representations, work stations, other employers' secondary offices - have the obligation to establish, complete, and transmits the register in electronic format if the following conditions are met cumulatively:

There is no obligation to establish a register of diplomatic missions, foreign consular offices based in Romania, as well as Romanian representatives of foreign legal persons for the periods when the individual labor contracts concluded with the Romanian citizens are registered with the territorial labor inspectorate.

The register shall be drawn up in electronic form and completed in the order of employment and shall contain the following elements:

a) the elements of identification of all employees: name, surname, personal number (CNP);

b) the date of employment; c) the position / occupation according to the specification of the Romanian Occupation Classification (COR) or other normative acts;

d) type of individual employment contract;

e) date and ground of termination of the individual employment contract.

It shall be transmitted to the territorial labor inspectorate in whose territorial jurisdiction the headquarters or domicile is in electronic form within 20 days from the date of employment of the first employee, using one of the following methods:

a) by filling in online the existing database on the Labor Inspection portal;

b) by e-mail, based on electronic signature;

c) by submitting to the territorial office of the electronic labor inspectorate, accompanied by a forwarding address signed by the employer.

The register shall be kept electronically at the employer's premises and, where appropriate, at the branch office, agency, office or other such unit without legal personality. In order to certify the legality and correctness of filling in the register, the employer has the obligation to draw up a personal file for each of the employees and to submit it to the labor inspectors at their request. The personal file of the employee includes at least: the necessary documents for employment, the individual employment contract, the supplementary acts and the other documents regarding the modification, suspension and termination of the individual employment contracts, as well as any other documents.

At the written request of the employee, the employer is obliged to issue copies, certified by his / her legal representative or by the person empowered by the employer for compliance with the original, of the documents existing in the personal file of the electronic register (s) records relating to his or her person and / or a document attesting to his or her work, seniority in work, profession and specialty, as evidenced by the general record of the record and the personal file.

The program of work (including regulations overtime and night shifts)

Strictly necessary for the restoration of work capacity, but also for solving the personal problems that occur in the life of every employee (as in every person's life), the rest time is in the following forms: lunch break, daily rest rest between two days of work), weekly rest, legal holidays and holidays.

We will treat the legal regulations on rest time by making the following division conventionally:

a. forms of rest time other than periods of leave and,

b. leave.

a) have been granted a delegation of competence for staffing through the conclusion of individual employment contracts;

b) have been given delegation of competence for establishment and completion The General Register of Employees in Electronic Format.

The first category belongs:

a) Meal break - is regulated by Article 134, paragraph 1, of the Labor Code as follows: "In cases where the daily working time is longer than 6 hours, employees are entitled to a meal break and other breaks, under the conditions laid down in the collective agreement applicable employment or internal labor regulation".

For young people under the age of 18, the duration of the meal break will be at least 30 minutes if the daily work time is more than 4 and a half hours.

The duration of breaks is usually not included in the normal daily working time, but exceeds this duration. By way of exception, the length of the breaks will be included in the duration of the working time if, either in the collective labor contract or in the internal regulation, this provision is expressly provided for.

(B) Rest time between two days of work - is governed by the Labor Code¹³⁸ distinctly:

- in cases expressing the rule, the rest between two days of work must be at least 12 consecutive hours;

- In the case of shift work - this being the exception - between the time of departure from an exchange and the time of entry for the next exchange, there must be a rest (interval) of at least 8 hours.

(C) Weekly rest. Regulating the duration of the working week to 5 days, the Decree - Law no. 95/1990 has implicitly regulated the right to a two-day weekly rest. This right has acquired a constitutional statute by providing for the average duration of the 40-hour working week.

The Labor Code provides an explicit provision in Art.137 paragraph 1: "Weekly rest is granted in 2 consecutive days, usually on Saturdays and Sundays." From the weekly rest rule on Saturdays and Sundays, the exception is also allowed on other days of the week if:

- resting on Saturdays and Sundays would harm the public interest or the normal course of business;
- granting weekly rest on days other than Saturdays and Sundays is provided for in the applicable collective labor agreement or internal regulation.

Indication:

a) Employees who will not be entitled to a weekly rest on Saturdays and Sundays will benefit - compensatory - from a salary increase determined by the collective labor contract or, as the case may be, by the individual employment contract (art.137 paragraphs 2 and 3 of the Labour Code)¹¹⁹;

¹³⁸ **Art. 135**

(1) Employees shall be entitled to a rest period of at least 12 consecutive hours between two working days.

(2) By way of exception, in the case of shift work, this rest period may not be less than 8 hours between shifts.

¹¹⁹ **Art. 137**

(1) Weekly rest is 48 consecutive hours, usually Saturdays and Sundays.

2. If the rest on Saturdays and Sundays would be prejudicial to the public interest or normal course of work, the weekly rest may also be granted on other days laid down in the applicable collective labor agreement or internal regulation.

(3) In the situation stipulated in paragraph (2) the employees will benefit from a salary increase established by the collective labor contract or, as the case may be, by the individual labor contract.

(4) In exceptional circumstances weekly rest periods are granted cumulatively, after a continuous period of work that can not exceed 14 calendar days, with the approval of the territorial labor

b) Employees who, in exceptional circumstances, can not benefit from weekly rest in a continuous period of work of up to 14 calendar days, will receive these days of cumulative rest (in this case, the territorial labor inspectorate and the trade union agreement or, as the case may be, representatives of the employees). At the same time, these employees will benefit – as compensation - from an increase equivalent to the double of the negotiated bonus for additional work (this, according to article 123, paragraph 2, Labor Code can not be less than 75% of the basic salary).

Suspension of the weekly rest. The Labor Code, by the provision of art. 138 (1) Labor Code¹²⁰ gives the employer the possibility of ordering the suspension of the weekly rest "in the case of urgent work, the immediate execution of which is necessary for organizing measures to save the person or property of the employer, to avoid imminent accidents or to eliminate the effects of accidents ... "

And in the case of this suspension, employees are entitled to double the compensations due according to art. 123 (2) of Labor Code¹²¹.

Legal holidays become time rest as a result of the regulations of the Labor Code. Thus, according to Article 139(1) Labour Code¹²², it was established as being public holidays.

Employees who work on jobs where work cannot be interrupted due to the manufacturing process or specific activity (health care units and the public food) will benefit from free time properly in the following 30 days, and if this is not possible,

inspectorate and with the consent of the trade union or, as the case may be, of the employees' representatives.

(5) The employees whose weekly rest are granted according to par. (4) are entitled to double the compensations due according to art. 123 par. (2).

(Art. 137 (1) amended by Law 97/2015)

¹²⁰ **Art. 138**

1. In the case of urgent work whose immediate execution is necessary for the organization of measures to save the person or property of the employer in order to avoid imminent accidents or to remove the effects of such accidents on the materials or installations or buildings the weekly rest can be suspended for the staff required to carry out these works.

(2) The employees whose weekly rest was suspended according to par. (1) are entitled to double the compensations due according to art. 123 par. (2) .

¹²¹ **Art. 123**

(1) If the compensation by paid free time is not possible within the time limit provided by art. 122 paragraph (1) the following month, additional work will be paid to the employee by adding a salary increase corresponding to his duration.

(2) The increase for the additional work, granted under the conditions stipulated in paragraph (1) shall be established by negotiation, within the framework of the collective labor contract or, as the case may be, of the individual employment contract and shall not be less than 75% of the basic salary.

¹²² **Art. 139**

(1) The legal holidays in which they are not working are:

- 1 and 2 January;
 - the first and second Easter days;
 - January 24 - The Day of the Union of Romanian Principalities;
 - 1st May;
 - the first and the second day of Pentecost;
 - June 1st;
 - Assumption of the Virgin Mary;
 - November 30 - The Holy Apostle Andrew the First Called, Protector of Romania;
 - December 1st;
 - first and second day of Christmas;
 - two days for each of the three annual religious holidays declared as such by religious denominations other than Christian religious denominations for persons belonging to them.
- (2) The free days are provided by the employer.

they will benefit from an increase in the basic salary which may not be less than 100 % of the basic salary corresponding to the work done in the normal hours of work.

Working time shall mean any period in which the employee work is done, is located at the disposal of the employer and shall carry out the tasks and powers, in accordance with the provisions of the individual labor contract, the collective employment agreement applicable and/or of the legislation in force.

The provisions of the Labor Code relating to the time of work and rest time are generally consistent with the provisions of Council Directive 93/104/EC of 23.11.1993 concerning certain aspects of the organization of the time...

(1) For full-time employees, employed during the normal working time is 8 hours per day and 40 hours per week.

(2) In the case of young people aged up to 18 years duration of working time is 6 hours per day and 30 hours per week.

According to the Labor Code for full-time employees, the normal duration of working time is 8 hours per day and 40 hours per week (Article112).¹²³

The duration of 8 hours a day of work shall ensure that, under normal circumstances, the production process of responding to the requirements of the order biological, social, spiritual and material of the employees. Not less but this period is justified from the point of view of history, being the result of long developments; it is likely to be reduced, depending on the stage of the social and economic development.

Allocation of working time within the week is, as a rule, uniform, 8 hours per day for 5 days, with two days rest position.

In relation to the specific nature of the establishment or the work done, it may opt for a highly uneven spread of the organization of working time, in compliance with the normal working time of 40 hours a week (Article112).

The concrete way of establishing such a program - stipulated in art.113 of the Code - will be negotiated through the collective labor contract at the level of the employer or, in the absence thereof, will be provided by the internal regulation.¹²⁴

The work program unevenly can only operate if specified expressly provided for in the individual employment contracts.

Pursuant to Article 115¹²⁵, the employer has the possibility to establish the individual programs of work, with the agreement of, or at the request of the employee concerned, if this possibility is provided for in collective agreements applicable to the level or, in the absence thereof, in the rules of procedure.

In such a case, the duration of the daily working time is divided into two periods: a fixed period in which the staff is at the same time at the place of work and

¹²³ **Article 112**

(1) for full-time employees, employed during the normal working time is 8 hours per day and 40 hours per week.

(2) In the case of young people aged up to 18 years duration of working time is 6 hours per day and 30 hours per week.

¹²⁴ **Article 113**

(1) Apportionment of working time within the week is, as a rule, uniform, 8 hours per day for 5 days, with two days of rest.

(2) depending on the nature of the establishment or the work done, it may opt for a highly uneven spread of the organization of working time, in compliance with the normal working time of 40 hours a week.

¹²⁵ **Art. 115**

(1) For certain sectors of activity, units or professions, collective and individual negotiations or specific normative acts may be established for a daily working time of less than or over 8 hours.

