

# LAW – LABOUR CODE\*

## TITLE I General provisions

### CHAPTER I Scope of application

**Article 1.** – (1) The present code regulates all the individual and collective labour relations, the manner in which the control of the implementation of labour relations regulations takes place, as well as labour jurisdiction.

(2) The present code also applies to the labour relations regulated by special laws, only in so far as the latter do not contain derogatory specific provisions.

**Article 2.** – The provisions contained in the present code apply to:

- a) Romanian citizens who are employed under an individual labour contract and who work in Romania;
- b) Romanian citizens employed under an individual labour contract abroad, based on contracts concluded with a Romanian employer, except when the legislation of the state on the territory of which the individual labour contract is performed is more favourable;
- c) foreign or stateless citizens employed under an individual labour contract, who work for a Romanian employer on the territory of Romania;

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- d) persons who have acquired the refugee status and are employed under an individual labour contract on the territory of Romania, according to the law;
- e) apprentices who work based on an on-the-job apprenticeship contract;
- f) employers who are natural or legal entities;
- g) trade unions or employers' organisations.

## CHAPTER II

### Fundamental principles

**Article 3.** – (1) The freedom to work is guaranteed by the Constitution. The right to work shall not be restricted.

(2) All persons shall be free to choose their work place and profession, trade, or activity to carry out.

(3) No one can be obliged to work or not to work in a certain work place or profession, whatever these might be.

(4) Any labour contract concluded in violation of the provisions of paragraphs (1)–(3) shall be null *de jure*.

**Article 4.** – (1) Forced labour shall be prohibited.

(2) The term *forced labour* designates any work or service imposed on a person under threat or for which the person in question has not given his/her free consent.

(3) The work or activity imposed by the public authorities shall not be seen as forced labour:

- a) in compliance with the law concerning the mandatory military service;
- b) in the discharge of the civic obligations set up by the law;
- c) in accordance with a final judicial decision of conviction;
- d) in case of absolute necessity, i.e. in the event of a war, catastrophe or risk of catastrophe such as: fires, floods, earthquakes, violent epidemics or epizootics, invasions of animals or insects, and, in general, under all circumstances jeopardising life or the normal living conditions of most of the population or of part of it.

**Article 5.** – (1) Within the framework of work relations, the principle of the equality of treatment for all employees and employers shall apply.

(2) Any direct or indirect discrimination against an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be prohibited.

(3) A direct discrimination shall be represented by actions and facts of exclusion, differentiation, restriction, or preference, based on one or several of the criteria stipulated under paragraph (2), the purpose or effect of which is the failure to grant, the restriction or rejection of the recognition, use, or exercise of the rights stipulated in the labour legislation.

(4) An indirect discrimination shall be represented by actions and facts apparently based on other criteria than those stipulated under paragraph (2), but which cause the effects of a direct discrimination to take place.

**Article 6.** – (1) Any employee who performs a work shall benefit from adequate work conditions for the activity carried out, social security, labour safety and health, as well as the observance of his/her dignity and conscience, without any discrimination.

(2) All employees who perform a work shall have recognised their right to equal payment for equal work, their right to collective negotiations, their right to personal data protection, as well as their right to protection from unlawful dismissal.

**Article 7.** – Employees and employers can associate freely for the defence of their rights and the promotion of their vocational, economic, and social interests.

**Article 8.** – (1) Labour relations are based on the principle of consensus and good faith.

(2) To ensure a proper progress of labour relations the participants in labour relations shall inform and consult one another, in compliance with the law and the collective labour contracts.

**Article 9.** – The Romanian citizens are free to be employed in member countries of the European Union, as well as in any other state, provided they comply with the norms of international labour law and the bilateral treaties Romania is a party to.

## TITLE II Individual labour contract

### CHAPTER I

#### Conclusion of the individual labour contract

**Article 10.** – An individual labour contract is a contract based on which a natural entity, called *employee*, undertakes to perform work for and under the authority of an employer, who is a natural or legal entity, in return for a remuneration, called *wages*.

**Article 11.** – The clauses of the individual labour contract cannot contain contrary provisions or rights below the minimum level set up by laws or collective labour contracts.

**Article 12.** – (1) An individual labour contract shall be concluded for an indefinite term.

(2) As an exception, an individual labour contract can also be concluded for a definite term, under the conditions expressly stipulated by the law.

**Article 13.** – (1) A natural entity shall be allowed to work after having turned 16 years of age.

(2) A legal entity can also conclude a labour contract, as an employee, after turning 15 years of age, based on his/her parents' or legal representatives' consent, for activities in accordance with his/her physical development, aptitudes and knowledge, unless this places under risk his/her health, development, and vocational training.

(3) Employment of persons under the age of 15 is prohibited.

(4) Employment of persons placed under court interdiction is prohibited.

(5) Employment in difficult, harmful, or dangerous work places shall only take place after the person has turned 18 years of age; such work places shall be established in a Government decision.

**Article 14.** – (1) For the purposes of this code, *employer* means a natural or legal entity who can employ, according to the law, labour force based on an individual labour contract.