(2) The daily working time of 12 hours shall be followed by a 24-hour rest period.

period furniture, in which the employee chooses the hours to arrival and departure, with respect to the organization of working time on a daily basis.

In accordance with Article 116 of the Labor Code, the employer shall be obliged to keep records of hours of work performed by each employee and subject to control by the Labor Inspection this record whenever required.

The duration of the reduced work time - There are situations where the length of time is less than 8 hours a day and 40 hours a week.

A first situation is that of young people under the age of 18, for whom the working time is 6 hours a day and 30 hours per week (Art.112).

A second situation concerns nursing workers and calls for breastfeeding breaks to be replaced by reducing the normal length of their working hours by two hours a day.

Another situation: employees who perform at least 3 hours of work at night (between 22.00-6.00 - art.125¹²⁶) benefit from either a reduced working hours of one hour compared to the normal working day, without this would lead to the decrease of the basic salary, or a salary increase of at least 25% of the basic salary for each performed night work (art.126)¹²⁷.

It is forbidden to use young people under the age of 18 for work during the night, and pregnant women, boys and nurses can not be forced to work at night (Article 125)¹²⁸.

The establishment of the categories of personnel, activities and jobs for which the working time is reduced to less than 8 hours per day is based on the following criteria:

- a) the nature of the noxious-physical, chemical or biological factors and their mechanism of action on the body;
- b) the intensity of action of the harmful factors or the association of these factors;
- c) duration of exposure to the action of the noxious factors;

¹²⁶ **Art. 125**

(1) Work performed between 22.00-6.00 is considered night work.

(2) The night employee is, as the case may be:

- a) the employee who carries out night work for at least 3 hours of his / her daily working time;
- b) the employee who performs night work at least 30% of his monthly working time.

(3) The normal working time for the night worker shall not exceed an average of 8 hours per day, calculated over a reference period of up to 3 calendar months, subject to the statutory weekly rest periods.

4. The normal length of working time for night workers whose work is carried out under special or special working conditions shall not exceed 8 hours during any 24-hour period unless the increase in such duration is provided for in the contract applicable collective labor and only if such provision does not contravene express provisions laid down in the collective labor agreement concluded at the higher level.

(5) In the situation provided in par. (4), the employer is obliged to grant equivalent compensatory rest periods or cash compensation of overnight work hours over the 8-hour period.

(6) The employer who frequently uses night work is obliged to inform about this the territorial labor inspectorate.

¹²⁷ **Art. 126**

Salariații de noapte beneficiază:

- a) fie de program de lucru redus cu o oră față de durată normală a zilei de muncă, pentru zilele în care efectuează cel puțin 3 ore de muncă de noapte, fără ca aceasta să ducă la scăderea salariului de bază;
- b) fie de un spor pentru munca prestată în timpul nopții de 25% din salariul de bază, dacă timpul astfel lucrat reprezintă cel puțin 3 ore de noapte din timpul normal de lucru.

¹²⁸ See also Article 19 of Government Emergency Ordinance No.96 / 2003 on the Protection of Maternity at Work.

d) existence of working conditions involving greater physical effort, under unfavorable conditions of microclimate, intense noise or vibration;

e) existence of working conditions involving a special nervous demand, very tense and multilateral attention or intense concentration and intense workflow;

f) the existence of working conditions involving an overload of nerves caused by a risk of injury or illness;

g) the structure and level of morbidity in relation to the specific nature of the work place;

h) other harmful, heavy or hazardous work conditions that may lead to premature wear of the body.

The duration of the working time is reduced, taking into account the action of the listed factors on the health and work capacity and the extent to which the consequences of the actions of these factors can be reduced or eliminated by reducing the exposure time.

Working over the normal duration (overtime)¹²⁹

Art.120 of the Labor Code provides that work performed outside the normal weekly working time (over 40 hours) is considered as additional work.

The possibility of a daily working time of more than 8 hours is also provided by Art. When this duration is 12 hours, you must follow a 24-hour rest period.

Certain categories of staff are sometimes provided with a maximum working time above normal.

For example, for drivers, the driving time between two daily rest periods or between a daily rest period and a weekly rest period should not exceed 9 hours. This can be extended up to 10 hours twice a week.

Total driving time over a period of two consecutive weeks shall not exceed 90 hours.

Having regard to Community law (Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, as amended by Directive 2000/34 / EC of 22 June 2000), our legislator provided (in Article 114¹³⁰ Labor Code) that the maximum legal length of working time can not exceed 48 hours per week, including overtime.

¹²⁹ **Art. 120**

(1) Work done outside the normal weekly working time, provided in art. 112, is considered as additional work.

(2) Additional work may not be performed without the agreement of the employee, except in the case of force majeure or for urgent work to prevent the occurrence of accidents or the consequences of an accident.

¹³⁰ **Art. 114**

(1) The maximum legal length of working time may not exceed 48 hours per week, including overtime.

2. By way of exception, the length of working time, including overtime, may be extended over 48 hours per week, provided that the average working hours, calculated over a reference period of 4 calendar months, do not exceed 48 hours per week.

(3) For certain activities or professions established by the applicable collective labor agreement, reference periods of more than 4 months, but not exceeding 6 months, may be negotiated by collective agreement.

(4) Subject to compliance with the regulations on the protection of employees' health and safety at work, for objective, technical or work organization reasons, collective agreements may provide for derogations from the length of the reference period set out in paragraph (3) but for reference periods which in no case exceed 12 months.

(5) When establishing the reference periods referred to in paragraph (2) - (4) shall not take into account the duration of the annual leave and the suspension of the individual labor contract.

(6) The provisions of paragraph (1) to (4) shall not apply to young people below the age of 18.

However, when the work is done in exchange, the length of the working time may be extended over 8 hours a day and 48 hours per week, provided that the average working hours, calculated over a maximum of 3 weeks, do not exceed 8 hours a day or 48 hours a week.

These provisions do not apply to young people below the age of 18. This last provision is logical given that, under Article 109 (2), the length of working time for these young people is 6 hours a day and 30 hours a week.

In a strictly legal interpretation of the said provisions, the following conclusions will be reached:

- the rule is that the statutory maximum length of working time may not exceed 48 hours per week, including overtime, which obviously also means exceeding the working day of 8 hours a day, given that the working week is 5 days;

- Exceptionally, 48 hours may be exceeded when the work is done in exchange, but only on the condition that for a maximum of three weeks it does not exceed 8 hours a day or 48 hours a week;

- the maximum daily working time can be 12 hours, established by collective or individual negotiations or by normative acts, for certain sectors of activity, units or professions.

In such a case, it is only by analogy that 48 hours per week may be exceeded provided that for a maximum of 3 weeks the average of 8 hours a day and 48 hours a week is not exceeded.

We find that, as regards the maximum legal length of working time, the legislator has taken over the corresponding provisions of Community law incompletely, as a result of which there are difficulties in applying the provisions of the Labor Code.

Thus, the rules of Directive 93/104 EC apply to all sectors of activity, with the exception of air, rail, road, sea, river and lake transport, sea fishing, other maritime activities and the activities of training doctors¹³¹. The Directive envisages the 7-day working week (Articles 5 and 6), and within 24 hours the worker must have a minimum of 11 consecutive hours of rest (Article 3) and finally, member states (the European Union) may impose compliance with the rule 48 hours per week within a reference period of up to 4 months (Articles 6 and 16).

Under the assumption of cumulative functions, the ban on 48 hours of work per week is no longer working.

Another condition for carrying out additional work (along with its maximum limit) is the employee's agreement. This agreement is not required in the event of force majeure or for urgent work to prevent accidents or to eliminate the consequences of an accident.

In this respect, according to Article 56 paragraph 2 of the Law no.346 / 2002 on insurance against accidents at work and occupational diseases, it is stipulated that the employees have the obligation to take part in actions regarding the adoption of health and safety measures at work.

The rule is that supplementary work is compensated by free-of-charge paid within the next 30 days after it is performed (art. 119 (1)).

When the compensation is not possible in the following month, the person concerned will receive a salary increase determined by negotiation (the collective

¹³¹ See Ovidiu Ținca, *Community social law*, Lumina Lex Publishing House, Bucharest, 2002, p.156.

labor contract or, as the case may be, the individual employment contract) and can not - according to Art.120 of the Code - less than 75% of the basic salary.

In the case of legally feasible days (Article 134), the bonus may not be less than 100% of the basic salary.

Likewise, it also provides for the Collective Labor Agreement at national level. However, according to this contract, the hours that could not be compensated by the end of the month are paid in the form of an allowance (Article 15), and the increase is 50% of the basic salary (art.40 para.2 letter c).

We observe that some contractual provisions are more favorable to employees than those of the Labor Code, others do not.

As a result, the minimum 75% increase covered by the Labor Code (Art.120) was raised by the Collective Labor Agreement at national level at 100% (Art.40 para.2 letter c). However, the Labor Code does not reduce the increase to 50% for what exceeds 120 hours / employee / year. This contractual provision is unlawful, contrary to Article 8 of Law no. 130/1996¹³², according to which:

- the collective labor contract clauses can be established only within the limits and conditions stipulated by the law (paragraph 1).

- at the conclusion of the collective labor contract, the legal provisions regarding employees' rights are of a minimal character (paragraph 4).

It should be noted that, unlike the regulations in European countries, the Labor Code does not directly involve the unions or employees' representatives in the field of additional labor, especially as regards its limitation¹³³. It also does not provide for any sanctions in the event of non-compliance with the provisions on work done over normal work hours.

6. Annual leave

The annual leave, without any doubt, is the main form of the right to rest, right of conventional nature being founded on individual employment contract.¹³⁴

Entitlement to annual leave shall be defined by the indissoluble connection of two sides:

- **non-patrimonial**, consisting in the actual carrying out of leave, in the use of leisure time, in the suspension of the employee's obligation to perform the work, and,

- **patrimonial**, which shall consist in the entitlement to leave allowance, which may not be less than the average daily wage rights over the last three months preceding the period in which it is carried out the annual leave, multiplied by the number of days of leave.¹³⁵

¹³² On the Collective Labor Agreement (republished in the Official Gazette of Romania, Part I, no.184 of May 19, 1998).

¹³³ Article 115 (1) of the Labor Code provides for an exception, which only refers to the possibility that for certain sectors of activity, establishments or professions, collective bargaining can be established "with a daily working time of less than or equal to 8 hours".

¹³⁴ **Article 144**

(1) *The right to paid annual leave is guaranteed to all employees.*

(2) *Entitlement to annual leave may not be subject to any form of assignment, waiver or limitations.*

¹³⁵ **Article 150**

(1) *For the period of annual leave the employee shall receive an allowance of leave, which may not be less than the basic salary, allowances and permanent increases due for the period in question, provided for in the individual employment contract.*

(2) *The allowance of annual leave represents the daily average wage rights referred to in paragraph (1) of the last 3 months preceding the period in which it is carried out annual leave, multiplied by the number of days of leave.*

Entitlement to annual leave may not be subject to any form of assignment, waiver or limitations.

Actual **duration** of annual leave¹³⁶ shall be established in the individual employment contract, in compliance with the law and collective agreements applicable and shall be granted in proportion to the duration of the activity performed in a calendar year.

For teaching staff in pre-university education and higher education duration of annual leave is of 78 calendar days corresponding to the basic teaching standard (according to the detailed rules relating to annual leave of the teaching staff within education), and for magistrates, the duration of the annual leave on an annual basis is 35 working days (Article 79(1) of the Law no. 303/2004 on the judges and prosecutors).

Actual duration of annual leave shall be established by the negotiation of the collective employment agreement and provided for in the individual employment contract. The length of such leave shall be proportional to the work performed in a calendar year (Article 145(2) Labour Code).

We mention that the duration of the leave on an annual basis shall not include public holidays in which are not working and no holidays paid thus determined by the collective employment agreement applicable.

The additional annual leave shall be granted to employees working under difficult, dangerous or harmful conditions, to blind and other disabled persons and to young people under the age of 18. The duration of the additional rest leave is at least three working days (Article 147 of the Labor Code¹³⁷), meaning that by negotiation the actual duration for each employee in one of these categories is determined.

Employees who work during the year are entitled to annual leave in proportion to the period worked in that calendar year.

Employees who have been out of work for the entire calendar year, being on sick leave or on unpaid leave are not entitled to rest leave.

If the person carries out part-time work at two units, then he / she is entitled to receive rest leave from both units, with a time proportionate to the time worked.

Carrying out the annual leave involves the following rules:

- rest leave is done each year and only exceptionally - in the cases expressly provided by law or in the cases provided for in the applicable collective labor agreement - the annual leave is allowed in the following year;

(3) The allowance of rest leave shall be paid by the employer with at least five working days before leaving for the holidays.

¹³⁶ **Article 145**

(1) The minimum duration of annual leave of rest is 20 working days.

(2) The duration of the actual annual leave of rest shall be established in the individual employment contracts, in compliance with the law and the collective employment agreements applicable.

(3) Public holidays in which does not work, as well as free and paid days established by the collective employment agreement applicable are not included in the duration of the annual leave on an annual basis.

(Paragraph 2 of Article 145 as amended by Law 12/2015)

¹³⁷ **Art. 147**

(1) Salariații care lucrează în condiții grele, periculoase sau vătămătoare, nevăzătorii, alte persoane cu handicap și tinerii în vârstă de până la 18 ani beneficiază de un concediu de odihnă suplimentar de cel puțin 3 zile lucrătoare.

(2) Numărul de zile lucrătoare aferent concediului de odihnă suplimentar pentru categoriile de salariați prevăzute la alin. (1) se stabilește prin contractul colectiv de muncă aplicabil și va fi de cel puțin 3 zile lucrătoare.

- the employer is obliged to grant the leave until the end of the following year to all employees who, in one calendar year, have not fully completed the annual leave to which they were entitled (Article 146 paragraph 3 of Labour Code ¹³⁸);
- the date scheduled for the commencement of the holiday leave will be modified at the employee's request (the regulation concerns the employees of the public administration, the special autonomous administrations, the budget units¹⁴², the justice¹⁴³, the prosecutor's offices¹⁴⁴, but **may be** extended to all categories of employees)
 - a. is on sick leave;
 - b. applies for rest leave before or after maternity leave;
 - c. is called upon to perform public duties;
 - d. is called upon to meet military obligations other than military service in due time;
 - e. follows or must undergo a qualification, retraining, improvement or specialization course;
 - f. has a medical recommendation for treatment in a spa and climatic resort and therefore the date of commencement of rest leave will be the one indicated in the medical recommendation;
 - g. is on paid leave for childcare up to two years of age;
- in certain situations, when unforeseen service needs necessitates the presence of the employee in the unit (in cases of force majeure or urgent interests), leave is suspended by **recall from leave** based on the employer's written provision. In this case, the employer shall bear the expenses of the employee and the family necessary to return to the place of work;
- annual leave can be interrupted at the request of the employee for objective reasons (Article 151 paragraph 1¹³⁹).

Compensation in cash of unpaid leave is allowed only in the case of termination of the individual employment contract (and in case of magistrates only in case of termination of the activity in the court or prosecutor's office where the judge or the prosecutor functioned).

The allowance for the annual leave¹⁴⁰ shall be granted at least 5 working days before starting the leave and shall not be less than the basic salary, indemnity and bonuses of a permanent nature due for that period.

¹³⁸ **Art. 146**

(1) Annual leave shall be carried out each year.

(2) By way of exception from the provisions of paragraph (1), the leave in the following year is allowed only in the cases expressly provided by the law or in the cases provided for in the applicable collective labor agreement.

(3) The employer is obliged to grant leave until the end of the following year to all employees who in one calendar year have not fully completed the holiday leave to which they were entitled.

(4) Compensation in cash of unpaid leave is allowed only in case of termination of the individual employment contract.

¹⁴² Art. 10 of the Government Decision no. 250/1992.

¹⁴³ Art. 9 of the staff Regulations of the Courts.

¹⁴⁴ Art. 10 of the Regulation... employed with the prosecutor's office.

¹³⁹ **Art. 151**

(1) The rest leave may be interrupted, at the request of the employee, for objective reasons.

(2) The employer may recall the employee from the rest leave in the event of force majeure or for urgent interests requiring the presence of the employee at the workplace. In this case, the employer is obliged to bear all the costs of the employee and his / her family necessary for his / her return to the workplace as well as the possible damage suffered by him / her as a result of the interruption of the holiday leave.

¹⁴⁰ **Article 150**

(1) For the period of leave, the employee shall be entitled to a holiday allowance, which may not be

In this respect, it is made the average daily wage of these rights over the last three months and shall be multiplied by the number of days of leave.

Days off¹⁴¹, with payment, represent a right of employees in the event of special events allowances (birth, marriage, death, etc.). The nomination of these events as well as the number of days off paid shall be established by law, by the collective employment agreement applicable, or by the rules of procedure.

Unpaid leave¹⁴² shall be granted to the employee to solve some personal situations.

The duration of the unpaid leave shall be determined by the collective employment agreement applicable, or by the rules of procedure.

For example, shall be granted unpaid leave to employees in the public administration, particular autonomous companies, and budgetary units, with a total duration which may not exceed 90 days annually, in order to resolve the following personal situations¹⁴⁵:

a. taking the baccalaureate exam, admission examinations in higher education institutions, university exams;

b. taking the admission examination for doctor's degree as well as the doctoral exam;

c. presence in a competition for a position in another unit.

In the following situations, unpaid leave is granted without a limit of days:

a. caring for a sick child aged over 3 years during the period stated in the medical certificate;

b. medical treatment abroad for the period of time prescribed by a doctor, as well as for accompanying the husband, the wife, a close relative (child, brother, sister, parent) while they are in treatment abroad.

Unpaid leave does not affect the length of service and in the course of time these persons retain the status of employee.

Leave for professional training

Leave for professional training may be granted with or without payment, at the request of the employed person.

a. *Unpaid leave for professional training* shall be granted at the request of the employee for the duration of the training which the employee follows at his/her own initiative. The employer may reject the application of the employee only if the

less than the basic salary, indemnities and bonuses of a permanent nature due for the respective period stipulated in the individual employment contract.

(2) The holiday allowance is the daily average of the salary rights provided in par. (1) of the last 3 months preceding the one in which the leave is taken, multiplied by the number of days of leave.

(3) The annual leave allowance shall be paid by the employer with at least five working days before leaving for the annual leave.

¹⁴¹ Art. 152

(1) In the case of special family events, employees are entitled to paid days, which shall not be included in the period of rest leave.

(2) The special family events and the number of paid days are set by law, by the applicable collective labor agreement or by the internal regulation.

¹⁴² Art. 153

(1) Employees are entitled to unpaid leave to solve personal situations.

2. The duration of unpaid leave shall be determined by the applicable collective labor agreement or internal regulation.

¹⁴⁵ Art. 25 (1) of Government Decision no. 250/1992.

¹⁴⁵ Article 25(1) of the Government Decision no. 250/1992.

absence of the employee in the unit would be seriously detrimental to the pursuit of the activity.

Carrying out of the unpaid leave for professional training can be also taken divided and in the course of a calendar year for:

- taking the graduation exam from certain forms of education;
- taking the exams to promote the following year within higher education institutions.

b. Leave for professional training paid by the employer.

In accordance with Article 157(1) of the Labour Code¹⁴³ in the case in which the employer has not fulfilled its obligation to ensure, on its expenses, the participation of an employee to professional training under the conditions laid down by law, the **employee is entitled to leave for professional training, paid by the employer of up to 10 working days or up to 80 hours.**

The application of paid leave shall be submitted to the employer at least one month before, and the period in which the employee will receive paid leave for professional training shall be determined by mutual agreement.

The duration of the leave for professional training is assimilated to a period of actual work as regards the rights due to the employee (other than the salary).

According to the Labor Code, any member of staff who attends a faculty or professional training courses shall be entitled to **leave for studies**. It can be divided up in the course of a year, according to the needs of the employee. There are two possibilities as regards the leave for studies: **unpaid leave** during the period of absence or paid leave in case the employee attends training courses to help him/her in the field of activity which he/she carries out.

The employer shall be obliged to accept the **request of leave for studies** of employee only when his/her absence does not cause serious disruption of the activities of the company. According to labor law, the employees have the right to 30 calendar days of **unpaid leave** for preparing the **session of exams** or to defend the graduation theses (bachelor's degree, dissertation, doctorate, etc.). The period of leave for studies and professional training is not deducted from the seniority.

The application for leave for studies: a procedure which is essential in obtaining the leave for studies

In order to obtain the **leave for studies**, the employees must follow a procedure of regular leave, medical or annual. In this respect, the **unpaid leave** or with payment for the continuation of studies or professional training shall be announced one month before performing it. Employees must complete a **leave request** to submit it to the **employer**. The application of leave is subsequently verified, can be approved or rejected on the basis of factors related to the professional role of the employee requesting the leave, but also on the reasons listed in the request for leave. If the reasons mentioned are plausible and if the absence of the employee does not influence the company's activity, the employer shall be obliged to approve the leave request.