(2) A legal entity can conclude individual labour contracts, as an employer, after having acquired that legal status.

(3) A natural entity can conclude individual labour contracts, as an employer, after having acquired the capacity to exercise.

**Article 15.** – It is prohibited, under penalty of absolute nullity, to conclude an individual labour contract for the purpose of performing an illicit or immoral work or activity.

**Article 16.** – (1) An individual labour contract shall be concluded based on the parties' consent, in written form, in Romanian. The employer has the obligation to conclude the individual labour contract in written form.

(2) If the individual labour contract has not been concluded in written form, the presumption is that it has been concluded for an indefinite term, and the parties can give proof of contract provisions and work performed through any other elements of proof.

(3) The work performed based on an individual labour contract gives the employee length of service.

**Article 17.** – (1) Prior to the conclusion or amendment of an individual labour contract, the employer must inform the person applying for employment or the employee, as the case may be, about the general clauses he intends to include in the contract or to amend.

(2) The information stipulated under paragraph (1) shall comprise, as the case may be, the following elements at least:

- a) the identity of the parties;
- b) the work place or, in the absence of a stable work place, the possibility that the employee may work in various places;
- c) the employer's head office or, as the case may be, residence;
- d) the duties of the job;
- e) the typical risks of the job;
- f) the date from which the contract is to take effect;
- g) in the event of a labour contract for a definite term or a temporary labour contract, the duration thereof;

h) the duration of the annual leave the employee is entitled to;

i) the conditions under which the contracting parties can give notice and the duration thereof;

j) the basic wages, other elements of the earned income, as well as the periodicity of the payment of wages the employee is entitled to;

k) the normal work period expressed in hours per day and hours per week;

l) the mention of the collective labour contract regulating the work conditions for the employee;

m) the length of the trial period.

(3) The elements in the information stipulated under paragraph (2) shall also be found in the contents of the individual labour contract.

(4) Any change in any of the elements stipulated under paragraph (2) during the performance of the individual labour contract shall require the conclusion of a rider to the contract, within 15 days from the employee being notified in writing, except for circumstances when such a change is made possible by the law or the applicable collective labour contract.

(5) As regards the information provided to the employee, prior to the conclusion of the individual labour contract, the parties can enter into a confidentiality agreement.

**Article 18.** – (1) If the employee is to carry out his/her activity abroad, the employer shall provide him/her, in due time, with the information stipulated under article 17 (2), including information regarding:

a) the duration of the work period to be performed abroad;

b) the currency in which his/her wages are to be paid, as well as the methods of payment;

c) the payments in money and/or in kind related to the activity carried out abroad;

d) the climate conditions;

e) the main regulations in that country's labour legislation;

f) the local customs the non-observance of which might endanger the employee's life, freedom, or personal safety.

(2) Special laws regulating the typical work conditions abroad shall complement the provisions of paragraph (1).

**Article 19.** – If the employer does not comply with his obligation to inform the employee within 15 days from the time of launching the offer for the termination or amendment of the individual labour contract, or, as the case may be, of the performance of the activity abroad, the employee shall be entitled to notify, within 30 days, the competent court of law and ask for compensation corresponding to the damage caused to him/her as a result of the non-fulfilment by the employer of his obligation to inform him/her.

**Article 20.** – (1) Besides the general clauses stipulated under article 17, the parties can also negotiate and include other specific clauses in the individual labour contract.

(2) The following are regarded as specific clauses, the enumeration thereof not being restrictive:

a) the clause on vocational formation;

b) the non-competition clause;

c) the mobility clause;

d) the confidentiality clause.

**Article 21.** – (1) The non-competition clause shall force the employee not to perform, for his/her own interest or that of a third party, an activity which is competing with the one performed for his/her employer, or an activity for the benefit of a third party which is in competition with his/her employer and forces the employer to pay a monthly allowance to the employee.

(2) The non-competition clause shall only take effect if the individual labour contract clearly stipulates the activities the employee is prohibited from performing for the duration of the contract.

(3) The allowance due to the employee shall be negotiated and shall be at least 25 % of the wages. The allowance must be paid in full and in time.

(4) The non-competition clause shall not operate during the trial period.

**Article 22.** – (1) The non-competition clause shall no longer operate on the date of termination of the individual labour contract.

(2) As an exception to the provisions of paragraph (1), the non-competition clause can also apply after the termination of the individual labour contract, for a period of 6 months at the most, when executive positions are involved, and 2 years at the most, for those having been in management positions, if such a period has been expressly agreed upon in the individual labour contract.

(3) The provisions of paragraph (2) shall not apply when the termination of the individual labour contract has taken place *de jure* or based on the initiative of the employer, for reasons which cannot be imputed to the employee.

**Article 23.** – (1) The non-competition clause cannot have as effect the employee's absolutely prohibition from exercising his/her profession or speciality.

(2) Based on a notification by the employee or the territorial factory inspectorate, the competent court of law can diminish the effects of the non-competition clause.

**Article 24.** – In the event of the employee having wrongly violated the non-competition clause, he/she can be obliged to return the allowance and, as the case may be, pay damages corresponding to the loss caused by him/her to the employer.

**Article 25.** – In the mobility clause, the parties in the individual labour contract stipulate that, considering the typical features of the work, the performance of the job duties by the employee shall not take place in a stable work place. In this case, the employee shall benefit from additional cash payments or payments in kind.

**Article 26.** – (1) In the confidentiality clause, the parties shall agree that, throughout the duration of the performance of the individual labour contract and after the termination thereof, they shall not transmit data or information they have learnt during the performance of the contract, under the terms set by the company's rules and regulations, in collective labour contracts or individual labour contracts.

(2) The non-compliance with this clause by either of the parties entails the obligation of the party at fault to pay damages.

**Article 27.** – (1) A person shall only be employed based on a medical certificate, which finds that the person in question is fit to perform that work.

(2) The failure to comply with the provisions of paragraph (1) causes the individual labour contract to become null.

(3) If the employee submits the medical certificate after the time of conclusion of the individual labour contract, and the contents of the certificate prove the person in question is fit for work, the contract thus concluded remains valid.

(4) The competence for and the procedure of issuing the medical certificate, as well as the sanctions applicable to the employer for employing or changing the work place or type of work without a medical certificate shall be stipulated by special laws.

(5) It is prohibited to require pregnancy tests on hiring a person.

(6) When employing a person in the fields of health, public catering, education, and other fields stipulated by the laws, typical medical tests may be required.

**Article 28.** – A medical certificate is also compulsory under the following circumstances:

a) when restarting work after an interruption exceeding 6 months, for jobs with exposure to occupational noxious factors, and one year, in the other cases;

b) in the event of a secondment or transfer to another work place or activity;

c) when beginning work, in the case of employees hired under a temporary labour contract;

d) in the case of apprentices, probationers, and school or college students, if they are to be trained per trades and professions, as well as when changing trade during the training;

e) periodically, in the case of persons who work under exposure to occupational noxious factors, according to the regulations of the Ministry of Health and Family;

f) periodically, in the case of persons who perform activities showing a risk of transmitting diseases and who work in the food and animal-breeding sectors, in drinking

water supply units, in children's collectivities, or in medical institutions, according to the regulations of the Ministry of Health and Family;

g) periodically, in the case of persons who work in institutions without risk factors, by means of medical examinations differentiated per age, gender, and health condition, according to the regulations in the collective labour contracts.

**Article 29.** – (1) The individual labour contract shall be concluded after a preliminary check of the professional and personal abilities of the person applying for the job.

(2) The ways in which the check stipulated under paragraph (1) is to take place shall be set up in the applicable collective labour contract, in the personnel status (professional or disciplinary), and in the company's rules and regulations, unless the law stipulates otherwise.

(3) The purpose of the information requested, under any form, by the employer from the person applying for a job on the occasion of the preliminary check of abilities can only be for assessing his/her capacity to be in that position, as well as his/her professional abilities.

(4) The employer can request information about the person applying for a job from his/her former employers, but only as regards the duties carried out and the length of that employment, and provided the person in question has been informed in advance.

**Article 30.** – (1) In public institutions and authorities, and other budgetary institutions, personnel employment can only take place based on a contest or examination, as the case may be.

(2) Vacancies existing in the list of positions shall be opened to contest, depending on the needs of each institution stipulated under paragraph (1).

(3) If, for the contest organised for filling a vacancy, several candidates have not entered the contest, the employment shall be decided by an examination.

(4) The terms for organising a contest/examination and the manner in which it takes place shall be set by the regulations approved in a Government decision.

**Article 31.** – (1) To check the abilities of the employee, on the conclusion of the individual labour contract, a trial

period of 30 calendar days at the most may be established for executive positions, and 90 calendar days at the most for management positions.

(2) The check of professional abilities when employing disabled persons shall be based only on a trial period of 50 calendar days at the most.

(3) As far as unskilled workers are concerned, the trial period shall be exceptional and shall not exceed 5 working days.

(4) Higher-education graduates shall be employed, at the beginning of the employment in their profession, based on a trial period of 3 to 6 months.

(5) During the trial period, the employee enjoys all the rights and has all the obligations stipulated in the labour legislation, the applicable collective labour contract, the company's rules and regulations, as well as the individual labour contract.

**Article 32.** – During the performance of an individual labour contract, there can be only one trial period.

(2) As an exception, an employee can be subjected to a new trial period if he/she starts a new position or profession with the same employer, or is to perform his/her activity in a work place under difficult, harmful, or dangerous conditions.

(3) The failure to inform the employee, before the conclusion or amendment of the individual labour contract, about the trial period, within the term set under article 14 (4), causes the employer to be disqualified from checking the employee's abilities by such means.

(4) The trial period shall represent length of service.

**Article 33.** – It is prohibited to successively employ more than three persons for trial periods for the same position.

**Article 34.** – (1) Each employer must establish a general book of the employees.

(2) The general book of the employees shall be first registered with the competent public authority, according to the law, which has jurisdiction over the employer's residence or head office, respectively, after which date it becomes an official document.