¹⁴³ **Article 157**

(1) If the employer has not complied with the obligation to insure the participation of an employee in vocational training at the expense of the employer, the employee is entitled to a training leave paid by the employer up to 10 working days or up to 80 hours.

(2) In the situation stipulated in par. (1) the leave allowance shall be determined according to art. 150.

(3) The period during which the employee benefits from the paid leave provided in par. (1) shall be agreed with the employer. The application for paid leave for training will be submitted to the employer under the conditions provided in art. 156 par. (1) .

7. Remuneration and statutory deductions. The income tax and social security contributions - What it is important to know: who pays, amounts paid, where to pay by the cross-border employment, e.g. Bulgarian citizens who work in Romania and Romanian citizens who work in Bulgaria.

A resident in the Romanian territory (eg Bulgarian citizens working in Romania) is obliged to declare in Romania the income obtained, regardless of their form (in the form of salaries, copyrights, freelancing income, etc.) and indifferent from what country they come from. If a natural person is resident in Romania, he is fiscally considered to receive income in Romania.

According to Art.60 of the Fiscal Code, individuals who work in Romania and obtain income in the form of salaries from abroad have the obligation to declare them monthly until the 25th of the following month for the month in which the income was obtained, to the competent fiscal body.

The competent fiscal body is represented by the financial administration where the individual has his / her domicile.

The declaration of the income obtained in the form of foreign salaries is made by the form 224 "Statement on income in the form of wages abroad obtained by natural persons carrying out activity in Romania and by the Romanian natural persons employed by the diplomatic missions and consular posts accredited in Romania " which is downloaded free of charge from the ANAF website.

When a Bulgarian citizen resident in Romania is considered tax resident?

Any natural person who has a period or periods of stay in Romania exceeding a total of 183 days during a period of 12 consecutive months is considered to be a tax resident in Romania (Article 7, paragraph 1, point 23 of the Fiscal Code).

Thus, individuals who perform work on the territory of Romania for an employee from outside Romania have the obligation to declare their income for tax purposes. The tax applied is the one established by the Romanian legislation.

How to notify the state by a Romanian citizen that he/she will no longer live in Romania, in order to no longer be taxed?

Persons wishing to go abroad who are about to stay for more than 183 days must submit to the competent fiscal body (ANAF of the country where they reside) the document "Questionnaire for establishing the tax resident's tax residency at departure from Romania" (according to OMFP No. 74/2012 published in the Official Gazette no 73 / 30.01.2012). The questionnaire is submitted 30 days prior to departure.

If you are going to a state with which Romania has a double taxation convention you are required to prove your tax residence through a residence certificate issued by the competent tax authority of the other State or by another document issued by another authority by the fiscal one, which has responsibilities in the field of residency certification. The document is valid only for the year when it is issued, which results in the document being obtained annually (Article 40 paragraph 6 of the Fiscal Code).

If you are going to a country with which Romania has not concluded a double taxation avoidance convention (Romania - Bulgaria), you are liable to pay tax, both in Romania and abroad, for the current year leaving the country plus another three consecutive years to the one in which he left the territory (Article 40 paragraph 7 of the Fiscal Code).

After submitting this questionnaire, you will receive within 15 days of submitting a notification regarding the fulfilment of the conditions of fiscal residence in which ANAF will inform you whether you still have tax obligations in Romania or you will be removed from the tax records.

In conclusion: natural persons residing in Romania who make income from employment contracts concluded with foreign companies have the obligation to declare this income monthly and to tax them according to the legislation in force.

How is taxed the income from salaries obtained from abroad (e.g. Bulgaria)?

The income from salaries obtained abroad is taxed according to art. 57 of the Fiscal Code with 16% income tax and declared in the 224 declaration. In addition to the income tax on salaries, it is also due to social security contributions.

8. Business Travel (Travel for business purpose)

Employees travelling on duty are entitled to travel and accommodation expenses, as well as to a delegation allowance, in accordance with the Labor Code. This allowance, also called diurnal allowance, is granted on a calendar day for both intra-country and international travel, in an amount specifically set by law. Find out from the material below what are the conditions for granting a daily allowance, whether or not it is subject to income tax, and on what basis the accounting documents will be settled.

The subsistence allowance is a **legal right of any employee** engaged under a contract of employment, as shown in the Labor Code: *"The Employee delegate shall be entitled to the payment of the costs of transport and accommodation, as well as to an allowance of delegation, under the conditions provided for by law or the collective employment agreement applicable"*.

The same decree¹⁴⁴ lays down that the delegation can be ordered for a period of not more than 60 calendar days in 12 months and can be prolonged for successive period of maximum 60 calendar days, only with the agreement of the employee. "The refusal of the employee of an extension of the assignment shall not constitute grounds for disciplinary sanction of", is mentioned in the labor legislation.

In the case of commercial companies, payment for the period the delegation and detachment shall be granted under the conditions laid down in collective agreements or individual contracts of employment.

In the case in which the company has concluded a collective work, when determining the daily subsistence allowance and the other conditions during driving can be done through an amendment to the individual employment contracts. The subsistence allowance shall be granted both in the country and abroad. According to the domestic rules, daily allowance shall be granted per calendar day.

Within the **country**, the subsistence allowance is established at the level of the legally granted public institutions, indexed with 2.5, and will be granted in the case in which the delegation shall be carried out in a locality situated at a distance greater than 5 km from the town in which he has his permanent place of employment, is

¹⁴⁴ **Article 44**

(1) The delegation may be arranged for a period of up to 60 calendar days in 12 months and may be extended for successive periods of maximum 60 calendar days only with the agreement of the employee. The employee's refusal to extend the delegation may not be a reason for disciplinary sanction.

(2) The delegated employee is entitled to the payment of transport and accommodation expenses, as well as to a delegation allowance, under the conditions stipulated by the law or the applicable collective labor contract.

shown in the *Government Decision no. 1860/2006*. The allowance shall be granted to the employee regardless of the function which it meets and the authority or public institution in which their activities are carried out.

The number of calendar days in which the person is in the delegation counts from the date and time of departure until the date and time of the return of the means of transport to and from the place where he has his permanent place of employment, considering every 24 hours as a day of delegation.

For one-day delegation as well as for the last day, in case of delegation for several days, the allowance shall be granted only if the duration of the delegation is at least 12 hours. The level set for public institutions is, as of January 27, 2015, by, **17 lei/day**.

In respect of the **external you subsistence expenses**, it shall be governed by the *Government Decision No. 518/1995 concerning the rights and obligations of the staff of the roman sent abroad for the fulfilment of tasks with the temporary nature*. The subsistence allowance is established at the level of the legal framework of the daily subsistence allowance established for each country indexed with 2.5.

The period for which foreign currency denomination is granted shall be determined by the means of transport used, taking into account the time of departure of the airplane, when leaving abroad, and the moment of landing of the airplane, on arrival in the country, and at airports serving as points of departure border crossing of Romania.

In the case of train or car journeys, the time of passing by train or by means of vehicles at the border crossing points of Romania shall be considered, both when travelling abroad and returning to the country.

Instead, for periods of less than 24 hours, the daily allowance is as follows: 50% up to 12 hours and 100% for the period exceeding 12 hours.

The subsistence allowance granted for trips abroad **covers including the cost of transport within the locality**.

According to the legal rules, **will not be granted meal tickets** for the period during which the employee is in delegation / posting and receives daily allowance (diurnal). This provision is covered by GD no. 23/2015, which approves the rules for the application of the Mass Voucher Law. "The days when the employees are delegated or detached outside the locality in which they have their permanent work place and receive daily or monthly allowance for delegation or detachment are not considered days," says the normative act quoted.

The person sent in the delegation or posting has the right to receive, under the law, an advance in cash, determined in relation to the number of days of travel, but not more than the total of the delegation or posting expenses for 30 calendar days, the provision being included by GD 1860/2006. Also, the amounts in foreign currency due to staff sent abroad are granted in the form of an advance, as shown in GD 518/1995.

However, by way of exception, in practice, there may be situations in which the company may grant a daily allowance after the delegation or posting of persons.

Granting of the advance in lei and its justification shall be done under the conditions stipulated by the legal regulations regarding cashing operations and cash payments through the cashier. Thus, before the travel, the financial-accounting department will prepare, in duplicate, for the person sent in the delegation / posting, a payment order (cashing), according to the Order of the Ministry of Economy and Finance no. 3512/2008 on financial and accounting documents.

Further, the employee who will travel for each trip and to justify the advances made for the purchase of cash-paid material will prepare a copy of the document called *Travel Order*.

In addition, the person sent in the delegation or posting is required to obtain, on this order, from the unit to which he is travelling, the visa and the stamp of the head of the unit or his substitute, indicating the date and time of arrival and departure. In the case of the foreign currency advance, the justification of the amounts spent in foreign currency, except for the daily allowances, is made on the basis of documents and approved by the managers of the sending units.

Therefore, the financial-accounting document used to settle the money received by the person sent in a delegation or posting abroad, other than diurnal rights, will be *made for travel expenses (external)*.

"The tax rules for salary income also apply to (...) the indemnity and any other amount of the same nature received by the employees during the period of delegation and posting to another locality, in the country and abroad, in the interest of the service, for the part which exceeds the limit of 2.5 times the legal level established by the Government Decision for the staff of the public institutions. These provisions also apply to the employees of the Romanian representatives of foreign legal persons", is mentioned in the Fiscal Code.

Thus, according to the regulations, the allowance during the period of the delegation and posting elsewhere in the country and abroad, for business purpose, the amount of which exceeds 2.5 times the legally established for the employees in the public institutions **shall be subject to the tax on salaries, and shall be included in the mandatory monthly basis for the calculation of the social contributions**, irrespective of the taxable entity (paying the tax on profit tax payer tax on income of micro, an authorized natural person, individual undertaking, non-governmental organization).

Basically, if it exceeds 2.5 times the legally established level for public institutions, then the difference is considered income assimilated to salaries/advantage in nature and shall be taxed as such, with both the income tax rate to 16%, and compulsory social contributions, employee and employer.

Starting from 27 January 2015, the value of the daily subsistence allowance for staff of the budget has increased by¹⁴⁵ 4 lei, reaching the 17 lei/day, so that a person employed in private environment may receive a non-taxable allowance for a delegation in the country in the amount of 17 lei x 2.5 = 42.5 lei/day.

With effect from 1 June 2013, a rule which has not been modified since then, being valid, then, in 2017, for subsistence expenses shall apply to the general rule of deductibility, so that employers may lay down that the subsistence expenses, any amount of money, this being fully in the calculation of the deductible taxable profit.