(3) The general book of the employees shall be filled out in order of employment and shall comprise the identification elements of all employees, the elements characterising their labour contracts, as well as all situations which occur during the performance of work relations in connection with the execution, amendment, suspension or termination of the individual labour contract.

(4) The general book of the employees shall be kept at the employer's residence or head office, respectively, and it shall be placed at the disposal of the factory inspector or any other authority requesting it, according to the law.

(5) At the employee's request, the employer must issue a document attesting the former's activity, length of service in his/her trade and speciality.

(6) In case of termination of the employer's activity, the general book of the employees shall be deposited with the competent public authority, according to the law, which has jurisdiction over the employer's residence or head office, respectively, as the case may be.

(7) The methodology for preparing the general book of the employees, the recordings to be made, as well as any other elements related to making them shall be stipulated in a Government decision.

**Article 35.** – (1) Any employee shall be entitled to hold concurrently several positions, based on individual labour contracts, with the adequate wages for each of them.

(2) Exceptions to the provisions of paragraph (1) shall be the cases when the law stipulates incompatibilities for holding concurrently some positions.

(3) Employees who hold concurrently several positions shall have to declare to each employer the place where he/she exercises the position he/she deems as basic.

**Article 36.** – Foreign and stateless citizens can be employed under an individual labour contract based on the work permit issued according to the law.

## CHAPTER II

### Execution of the individual labour contract

**Article 37.** – The rights and obligations concerning the work relations between the employer and the employee

shall be established according to the law, by negotiations, within the collective labour contracts and individual labour contracts.

**Article 38.** – Employees cannot give up the rights recognised by the law. Any transaction whose aim is to give up the rights recognised by the law to employees or to limit such rights shall be rendered void.

**Article 39.** – (1) The employee's main rights are as follows:

- a) the right to receive wages for the work performed;
- b) the right to a daily and weekly rest;
- c) the right to an annual holiday;
- d) the right to equal chances and treatment;
- e) the right to dignity of labour;
- f) the right to labour safety and health;
- 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 improvement of the work conditions and environment;
- j) the right to protection as far as dismissal is concerned;
- k) the right to collective and individual negotiation;
- l) the right to participate in collective actions;
- m) the right to establish or join a trade union.

(2) The employee's main obligations are as follows:

- a) the obligation to accomplish his/her work load or, as the case may be, to meet his/her duties according to the job description;
- b) the obligation to observe work discipline;
- c) the obligation to observe the provisions of the company's rules and regulations, of the applicable collective labour contract, as well as of the individual labour contract;
- d) the obligation of fidelity to the employer in performing his/her job duties;
- e) the obligation to observe labour safety and health in the company;
- f) the obligation to observe the professional secrecy.

**Article 40.** – (1) The employer's main rights are as follows:

- a) to set up the organisation and operation of the company;
  - b) to establish the duties of each employee, according to the law;
  - c) to issue mandatory orders to the employee, provided these are legal;
  - d) to exert control over the way in which the job duties are carried out;
  - e) to find whether departures from discipline have taken place and to inflict the adequate sanctions, according to the law, the applicable collective labour contract, and the company's rules and regulations.
- (2) The employer's main obligations are as follows:
- a) to inform the employees on the work conditions and elements regarding the progress of work relations;
  - b) to provide permanently the technical and organisational conditions envisaged when the work loads had been devised, and the adequate work conditions;
  - c) to grant the employees all the rights deriving from the law, the applicable collective labour contract, and the individual labour contracts;
  - d) to inform periodically the employees about the company's economic and financial position;
  - e) to consult with the trade union or, as the case may be, the employees' representatives on the decisions likely to affect substantially their rights and interests;
  - f) to pay all the contributions and taxes which fall upon him, as well as to withhold and transfer the contributions and taxes due by the employees, according to the law;
  - g) to establish the general book of the employees and make the recordings stipulated by the law;
  - h) to issue, on request, all the documents attesting the petitioner's employee status;
  - i) to make sure the employees' personal data are confidential.

### CHAPTER III

#### **Amendments to the individual labour contract**

**Article 41.** – (1) The individual labour contract can only be amended based on the parties' consent.

(2) As an exception, the unilateral amendment of the individual labour contract shall only be possible in the cases and under the conditions stipulated by the present code.

(3) Amendments to the individual labour contract shall refer to any of the following elements:

- a) length of the contract;
- b) work place;
- c) kind of work;
- d) work conditions;
- e) wages;
- f) working time and rest time.

**Article 42.** – (1) The work place can be modified unilaterally by the employer by delegating or temporarily seconding the employee to a work place other than the one stipulated in the individual labour contract.

(2) During the delegation or secondment, respectively, the employee shall preserve his/her position and all the other rights stipulated in the individual labour contract.

**Article 43.** – The delegation represents the temporary exercise by the employee, based on the employer's order, of works or assignments corresponding to the job duties, outside his/her work place.

**Article 44.** – (1) The delegation can be ordered for a period not exceeding 60 days, and can be extended, based on the employee's consent, by 60 days at the most.

(2) The delegated employee shall be entitled to the payment of travelling and accommodation expenses, as well as of a delegation allowance, under the terms of the law or of the applicable collective labour contract.

**Article 45.** – The secondment is the action whereby a temporary change in the work place is provided for, based on the employer's order, with another employer, for the purpose of performing some works in the latter's interest. In this exceptional case, a secondment can also mean a change in the kind of work, but only based on the employee's written consent.

**Article 46.** – (1) A secondment can be ordered for a period not exceeding one year.

(2) In this exceptional case, the period of the secondment can be extended for objective reasons

requiring the employee's presence with the employer who ordered the secondment, based on both parties' consent, every six months.

(3) The employee can decline the secondment ordered by his/her employer only in exceptional cases, and for good personal grounds.

(4) The seconded employee shall be entitled to the payment of travelling and accommodation expenses, as well as of a secondment allowance, under the terms of the law or of the applicable collective labour contract.

**Article 47.** – (1) The employer with whom the secondment has been ordered shall grant the rights due to the seconded employee.

(2) For the duration of the secondment, the employee shall enjoy the more favourable rights, either those coming from the employer who ordered the secondment, or those coming from the employer to whom he was seconded.

(3) The employer ordering the secondment shall be under an obligation to take the necessary steps so that the employer to whom the secondment has been ordered meets all the obligations to the seconded employee fully and in due time.

(4) If the employer to whom the secondment has been ordered does not meet all the obligations to the seconded employee fully and in due time, such obligations shall be met by the employer having ordered the secondment.

(5) If there is disagreement between the two employers or if none of them meets his obligations according to the provisions of paragraphs (1) and (2), the seconded employee is entitled to return to his/her work place with the employer having seconded him/her, to take action against either of the two employers, and to ask for the enforced fulfilment of the obligations.

**Article 48.** – The employer can temporarily change the place and kind of work, without the employee's consent, also in case of absolute necessity, as a disciplinary sanction, or as a measure for protecting the employee, in the cases and under the terms stipulated by the present code.

## CHAPTER IV

### Suspension of the individual labour contract

**Article 49.** – (1) The suspension of the individual labour contract can take place *de jure*, based on the parties' consent, or through the unilateral action of one of the parties.

(2) The suspension of the individual labour contract has as an effect the suspension of the performance of work by the employee and of the payment of the wage entitlements by the employer.

(3) Throughout the suspension, other rights and obligations than those stipulated under paragraph (2) can go on existing unless otherwise stipulated by special laws, the applicable collective labour contract, individual labour contracts, or the company's rules and regulations.

(4) In the event of the individual labour contract being suspended because of a fact imputable to the employee, throughout the suspension the latter shall not enjoy any of the rights deriving from his/her position as employee.

**Article 50.** – The individual labour contract shall be suspended *de jure* under the following circumstances:

- a) maternity leave;
- b) leave for temporary industrial disablement;
- c) quarantine;
- d) compulsory military service;
- e) exercise of managerial functions within an executive, legislative, or court authority, throughout the term of office;
- f) holding a paid management position in a trade union;
- g) case of absolute necessity;
- h) if the employee is taken into preventive custody according to the rules of criminal procedure;
- h) in other cases expressly stipulated by the law.

**Article 51.** – The individual labour contract can be suspended on the employee's initiative, under the following circumstances:

- a) leave for raising a child up to the age of 2, or, in case of a disabled child, up to the age of 3;

b) leave for looking after a sick child up to the age of 7 or, in case of a disabled child, for intercurrent diseases, up to the age of 18;

c) paternal leave;

d) vocational training leave;

e) exercise of elected positions within vocational bodies established at the central or local level, for the entire term of office;

f) participation in a strike;

g) absences without leave.

**Article 52.** – (1) The individual labour contract can be suspended on the employer's initiative under the following circumstances:

a) during a preliminary disciplinary inquiry, according to the law;

b) as a disciplinary sanction;

c) if the employer has lodged a penal complaint against the employee or the latter has been sent to trial for criminal actions inconsistent with his/her position, until a final judgment is delivered;

d) in the event of a temporary discontinuance of business, without the termination of the labour relationship, especially for economic, technological, structural reasons and the like;

e) for the duration of the secondment.

(2) As far as the cases stipulated under paragraph (1) c) are concerned, if the person in question is proved innocent, the employee shall resume his/her previous activity and an indemnity shall be paid to him/her equal to the wages and other entitlements he/she was deprived of during the contract suspension.

**Article 53.** – (1) For the duration of the temporary discontinuance of the employer's business, the employees shall benefit from an allowance, paid from the wage fund, which cannot be less than 75% of the basic wage corresponding to that work place.

(2) For the duration of the temporary discontinuance stipulated under paragraph (1), the employees shall be at the disposal of the employer, who can order the activity to be resumed at any time.

**Article 54.** – The individual labour contract can be suspended, based on the parties' consent, in case of unpaid leave for studies or for personal interests.

## CHAPTER V

### Termination of the individual labour contract

**Article 55.** – The individual labour contract can be terminated as follows:

a) *de jure*;

b) based on the parties' consent, on the date agreed upon;

c) as a result of the unilateral will of one of the parties, in the cases and under the terms limitedly stipulated by the law.