- It is advisable for each company to have an internal procedure for delegations to present transparently to all employees what their obligations are.

- Prior to going to the delegation, the employee may request an advance on the basis of an estimate of the expenses to be incurred, upon returning from the delegation and depositing the return to receive or refund the difference.

¹⁴⁵ The Finance Ministry Order No. 60/2015, which was published in the Official Gazette no. 68, the value of the daily subsistence allowance for staff of the budget has increased by lei 4, reaching the 17 lei/day.

- the employee can receive the daily allowance for each day of travel according to the entity's decision;
- during the period when the employee is travelling / posted and receives the daily allowance, no meal vouchers are granted;
- the employee will have to complete the travel order that he / she will have to hand over to the accounting department when returning. The travel order serves as: a provision to the delegate to carry out the travel, a document for the payment by the holder of the advance of the expenses incurred, a document for the determination of the differences to be received or to be returned by the advance holder, a documentary evidence of entry in the accounts.
- the employee will have to attach to the travel order all supporting documents (vouchers, invoices, transport tickets, etc.) which show expenses incurred during the delegation.

9. Termination of the employment contract - cases of termination of the individual employment contract (termination of the individual employment contract, termination of the individual employment contract for reasons related to the person's employee, termination of the individual labour contract for reasons not related to the employee, dismissal)

The individual employment contract is generally considered to be in the labour law of Romania as the sole source of the legal employment relationship on the basis of which a person acquires the status of an employee.

In fact, Art. 10 of the Labour Code defines the individual employment contract as the contract under which a natural person, called an employee, undertakes to work for and under the authority of an employer, a natural or legal person, in return for a salary.¹⁴⁶

The concept of "termination" of the employment contract may also include other grounds which, however, result in the end (breaking up or termination) of this legal relationship between the parties. Thus, in the situation of the public functions, for which the law stipulates, in order to conclude the individual employment contract, the election or appointment in office (such as senators, deputies, mayors, deputy mayors, etc.), the extinction of the legal labour relations is the consequence of the revocation, resignation, etc., before the expiration of the mandate for which he was invested.

Dismissal is the measure taken by the employer (patron), motivated by the lack of interest in continuing the employment relationship with the employee concerned and which may lead to the employee being taken out of work. However, the grounds for dismissal (termination of the employment contract) are laid down by mandatory rules, and it is not possible to change them or to establish others by the parties to the legal employment relationship. The regulation of mandatory terms and conditions for the termination of the employment contract ensures the respect of the interests of both sides of the legal work relationship.

¹⁴⁶ S. Beligradeanu, I.T. Stefanescu - "Dictionary of employment law" Lumina Lex Publishing House, Bucharest, 2002, p. 159.

The classification of cases of termination of the individual employment contract

Article 55(a-c) of the Labour Code¹⁴⁷ regulates the three hypotheses (modes) of termination of employment contracts, and in Article 81(1)(a-b) of the Labour Code are also covered two ways of termination of legal relations. From the content of the texts of the law in question, it follows that in all these assumptions, termination of the contract of employment is made through a legal act, either by an unilateral manifestation of the will, the initiative of one of the parties (employee or employer), either through a bilateral manifestation of will, as a result of the agreement of the parties, or in circumstances which do not depend on the will of any of the parties legal report of work.

The facts and the legal acts which justify the termination of the individual employment contract shall constitute grounds for termination of employment contracts. Regulation by law of the reasons for the termination of the employment contract ensures the guarantee of stability at work.

Therefore, in all cases of termination of the employment contract, by dismissal (individual or collective), as a consequence of the unilateral will of the employer, stating the reasons for the content of the decision given with regard to termination of the employment relationship is mandatory. If the termination of the employment contract occurs as a result of the agreement of the parties, on the date agreed by them, or as a result of an unilateral will of the employee, this is no longer obligatorily motivated.

The extinction of the legal employment relationship requires the determination of the reasons for it, the knowledge of the cases and the ways to end this report and the fulfilment of certain conditions; in their absence, the termination of the employment contract does not take effect. There is only one exception: when the legal relationship of work ceases to be lawful, ie in circumstances that do not depend on the will of the parties. The assumptions under labor law, in which the termination of the employment contract may take place, in the ways and for the reasons established by the law, form the cases of termination of the employment contract. However, in addition to the stability of the modes, motives and cases of termination of the employment contract, labor law provides for certain conditions, either substantive and formal, or procedural, to justify, to validate the termination of the employment contract as a legal act.

Thus, if the individual dismissal of the employee (Article 61(a)-(e) or collective (article 68 of the Labor Code amended and subsequently completed) occurs, the employer has the obligation to issue a written decision, which includes the appearance the reasons, the legal provisions on which it is based, the deadlines and the bodies to which the measure may be appealed. These are formal conditions without which the legal employment relationship can not take place. But labor law also contains procedural conditions, which, as it appreciates the literature, are of a complex nature. Some of these conditions are not tangential to the legal act of termination of the employment relationship, such as the employer's obligation to communicate within 30 days to the person concerned the termination of the

¹⁴⁷ **Article 55** - Individual employment contracts may be terminated as follows:

- a) de jure;
- b) after the agreement of the parties, on the date agreed upon by them;
- c) after the unilateral decision of one party, in the cases and under the terms restrictively provided for in the law.

employment contract, under the conditions of Art. 62 par. 2 of the Labor Code with subsequent amendments and supplements.

Other procedural conditions refer to the validity of the termination of the employment contract, such as: the employer's obligation to give notice to dismissed under Art. 61 letters c-e, art. 65 and art. 66 of the Labor Code; the employer's obligation that, in case of dismissal for the reasons provided by art. 61 letters c-e, as well as if the employment contract has ceased in accordance with art. 56 letter f of the Labor Code to propose to the employee other vacancies in the unit compatible with his / her training and, if he does not have such places, to seek the support of the territorial employment agency in order to redeploy the employee corresponding to his / her training. The cases that lead to the termination of the employment contract on the employer's initiative were also analyzed in the Romanian legal doctrine, which considered that the only criterion dividing the reasons for the termination of the employment relationship from the employer's initiative into "imputable" and "non-imputable" is the culpable attitude of the employed person, his fault. In view of this criterion, a classification of the cases of cessation of the labor contract has been made, as follows: causes that exclude the fault of the employed person and causes that cause the fault of the person employed. In another opinion, the causes that lead to the termination of the employment contract can be classified by: their legal nature; the manner of regulation and the circumstance that determines them.

According to the rules relating to the termination of the contract of employment, laid down in the Law no 53/2003 (Labor Code) in Romania, as amended and supplemented subsequently, distinct causes of termination of employment contracts, are: cessation of law of the individual employment contract, provided for in Article 56(a-k of the Labor Code¹⁴⁸, as amended and supplemented subsequently; as a

¹⁴⁸ **Art. 56**

An individual employment contract shall cease de jure:

- a) at the date of the death of the employee or of the employer, as well as in case of dissolution of the employer legal person, from the date when the employer ceased to exist according to the law;
- b) at the date of the irrevocable stay of the court's decision to declare the death or prohibition of the employee or the individual employer;
- c) at the time of cumulative fulfilment of standard age conditions and the minimum retirement contribution; at the time of the communication of the pension decision in the case of the third degree disability pension, the partial anticipated pension, the anticipated pension, the old-age pension with the reduction of the standard retirement age; at the date of communicating the medical decision on work capacity in the case of grade I or II invalidity;
- d) as a result of the finding of the absolute nullity of the individual labor contract, from the date on which the nullity was found by agreement of the parties or by a final court decision;
- e) as a result of the admission of the request for reintegration into the position occupied by an employee of an unlawfully dismissed person or for unfounded reasons, from the date of the final reintegration decision;
- f) as a result of the conviction of the execution of a custodial sentence, from the date of the final judgment;
- (g) from the date of withdrawal by the competent authorities or bodies of the approvals, authorizations or endorsements required for the exercise of the profession
- h) as a result of the prohibition of the exercise of a profession or function, as a complementary measure of security or punishment, from the date of the final ruling on the prohibition;
- i) on the expiration of the term of the individual employment contract concluded on a fixed term;
- j) withdrawal of consent of parents or legal representatives in the case of employees aged between 15 and 16 years.

(2) For the situations stipulated in paragraph (1) (c) –(j) the determination of the case of termination of the employment contract is made within 5 working days from its intervention, in writing, by decision of the employer, and shall be communicated to the persons in those cases within 5 working days.

result of the agreement of the parties, the date agreed by them, in accordance with Article 55(b) of the Labor Code and Article 74(1)(a) and (b) of the single collective employment agreement at national level on the years 2005-2006 in Romania and as a result of a unilateral demands of one of the parties, the detent in the cases and under the conditions provided for by law - dismissal provided for in Article 61(a-e ; art 65 Paragraphs 1 and 66 of the Labour Code and the resignation (Article 79 of the Labour Code).¹⁴⁹

Upon the employer's unilateral initiative, we can distinguish:

- dismissal for reasons that depend on the person of the employee, regulated by art. 61 (a) of Labour Code, with subsequent amendments and supplements
- dismissal for reasons not related to the employee, provided by art.65 (1) and (66) (individual and collective dismissal) of the Labour Code, as subsequently amended and supplemented.¹⁵⁰

Termination of the individual employment contract as a result of the agreement of the parties, on the date agreed between them

A distinct grounds for termination of the contract of employment is stipulated by Article 55(b) of the new Labour Code: "Following the agreement of the parties, upon the date agreed by them". In the Romanian law, the employment contract is

(Article 56 paragraph 1 letter c amended by Law 12/2015)

¹⁴⁹ **Article 56**

An individual employment contract shall cease de jure:

- a) on the date of employee death;
- b) on the date of the final judgment certifying the death or legal guardianship of the employee;
- c) repealed;
- d) on the date the decision of employee old-age retirement, full or partial early retirement or invalidity retirement has been notified according to the law;
- e) following the establishment of the absolute nullity of the individual employment contract, from the date the nullity was established by agreement of the parties or by final judgment;
- f) when the demand of reinstatement in the position held by a person unlawfully or groundlessly dismissed has been admitted, from the date of the final reinstatement judgment;
- g) following the conviction to a prison term, from the date of the final judgment;
- h) from the date the competent authorities or bodies withdraw the approvals, authorizations or attestations necessary for the exercise of the profession;
- i) following the interdiction to practice a profession or a function, as a safety measure or complementary punishment, from the date of the final interdiction judgment;
- j) at the end of the individual employment contract of limited duration;
- k) following the withdrawal of the agreement of the parents or legal representatives, for the employees from fifteen to sixteen years old.