#### Section 1

#### *De jure termination of the individual labour contract*

**Article 56.** – The individual labour contract is *de jure* terminated:

a) on the date of the death of the employee or employer, if he/she is a natural entity;

b) on the date a final judgment is delivered, declaring the death or placing under interdiction of the employee or of the employer, if he/she is a natural entity, and if this causes the business liquidation;

c) as a result of the dissolution of the employer, if this is a legal entity, from the date the legal entity ceases to exist;

d) on the date the standard age conditions and the minimum period of contribution are cumulatively met, or, as the case may be, on the date the decision of retirement for age limit or disability of the employee is communicated, according to the law;

e) as a result of finding the absolute nullity of the individual labour contract, from the date the nullity was found based on the parties' consent, or a final judgment;

f) as a result of the admittance of the petition for reinstating in the position occupied by the employee a person dismissed unlawfully or for ill-founded grounds, from the date the final judgment is delivered;

g) as a result of a criminal sentence to be served on the job, from the date of issuance of the serving warrant;

h) from the date of withdrawal, by the competent authorities or bodies, of the approvals, authorisations, or certifications necessary for exercising one's profession;

i) as a result of the interdiction to exercise a profession or an office, as a safety measure or complementary punishment, from the date the final judgment ordering the interdiction was delivered;

j) on the expiry of the deadline of the individual labour contract concluded for a definite term;

k) from the date of withdrawal of the parents' or legal representatives' consent, for employees whose ages range between 15 and 16 years.

**Article 57.** – (1) The failure to comply with any of the necessary lawful conditions for the valid conclusion of the individual labour contract entails its nullity.

(2) The finding of the nullity of the individual labour contract shall have effects in the future.

(3) The nullity of the individual labour contract can be annulled by the subsequent observance of the conditions imposed by the law.

(4) If a clause is vitiated by nullity, since it establishes rights or obligations for the employees, which contravene to some imperative lawful norms or applicable collective labour contracts this shall be replaced *de jure* by the applicable lawful or conventional provisions, and the employee shall be entitled to indemnities.

(5) A person who has worked within a null individual labour contract is entitled to its payment in relation to the way in which job assignments have been accomplished.

(6) The finding of nullity and the setting up of the effects thereof can be done by consent of the parties.

(7) If the parties do not come to an agreement, the nullity shall be delivered by the judicial authority.

*Section 2*  
**Dismissal**

**Article 58.** – (1) The dismissal represents the termination of the individual labour contract on the employer's initiative.

(2) The dismissal can be ordered for reasons related to the employee's person or for reasons which are not related to the employee's person.

**Article 59.** – It shall be prohibited to dismiss employees:

a) based on criteria such as gender, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political option, social origin, disability, family status or responsibility, trade union membership or activity;

b) for the exercise, under the terms of the law, of their right to strike and trade union rights.

**Article 60.** – (1) Employees' dismissal shall not be ordered:

a) for the duration of the temporary industrial disablement, as established in a medical certificate according to the law;

b) for the duration of the quarantine leave;

c) for the duration an employed woman is pregnant, if the employer learnt about this fact prior to the issuance of the dismissal decision;

d) for the duration of the maternity leave;

e) for the duration of the leave for raising a child up to the age of 2, or, in case of a disabled child, up to the age of 3;

f) leave for looking after a sick child up to the age of 7 or, in case of a disabled child, for intercurrent diseases, up to the age of 18;

g) for the duration of the military service;

h) for the duration of the exercise of an elected position in a trade union body, except when the dismissal is ordered for a serious infraction of discipline or for repeated infractions of discipline by that employee;

i) for the duration of the leave.

(2) The provisions of paragraph (1) shall not apply in cases of dismissal for reasons due to the employer's judicial reorganisation or bankruptcy, according to the law.

*Section 3*  
**Dismissal for reasons related to the employee's person**

**Article 61.** – The employer can order the dismissal for reasons related to the employee's person under the following circumstances:

a) if the employee has perpetrated a serious infraction or repeated infractions of the work discipline regulations or those set by the individual labour contract, the applicable collective contract, or the company's rules and regulations, as a disciplinary sanction;

b) if the employee is taken into preventive custody for a period exceeding 60 days, under the rules of criminal procedure;

c) if, following a decision of the competent medical investigation authorities, it is established the physical unfitness and/or mental incapacity of the employee, which prevents the latter from accomplishing the duties related to his/her work place;

d) if the employee is not professionally fit for his/her job.

**Article 62.** – (1) If the dismissal takes place for one of the reasons stipulated under article 61 b)–d), the employer shall issue the dismissal within 30 calendar days from the date of establishing the dismissal cause.

(2) The decision shall be issued in writing and, under penalty of being declared void, it must be motivated *de facto* and *de jure* and comprise details about the period within which it can be contested and the court where the complaint is lodged.

**Article 63.** – (1) The dismissal for a serious infraction or repeated infraction of the work discipline regulations can only be ordered after the employer has completed a preliminary disciplinary inquiry, and within the periods set by the present code.

(2) The procedure of the preliminary inquiry is also mandatory in cases of dismissal due to the employee being professionally unfit. The terms and periods of the preliminary inquiry are those stipulated for the disciplinary inquiry.

**Article 64.** – (1) If the dismissal is ordered for the reasons stipulated under article 61 c) and d), as well as if the individual labour contract has ceased *de jure* under article 56 f), the employer must suggest to the employee other vacant positions in the company, consistent with his/her professional training or, as the case may be, his/her work capability assessed by the factory doctor.

(2) If the employer has no vacant positions according to paragraph (1), he shall ask the territorial employment agency for support in the redeployment of the employee according to his/her professional training or, as the case may be, to his/her work capability assessed by the company doctor, and shall subsequently inform the employee about the solutions proposed by the agency.

(3) The employee shall have at his/her disposal a period of 3 working days from the employer's communication according to the provisions of paragraphs (1) and (2) to state expressly his/her consent concerning the new job offered.

(4) If the employee does not state expressly his/her consent within the period stipulated under paragraph (3), as well as if the territorial employment agency cannot meet its obligation stipulated under paragraph (2), the employer can order the employee's dismissal.

(5) In the case of a dismissal for the reason stipulated under article 61 c), the employee shall benefit from a compensation, under the terms set in the applicable collective labour contract or in the individual labour contract, as the case may be.

#### Section 4

##### **Dismissal for reasons not related to the employee's person**

**Article 65.** – (1) The dismissal for reasons not related to the employee's person shall represent the termination of the individual labour contract, caused by the suppression of that employee's position due to economic difficulties, technological changes, or activity reorganisation.

(2) The suppression of a position must be effective and have an actual serious cause, one of those stipulated under paragraph (1).

**Article 66.** – The dismissal for reasons not related to the employee's person can be individual or collective.

**Article 67.** – The employees dismissed for reasons which are not related to their persons shall benefit from active measures to control unemployment and can benefit from compensations under the terms stipulated by the law and the applicable collective labour contract.

## Section 5

**Collective dismissal**

**Article 68.** – Collective dismissal means the dismissal, within 30 calendar days, ordered for one or more reasons of those stipulated under article 65 (1), of:

a) at least 5 employees, if the employer who is dismissing them has more than 20 employees and less than 100 employees;

b) at least 10% of the employees, if the employer who is dismissing them has at least 100 employees but less than 300 employees;

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

**Article 69.** – As far as collective dismissals are concerned, the employer has the following obligations:

a) to draw up a plan of social measures or of another type stipulated by the law or the applicable collective contracts, after having consulted the trade union or the employees representatives;

b) to propose vocational training programmes to the employees;

c) to place at the disposal of the trade union which has members in that company or, as the case may be, to the employees' representatives all the relevant information about the collective dismissal, with a view to receiving proposals from them;

d) with a view to reaching a common point of view, to start in due time consultations with the trade union or, as the case may be, the employees' representatives, concerning the methods and means for avoiding collective dismissals or diminishing the number of employees affected and mitigating the consequences.

**Article 70.** – (1) The employer shall notify in writing the trade union or, as the case may be, the employees' representatives of his intent of collective dismissal, at least 45 calendar days before the issuance of the dismissal decisions.

(2) The notification of the collective dismissal intent shall take the form of a collective dismissal project, which shall comprise:

a) the total number and categories of employees;

b) the reasons for the dismissal;

c) the number and categories of employees to be affected by the dismissal;

d) the criteria envisaged, according to the law and/or collective labour contracts, for establishing the dismissal priority sequence;

e) the steps considered for limiting the number of dismissals;

f) the steps for mitigating the consequences of the dismissal and the compensations to be granted to the employees dismissed, according to the provisions of the law and the applicable collective labour contract;

g) the date on which or the period during which the dismissals shall take place;

h) the period in which the trade union or, as the case may be, the employees' representatives can make proposals for avoiding dismissals or diminishing the number of employees dismissed.

(3) The employer shall notify the dismissal project to the territorial labour inspectorate and the territorial employment agency on the same date the notification was sent to the trade union or, as the case may be, to the employees' representatives.

**Article 71.** – The trade union or, as the case may be, the employees' representatives may propose to the employer steps for avoiding the dismissals or diminishing the number of employees dismissed, within 20 calendar days of the date of receipt of the dismissal project.

(2) The employer shall reply, in writing and stating good reasons, to the proposals formulated according to the provisions of paragraph (1), within 10 days of their receipt.

(3) If the aspects related to the collective dismissal under consideration cannot be solved within 45 days, as stipulated under article 70 (1), at the request of either party, the territorial factory inspectorate may order the extension by 15 calendar days at the most.

**Article 72.** – (1) The employer who ordered collective dismissals cannot employ new people for the positions of the employees dismissed for a period of 12 months from the date of their dismissal.

(2) If, during this period, the employer resumes the activities the termination of which had led to collective dismissals, the employees having been dismissed shall have the right to be re-employed in the positions they had had previously, without an examination, contest, or trial period.

(3) If the employees being entitled to be re-employed according to paragraph (2) do not apply for re-employment, the employer shall be entitled to employ new people for the vacant positions.