(2) In the cases referred to in paragraph (1)(c) to (j) , the determination in the case of the termination of the individual labor contract shall be made within five working days of the intervenirea thereof, in writing, by the decision of the employer, and shall be communicated to the persons in the situations in question within 5 working days.

(Article 56(1)(c as amended by Law 12/2015)

¹⁵⁰ **Article 65**

(1) A dismissal for reasons not related to the person of the employee is the cessation of the individual employment contract determined by the elimination of the workplace of the employee, for one or several reasons not connected to employee's person.

(2) The elimination of the workplace must be effective and have a real and serious cause.

Article 66

The dismissal for reasons not related to the person of the employee may be individual or collective.

considered to be the main source of legal report of work on the basis of which a person acquired the quality of employee. But the contract of employment is a legal instrument which at the same time give rise to a legal report by the conclusion of the individual employment contract, but geared and the rights and obligations of the parties, referred to in the Constitution of Romania that the right to work, the right to social protection, the right to association, the right to strike, etc. in the labor legislation in Romania, the general rule is the conclusion of the contract of indefinite duration, the exception being the conclusion of this contract for a specified period, which may not be less than 24 months and only under the conditions laid down by the law (Article 81(a-E)).¹⁵¹

10. Compensation by cessation/termination of employment contract

In the public sector, as shown in **art.67 of Labour Code**, the employees dismissed for reasons that are not related to their person benefit from active measures to combat unemployment and may be eligible for compensation under the conditions provided for by law and the collective employment agreement applicable.

In the private sector, the way of granting compensatory wages is not regulated by law. Thus, the amount of compensatory payments, the date of granting, other conditions of granting are determined by collective work. Even though the Labour Code does not provide expressly we appreciate that the granting of compensatory payments can also be established and the individual labour contract in which the conditions for granting are established by this contract. At the same time, we consider that nothing prevents the employer from granting the redundant employees other compensations than those provided in the individual labour contract and in the collective labour contract.

However, the right to compensatory payments is established prior to the termination of the individual employment contract, thus during its execution. After the termination of the individual labour contract, when he ceases to be an employer and the status of an employee, no rights can be established in favour of the former

¹⁵¹ Art. 81 - 1) Resignation means the unilateral act of the employee who, by a written notification, communicates the employer the cessation of the individual employment contract at the end of the notice period.

(2) The refusal of the employer to register the resignation shall give the employee the right to prove it by any type of evidence.

(3) An employee shall have the right not to motivate his/her resignation.

(4) The term of notice shall be the one agreed upon by the parties in the individual employment contract or, as appropriate, the one provided for in the applicable collective labour agreements and shall not exceed 15 calendar days for the employees in operational positions, respectively 30 calendar days for the employees in management positions.

(5) During the notice, the individual employment contract shall continue to take full effect.

(6) If the individual employment contract has been suspended during the notice period, the term of notice shall be suspended accordingly.

(7) The individual employment contract shall cease at the end of the term of notice or at the date of total or partial renunciation to that term by the employer.

(8) An employee may resign without notice if the employer has not met his/her obligations undertaken in the individual employment contract.

employee. Since the law does not regulate the conditions for granting compensatory payments, they are set by the parties, the employer and the employee.

In practice, compensatory salaries are usually granted upon termination of the individual labor contract with the salary of wage earners.

The provisions of art.65 (1) of the Labour Code, republished, regulates the possibility of termination of the individual labour contract for reasons that are not related to the employee caused by the closure of the work place, and par. (2) of this article states that closure of the job must be effective and have a real and serious cause.

11. Rights after illegal dismissal

In the case of unlawful dismissal, ascertained by the court, the employer may be obliged (if the dismissal decision is found to be illegal) to:

- - Compensation of equal pay with increased salary rights and all indexed and up-dated salary rights accruing to the employee, rights related to periods during which he/she was unlawfully dismissed;
- - Compensation of equal pay with increased salary rights and all indexed and current wage entitlements, including the due allowances, of Saturdays worked (where applicable) in the last 3 years prior to the date of bringing the action in court which the employee actually worked during this period, without benefiting from his/her rights;
- - Obliges the employer to pay to the employee the contributions due to the state budget for the amounts not paid and also to pay due diligence in order to enclose the mention of the said rights in a certifying attestation.

Dismissal by job closure implies observance of a certain procedure imposed by the Labour Code. More specifically, the employer has the obligation to grant the dismissed employee a **notice of at least 20 working days**. 'In the case in which the individual employment contracts or the applicable collective employment agreement provides for a period of notice above, then it will be granted, since it is favourable to the employee', rated the expert.

Moreover, the labour legislation provides that the employee fired for reasons that are not related to his/her person benefits from **active measures to combat unemployment**. In practice, the employer shall notify the Territorial agency for employment for redistribution of the employee. Other employers provide support to employees dismissed by advice in order to find a new job or by contacting an agency for placement of staff. "Although it is laid down by law, some employers granted the employees dismissed a number of hours free paid during the period of notice in order to seek employment. As a general rule, they shall be combined in the last part of the period of notice.

12. Social security compensations - e.g. Compensation for unemployment, pension rights, etc.

After joining the European Union, efforts are being made to change the legislative and institutional framework specific to the communist political systems, adapting to the principles and standards in the EU Member States. Integrated countries must also adapt to the permanent changes in the European Union, which are characteristic of the deepening process of integration. One of the criteria for integration into the European Union is the uptake of the *acquis communautaire*. This criterion is difficult to achieve because it involves both bilateral negotiations on

chapters of European legislation and internal processes of legislative and institutional adaptation.

Every state has an obligation to protect its citizens. That is why the large and growing number of Romanian citizens working abroad generated the growing concerns of the Romanian state for the social protection of these people. The important policy of European integration for Romania and the need to protect the interests of Romanian citizens require an analysis of the way in which social security of migrant workers takes place after Romania's accession to the European Union.

Social security is now a major concern for both governments and individuals. The period after 1989 was rich in transformations, both in terms of the legal framework for the functioning of labour market relations and the mechanisms for ensuring social protection and inclusion. During this period, the realities of social phenomena such as population aging and demographic decline, labor market changes, and adaptation to community standards have led to profound changes in the social security system in Romania.

The Ministry of Labor and Social Justice, the institution responsible for social policy in Romania, has proposed a radical change in addressing social policy. Thus, it is intended to create decent conditions for effective participation of citizens in social life, by ensuring collective, legislative or other guarantees, in parallel with the continuous increase of individual responsibility. The "promoted social model" is based on the balance between competition, collaboration and solidarity.

The demands of the market economy and the preparation for accession to the European Union have led to the adoption of flexible legal instruments to boost the dynamics of the labour market and of the working relationships as a whole so that the application of a modern legal framework becomes the engine of profound changes in society.

The current Labour Code regulates work relations and proposes legislative solutions that from a conceptual point of view seek to ensure the coherence, correctness, flexibility and stability of labour law over time. At the same time, the extension of the provisions of the Labour Code reinforces the principle of non-discriminatory application of labour law.

At present, the Romanian social security legislation regulates:

2. *Public system of pensions in Romania:*

- Law no. 263/2010 on the unitary public pension system, with subsequent amendments and supplements;
- Government Decision no. 257/2011 for the approval of the rules for the application of Law no. 263/2010 on the unitary system of public pensions, with **subsequent amendments and supplements.**

3. *Social Assistance*

- Law 197/2012 on quality assurance in the field of social services
- Law no. 292 of 20 December 2011 - Social Assistance Law
- Emergency Ordinance no. 124 of 27 December 2011 amending and completing some regulatory acts regulating the granting of social assistance benefits
- Law no. 74 of 3 May 1999 for the ratification of the revised European Social Charter, adopted in Strasbourg on 3 May 1996
- Law no. 47 of 8 March 2006 on the national social assistance system

4. *Persons with Disabilities:*

- Decision no. 89 / 05.02.2010 amending and supplementing the Methodological Norms for the application of the provisions of Law no. 448/2006 on the protection

and promotion of the rights of persons with disabilities, approved by the Government Decision no. 268/2007 (OJ No. 103 / 15.02.2010)

Social security holds most of the social security system. The state social insurance budget is financed by the following social security benefits: old-age pensions, invalidity pensions, survivors' pensions, occupational disease and work-related accidents, sickness prevention and recovery, indemnities for maternity, allowances for child raising and care, death allowances. The allowance for temporary work incapacity is co-financed by the state social insurance budget and employer. Social contributions cover social insurance, unemployment insurance and health insurance, as well as contributions to the state fund for people with disabilities.

The public pension system in Romania is atypical. Since its creation, this system has not only referred to pensions but has integrated many types of short-term or non-contributory benefits such as maternity, medical leave, parental leave and child care leave, death. There was no separation of insurance contributions depending on benefits, social security budgets and their execution being developed and monitored globally.

In order to increase the sustainability of the public pension system, various measures have been put in place in recent years, including the transfer of non-contributory benefits from the social security budget to the state budget (child-raising allowance up to two years old or up to three years of age , in the case of a disabled child) or to the social health insurance budget (allowances granted on the basis of medical certificates, such as allowances for temporary work incapacity, maternity, sick child care, temporary shift to other work, reduction of working time, quarantine).

Reforming the pension system and other social security rights is a response to the economic and social realities facing the public pension system. The reform meant the separation of the social security budget from the state budget and the administration of pension funds by the central administration, as well as the extension of the contribution period, the differentiation of the contributions, the change of the pension calculation methodology and the tightening of the early retirement conditions. All these changes were made by normative acts regarding the public pension system and other social insurance rights.

At the same time, the personal field for the provision of social security benefits in the public system was more precisely defined and expanded. Thus, the main categories of insured persons in the public pension system are:

- persons with an individual labour contract;
- elected public authorities or persons appointed within the executive, legislative or judicial authority during their term of office;
- registered unemployed and who fall under the Law no. 76/2002 on the unemployment insurance system and the stimulation of employment;
- persons authorized to carry out independent activities, sole shareholder, associates, partners or shareholders, administrators or managers;
- members of the family association;
- agricultural and forestry workers, property owners and / or lessees of agricultural and forestry areas, members of agricultural companies or other forms of association in agriculture;
- persons employed in international institutions;
- persons who carry out activities solely on the basis of civil service conventions;
- persons registered in worship units recognized by law.

The pension law¹⁵², which entered into force in 2010, distributes the load for the payment of social security contributions of member between the employee and the employer. The amount of the pension depends on the amount of the contributions paid during the active life. In order to mitigate the effects of inflation on pensions, quarterly indexation and gradual retraining mechanisms were applied. In order to bring the level of pensions as close as possible to the needs of the beneficiaries, given that the number of active population is far exceeded by the number of pensioners, the importance of the "pay as you go" pension system will gradually decrease in favor of private pension insurance.

The reform of the public pension system in Romania aimed at the observance of the community provisions in preparation for accession to the European Union. Thus, discrimination on the basis of nationality with regard to social security has been eliminated, the possibility of exporting benefits and the aggregation of insurance periods has been foreseen.

Social health insurance is the main system for protecting the health of the population, guaranteed by the Romanian Constitution. Law no. 145/1997 on social health insurance regulated a new form of state social insurance, namely social health insurance.

Currently, the field of social health insurance is regulated by GEO no. 150/2002 on the organization and functioning of the social health insurance system. GEO no. 150/2002 enshrines the principle of non-discrimination regarding the right to medical services of insured persons and their family members in the framework of social health insurance. Social health insurance is mandatory, covering virtually all the country's population: employees, retirees, unemployed, people working on civil contracts, people who are not paid but have an obligation to ensure their health.

Romanian citizens residing in the country are subject to compulsory health insurance but also foreign citizens and stateless persons residing or residing in Romania.

13. Work litigation (labour jurisdiction) - protection of the employee's right

Ethimologically, the word "jurisdiction" comes from the Latin "juris", which means "right" and "dico" which means "to say", which in Romanian is translated by "giving the right, or decide what the law establishes."¹⁵³

The jurisdiction or judgment activity has to solve by certain bodies and according to a procedure laid down by the law of disputes, the causes of which arise between the subjects of legal relations, in connection with the rights and obligations forming the content of these relations. If the law recognizes and formulate certain subjective rights of persons, it is absolutely necessary to make available also a legal means to achieve them. The procedural means to which the holder use to perform the violated right or for court confirmation of the right, is represented by the action.

Administration of justice is the duty of the courts, and exceptionally it is given within the competence of the other bodies, which make up the special jurisdictions.

The justification of this fact is the nature of the disputes on which special courts are called upon to solve them.

¹⁵² Law 263/2010 - Law no. 172/2016 for completing art. 158 of Law no. 263/2010 regarding the unitary pension system was published in the Official Gazette, Part I, no. 808 of 13 October 2016 and entered into force on 12 November 2016.

¹⁵³ See Sanda Ghimpu , Alexandru Ticlea, Labour law, second edition, All Beck Publishing House, 2001, P787

The Labour Code dedicates Title IX “Work conflicts” to the rules relating to jurisdiction of labour. This has as its object the settlement of work disputes with respect to the conclusion, modification, suspension and termination of the individual employment contracts or, as the case may be, the collective labour agreements provided for in the code, as well as the applications on the legal relationship between the social partners ⁴.

Therefore, the organization of the labour jurisdiction as special jurisdiction lies in the peculiarities of the legal relations of employment and in considering just these peculiarities. It fulfils a safety function, as well as the rules of labor law.

The market economy has imposed the recognition of the existence of the two social partners employees and employers, without which no useful social and productive activity would not be built.

The common goal is that of performing an efficient and cost-effective activity, with the greatest possible benefits, to ensure to each of them prosperity, and stability, professional, social and economic progress.

But not always the two parties agree and for this reason there are disputes, misunderstandings, conflicts. It should be noted that not all dissensions automatically lead to a legal conflict, within the legal meaning of the term. The conflict appears as imminent danger when¹⁵⁴ one of the two social partners does not respect the rights of the other, does not fulfil the obligations it has assumed, or seizes that there is a danger of the conflict occurs and notifies the other partner that is going to be resorted to pressure.

The first regulation of work conflicts after 1989 was represented by Law no. 15/1991 on the settlement of collective labour disputes, law aimed to meet a social reality that characterized the period of transition of Romania.

Subsequently, in order to harmonize our legislation with the European one, has been adopted the framework-law in this field, namely the Law no. 168/1999 on the settlement of work disputes, law by which there have been regulated all categories of work conflicts, the individual and collective.

The old Labour Code used the terminology of “work litigations” and defined them as disputes between employed persons and units, in connection with the conclusion, execution and termination of employment contract. Article 172(3) of the Labour Code where we can find this definition takes into account only the individual conflicts of rights.

The new Labour Code adopted by Law no. 53/2003 included in the category of work conflicts “any disagreement occurred between the social partners, in employment relations”. In the new regulation, the legislator has limited to include in Title IX of the Labour Code, only 6 articles, referred to in Article 231 to article 236, the law articles which contain principled provisions as well as references to the law.

We can appreciate that there is similarity between the terms “work disputes” and “conflicts of rights”, with the two of its components, individual and collective work conflicts.

The difference would consist in the fact that the work dispute represents a conflict deducted to judgment, or in other words a dispute with regard to which the matter was already seized the competent jurisdiction body to settle it. ¹⁵⁵

Article 3 of Law no. 168/1999¹⁵⁶ defined conflicts of work as those conflicts between the employees and the units where they were employed, with regard to the

¹⁵⁴ See Philippe Bois, *Etudes de droit social*, vol. 3, Vorlag, Zurich, 1991, p.19

¹⁵⁵ C. Calinoiu, *Jurisdiction of work*, Lumina Lex, Publishing House, Bucharest 1998, p. 24

¹⁵⁶ Repealed by the entry into force of Law No. 62/2011 - Law on social dialogue

professional, social, economic interests, or the rights arising from the operation of employment relations.

Taking a classification existing also in other systems of law, the Romanian law divides the conflicts of work into conflicts of rights and conflicts of interests.

Conflicts of interests are those conflicts which have as their object the determination of the conditions of employment and appear during the negotiation of collective agreements. They are related to the interests of the conflicts with a professional, social or economic nature of the employees.

Any conflict which may arise between employees and units in connection with the commencement or the conclusion of collective bargaining on the collective employment agreement, there is a conflict of interests. Conflicts of interests are determined and appear as a result of the disagreements between the social partners and the changes which are linked to the negotiation and conclusion of collective agreements.

Not all conflicts are conflicts of interests, but only those which arise in connection with the commencement, conduct and the conclusion of collective bargaining and aimed at the conclusion of collective work, in which must be established at least two objectives, namely : conditions of employment and wages.

In connection with the latter feature stated, we need to make a remark, namely that, in the course of employment relations, a particularly important role they have both collective agreements and individual employment contracts, and when the misunderstandings concern the determination of the conditions of employment of the collective employment agreement, the conflict is a conflict of interests.

Conflicts of interest may be only collective labour conflicts and the phases which can be followed with a view to settling are: conciliation (which is a mandatory phase to follow), mediation and arbitration (which are optional phases); the consequence of failure to solve the parties' disputes by exhaustion of these possibilities conferred by law, is the recourse to strike, as the last phase of the conflict of interests.

The conflicts of rights, as defined by Article 5 of Law no. 168/1999, are those conflicts which have as their object the exercise of certain rights or the fulfilment of obligations arising from laws and other regulatory acts, as well as individual or collective contracts of employment.

Conflicts of rights may be both collective, when concern a collective labour agreement, as well as individual when concerning an individual employment contract.

In accordance with the legislation concerning the settlement of disputes, shall be deemed to be conflicts of rights:

- a. The conflicts in connection with the conclusion, execution, modification, suspension, termination of the individual employment contracts;
- b. The conflicts in connection with the execution of collective labour agreements;
- c. The conflicts in connection with the payment of damages to cover the damages caused by the parties, through failure or poor performance of the obligations laid down in the contract by individual employment contracts;
- d. The conflicts in connection with the establishment of nullity of the individual or collective employment contracts, or of some of its clauses thereof ;
- e. The conflicts in connection with the establishment of cessation of application of the collective employment agreements.

The law expressly mentions that are not considered conflicts of rights the conflicts between the units and persons providing their various activities under other contracts than individual employment contracts.

Among the general principles of the civil process, which come from the constitutional rules which are common to all the activities of judgment and which are found in the activity of the jurisdiction of labour, we mention:

The principle of legality is a principle resulting from the rules relating to the organization and carrying out of the justice and which requires strict observance of the Constitution and the other regulatory acts to which he/she is subject. Settlement of any disputes can only be achieved by the concerned authorities and only in accordance with the procedure laid down by law. Both the courts and the other bodies of the jurisdiction of the work make justice in order to defend the citizens' rights and freedoms.

Equality of the parties is a general principle of jurisdiction activity and which manifests itself as a specific form of the constitutional principle of equal rights for all citizens. It is established in Article 16(1) and 1 of the Constitution and stipulates that "citizens are equal before the law and public authorities, without any privilege or discrimination".

Some rules specific to the matter we study ensures effective protection of employees participating in processes, so that, according to the rules concerning the settlement of work disputes, in the case of judging disputes having as object the unilateral measures ordered by employers, they have the obligation that until the first day of hearing to submit the evidence on the basis of which have taken the contested measure.

The official language in the justice system is Romanian. According to Article 128(1) and (2) of the Constitution, the proceedings shall be conducted in Romanian. The citizens belonging to national minorities shall have the right to express themselves in their mother tongue in front of the courts, under the conditions of the organic law".

Among constitutional principles with regard to the activity of the trial in general, we list the following:

The independence of judges, which is a general principle established in Article 124(3) of the Constitution, in accordance with which the "judges shall be independent and subject only to the law".

The right to defence is an essential principle of jurisdictional activity, whereas only by its respect the judgment of the court will reflect the truth and only on the basis of evidence administered and the verifications carried out on the defences made by the parties.

The exercise of the procedural rights in good faith is a general principle of the activity of judgment written in Article 57 of the Constitution, which stipulates that "Romanian citizens, aliens and stateless persons shall exercise their constitutional rights and freedoms in good faith, without any infringement of the rights and liberties of others."

Security of tenure of judges is a general principle of procedural activity which supports the independence and impartiality of judges and, implicitly, the correct administration of justice.

Judicial control is another important principle of the activity of the court, which makes it possible to organize the courts on different degrees of jurisdiction, the setting up of the appeal, or the recourse as well as the extraordinary ways of appeal, which make it possible the censorship of illegal and unfounded decisions by the superior courts or by those entitled to re-evaluate previous decisions if the first few procedural cycles has not reached this goal.

The active role of the court is a principle with the role of ensuring that the rights and interests of the parties in a dispute are guaranteed. For that judgment to be delivered to express a fair solution, the court must take any initiative which it considers necessary, to be useful and likely to lead to find out the truth in question.

Contradictoriality is another general principle of activity of judgment, which is also found in the activity of the jurisdiction of the labour market and which enables the parties to discuss any matter of arguing, in law or in fact that has to do with the cause, in support of a fair solution to the conflict of employment . It cannot be conceived a jurisdictional activity without hearing the conclusions of each of the parties, whereas matters of in fact and in law own to any cause deducted to judgment is to be explained in the course of judicial investigation.

The principle of continuity is the principle of expressing the requirement that judgment to be made at the beginning and the end by the same panel, which shall deliberate and giving judgment in the cause.

The principle of objective truth is in fact a materialization of the principles discussed above, the entire activity of the jurisdiction bodies being centred on the effort to completely clear and establish the exact deeds, events and circumstances of the case.

This principle binds the judge “to insist by all legal means, in order to discover the truth and to prevent any mistake in the knowledge of facts”. It's the only way the sentence pronounced by the court will be fair, legal and founded.

The jurisdiction of the labour market is the jurisdiction of whose features are conferred by the specificity of the legal relation of work, generated by the contract of employment.

Closeness of the judgment to the workplace, expediency in solving the causes, and removing or reduction of court costs, are only a few of the peculiarities of the jurisdiction.

Among the principles specific to labour law, we hereby list following :

Accessibility

The accessibility of the labour jurisdiction bodies is provided free of justice and the proximity to the judgment of the court, near the place of work of the applicant.

According to the Labour Code is competent the court in the domicile or residence of the applicant, particularly the ordinary law, where the competent authority is the responsibility of the court in the domicile or residence of the debtor.

Any exemption from the stamp duty of applications and procedural documents concerning conflicts of employment it is expressly stated. It should be noted, however, that this gratuity of labour jurisdiction bodies may not be general and shall not extend to all the sides of the process, so that there will be some expenditure, such as for example those arising from the payment of the fees of lawyers , or the payment of transport costs, etc.

Settlement of work conflict in an amicable manner, if possible.

The judge has the obligation, before entering the debate, to try the amicable settlement of the conflict of rights, the parties giving advice of reconciliation.¹⁵⁷ It is

¹⁵⁷ Law 62/2011 - Law on social dialogue: ”On the first day of the hearing, prior to the entry into debates, court has the obligation to try to extinguish the conflict of rights through the reconciliation of the parties”.

mandatory to attempt to settle amicably any work conflict, including conflicts of rights.¹⁵⁸ This obligation is incumbent on both the court, as well as both parties to the dispute.

The burden of proof is the responsibility of the employer.

In the general spirit of the Labour Code, the employee has a more favorable position in the labour conflict¹⁵⁹, whereas the burden of proof he owed to his employer, the situation is different from the common law. By way of exception to the rule that the complainant must prove their claims, whether the claimant or respondent, within the jurisdiction of work, the employee will be able to claim the employer to submit evidence in supporting its position. This overturn of the burden of proof, the fact that the defendant employer must prove the falsity of those said by the employee, cannot be considered to be contrary to the presumption of his/her innocence. The statements made by the employee gets the value of presumptions, and the employer must overthrow them, with the evidence produced, evidence which may be direct, or at least circumstantial.

Celerity.

Applications relating to the settlement of work conflicts shall be judged in emergency conditions¹⁶⁰, as well as the administration of evidence, which follows the same procedure for resolving the causes, in emergency, and in particular. Other special features of the jurisdiction of the work are represented by the absence of attack path of the appeal and that judgments handed down by the Court of First Instance in work disputes, shall be enforceable by law.

Court's composition

In the lawsuits under the jurisdiction of the work, appear other persons than the parties and this constitutes another special particularity existing in the field of labour law. The judges who settled in the first instance work disputes are helped by judicial assistants, as representatives of the interests of the parties involved in the dispute, of the employees and employers. Judicial assistants participate in the jurisdictional process but only in an advisory way and not to make decisions.

Specialization of judgment panel

Judgment of the case shall be carried out only by specialized panels, this being a mandatory requirement in disputes. Panel which shall take a decision on the labour conflicts are always specialized, so when there is a specialized department within courts, as well as and when there is no such department and specialized panels operate under the supervision of the civil sections of the courts.

Protection of employee's right¹⁶¹

1. Right to protection in the event of dismissal

¹⁵⁸ I. T. Ștefanescu, Treaty of labour law, Vol. II, Lumina Lex Publishing House, Bucharest, 2003, p. 335.

¹⁵⁹ Article 272 of the Labour Code: "The burden of proof in conflicts of work is the responsibility of the employer, it is obliged to submit the evidence in his defence until the first day of hearing."

¹⁶⁰ Article 271(1) of the Labour Code.

¹⁶¹ Article (6) the Labour Code - (1) Any employee providing a work benefits of appropriate working conditions to the work carried out, social protection, health and safety at work, as well as compliance with dignity and his/her conscience, without any discrimination.

(2) To all employees who work is recognized the right to collective bargaining, the right to the protection of personal data, as well as the right to protection against illegal dismissal.

(3) For equal work or work of equal value is prohibited any discrimination on the basis of the criterion of sex with respect to all the elements and conditions of remuneration.

The labour legislation provides for the numerous cases in which the employee has the right to protection:

The dismissal of employees cannot be ordered in the cases referred to in Article 60¹⁶² of the Labour Code. Prior assessment in the event of dismissal for inappropriate training and prior investigation in the event of dismissal for disciplinary reasons (Article 63(2) of the Labour Code).

In the case in which the dismissal shall be available for the grounds referred to in Article 61¹⁶³ (c) and (d), as well as in the case in which the individual labour contract has ceased under Article 56(1)(e), Article 64 of the labour code provides that the employer has the obligation to propose to employee other vacant places in the unit, compatible with the training or, as the case may be, with the ability to work laid down by the occupational medicine doctor. If the employer does not have vacant jobs, it has the obligation to request the support of the territorial employment agency for redistribution of the employee, corresponding to his/her vocational training or, as the case may be, the work capacity laid down by the occupational medicine doctor, and it will notify the employee the solutions proposed by the agency.

In the case of dismissal because of physical or mental incapacity the employee benefits from a compensation, under the conditions laid down in the applicable collective labour agreement or individual employment contract, as the case may be.

According to Article 67¹⁶⁴ of the Labour Code, the employees dismissed for reasons that are not related to their person benefit from active measures to combat unemployment and may be eligible for compensations under the conditions provided for by law and the collective employment agreement applicable.

¹⁶² **Article 60**

(1) The dismissal of employees can be ordered:

a) during the period of temporary incapacity for work, determined by a medical certificate in accordance with the law;

b) during the suspension of activity as a result of the imposition of quarantine;

c) during the period when the woman employee is pregnant, to the extent to which the employer has knowledge of this fact prior to the issuing of the decision of dismissal;

d) during the maternity leave;

e) during the leave for child raising up to the age of 2 years or, in the case of the child with disabilities, up to the age of 3 years;

(F) during the leave for sick child care in the age of up to 7 years or, in the case of the child with disabilities, for intercurrent disorders, up to the age of 18 years of age;

(Declared unconstitutional by Decision No. 814/2015 of the Constitutional Court)

h) during the annual leave.

(2) The provisions of paragraph (1) shall not apply in the case of lawful dismissal for reasons which occur as a result of the judicial reorganization, bankruptcy or dissolution of the employer, in accordance with the provisions of the law.

¹⁶³ **Article 61** - the employer may provide dismissal for reasons attributable to the employed person in the following situations:

a) when the employee has committed a serious or repeated disciplinary offence related to the labour discipline rules or the rules laid down in the individual employment contract, applicable collective labour agreement or rules of procedure, as a disciplinary sanction;

b) when the employee has been taken into preventive custody for more than 30 days, under the terms of the Code of Criminal Procedure;;

c) when, by decision of the competent medical examination bodies, a physical and/or mental inability of the employee is found, not allowing him/her to fulfil the duties corresponding to the position held;

d) when the employee is not professionally fit to the workplace where he/she is employed; .

¹⁶⁴ Article 67 - The employees dismissed for reasons not related to their person shall benefit from active measures designed to fight unemployment and may enjoy compensations under the terms of the law and the applicable collective labour agreement.

The persons dismissed under Article 61(c) and (d), Articles 65 and 66 shall be entitled to a notice which may not be less than 20 working days. Except for the persons dismissed under Article 61(d) (professional inadequacy), which is in the trial period.

We mention, however, that the often collective labour agreements at various levels provide for periods of notice, which must be observed as such by the employer.

As a measure of protection in the event of dismissal, the labour code provides that the dismissal ordered by failure to comply with the procedure provided for by the law is hit by an absolute nullity (Article 76)¹⁶⁵

14. Recommendations and suggestions

III. Legislation

1. The Constitution of Romania in 2003 - Revision of the Constitution and republished in 1991, with the updating of the names and renumbering of the articles, revised by the Law no. 429/2003, approved by the national referendum of 18-19 October 2003, confirmed by the decision of the Constitutional Court No. 3 of 22 October 2003. The text of the Constitution of 2003 was published in the Official Gazette of Romania, Part I, No. 669 of 22 September 2003.

2. Law no. 53/2003 - the Labour Code;

3. Emergency Government Ordinance no. 65 of 29 June 2005 regarding the amendment and completion of Law No. 53/2003 - the Labour Code, approved by Law No. 371 of 13 December 2005 (Official Gazette No. 1147 of 19 December 2005)

4. Emergency ordinance No. 55 of 30 August 2006 for the amendment and completion of Law No. 53/2003 - the Labour Code was published in the Official Gazette No. 788 of 18 September 2006.

5. Law No. 94 of 16 April 2007 approving the Government Emergency Ordinance no. 55/2006 for the amendment and completion of Law No. 53/2003 - the Labour Code was published in the Official Gazette No. 264 of 19 April 2007

6. Law No. 237 of 12 July 2007 concerning the amendment of paragraph (1) of Article 269 of Law No. 53/2003 - the Labour Code was published in the Official Gazette No. 497 of 25 July 2007

7. Collective employment agreement at national level for the years 2007-2010, concluded in accordance with Article 10 and 11 of Law no. 130/1996, republished, recorded at the Ministry of Labour, Social Solidarity and Family with No. 2895/29.11.2006

8. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time.

IV. Treaties. Courses. Monographs

¹⁶⁵ **Article 76** - Decision of dismissal shall be communicated to the employee in writing and must include:

a) the reasons leading to the dismissal;

b) the length of the notice;

c) the criteria for determining the order of priorities, according to art. 69 (2) (d) only in the case of collective dismissal;

d) the list of all workplaces available in the organization and the deadline within which the employees may choose to fill in a vacancy, under the terms of Article 64.

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