*Section 6*

**Right to notice**

**Article 73.** – (1) The persons dismissed based on article 61 c) and d), and articles 65 and 66 shall benefit from the right to a notice which cannot be less than 15 working days.

(2) The exception to the provisions of paragraph (1) is represented by the persons dismissed based on article 61 d), who are on a trial period.

**Article 74.** – (1) The dismissal decision shall be communicated to the employee in writing and shall compulsorily contain:

- a) the reasons for the dismissal;
- b) the term of notice;
- c) the criteria for establishing the priority sequence, according to article 70 (2) d);
- d) the list of all available positions in the company and the period in which the employees must choose for taking a vacant position, under article 64.

(2) If, during the notice period, the individual labour contract is suspended, the term of notice shall be suspended accordingly.

**Article 75.** – The dismissal decision shall take effects from the date it is notified to the employee.

*Section 7*

**Control and sanction of unfair dismissals**

**Article 76.** – The dismissal ordered in non-compliance with the procedure stipulated by the law shall be rendered void.

**Article 77.** – In the event of an industrial conflict, the employer cannot put forward in court other *de facto* or *de jure* reasons than the ones stated in the dismissal decision.

**Article 78.** – (1) If the dismissal was not well-grounded or was unfair, the court shall rule its cancellation and force the employer to pay an indemnity equal to the indexed, increased or updated wages and the other entitlements the employee would have otherwise benefited from.

(2) At the employee's request, the court which ruled the cancellation of the dismissal shall restore the parties to their status prior to the issuance of the dismissal document.

*Section 8*

**Resignation**

**Article 79.** – (1) *Resignation* means the unilateral act of will of the employee who, by means of a written notification, shall inform the employer about the termination of the individual labour contract, after the term of notice has elapsed.

(2) The employer's refusal to register the resignation shall give the employee the right to prove it by any elements of proof.

(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 labour contract or, as the case may be, the one stipulated in the applicable collective labour contracts, and shall not exceed 15 calendar days for employees in executive positions, or 30 calendar days for employees in management positions, respectively.

(5) For the duration of the notice the individual labour contract shall continue to take full effects.

(6) If, during the notice, the individual labour contract is suspended, the term of notice shall be suspended accordingly.

(7) The individual labour contract shall terminate on the date of expiry of the term of notice or on the date the employer gives up that term entirely or partially.

(8) An employee can resign without notice if the employer has not met his obligations according to the individual labour contract.

## CHAPTER VI

### Individual labour contract for a definite term

**Article 80.** – (1) As an exception to the rule stipulated under article 12 (1), the employers are allowed to employ, for the purpose and under the terms of the present code, personnel under individual labour contracts for a definite term.

(2) An individual labour contract for a definite term can only be concluded in a written form, expressly stating the term for which it is concluded.

(3) An individual labour contract for a definite term can be extended even after the expiry of the initial term, based on the parties' written consent, but only within the term stipulated under article 82 and two consecutive times at the most.

**Article 81.** – An individual labour contract for a definite term can only be concluded in the following instances:

- a) replacement of an employee in the event his/her labour contract is suspended, except when that employee participates in a strike;
- b) a temporary increase in the employer's activity;
- c) seasonal activities;
- d) if it is concluded based on lawful provisions made with a view to temporarily favouring certain categories of unemployed persons;
- e) in other instances expressly stipulated by special laws.

**Article 82.** – (1) The individual labour contract for a definite term cannot be concluded for a period exceeding 18 months.

(2) If the individual labour contract for a definite term is concluded with a view to replacing an employee whose individual labour contract has been suspended, the term of the contract shall expire when the reasons having caused the suspension of the individual labour contract of the tenured employee have ceased to exist.

**Article 83.** – An employee hired under an individual labour contract for a definite term can be subjected to a trial period, which shall not exceed:

- a) 5 working days, for a term of the individual labour contract less than 3 months;
- b) 15 working days, for a term of the individual labour contract between 3 and 6 months;
- c) 30 working days, for a term of the individual labour contract exceeding 6 months;
- d) 45 working days, in the case of employees holding management positions, for a term of the individual labour contract exceeding 6 months.

**Article 84.** – (1) On the expiry of the individual labour contract for a definite term, an employee shall be hired for that position under an individual labour contract for an indefinite term.

(2) The provisions of paragraph (1) shall not apply:

- a) if the individual labour contract for a definite term is concluded with a view to temporarily replacing a missing employee, if a new cause for suspending his/her contract occurs;
- b) if a new individual labour contract for a definite term is concluded with a view to doing some urgent, exceptional works;
- c) if the conclusion of a new individual labour contract for a definite term proves necessary for the reasons stipulated under article 81 e);
- d) if the individual labour contract for a definite term has been terminated on the employee's initiative or the employer's initiative, for a serious misconduct and repeated misconduct by the employee.

**Article 85.** – The employers shall inform the employees employed under individual labour contracts for a definite term about the vacant positions or those to become vacant, which are in compliance with their vocational training, and shall grant them access to such positions under equal terms as the employees employed under individual labour contracts for an indefinite term. This information shall be made public in an announcement posted at the employer's head office.

**Article 86.** – Unless otherwise stipulated in the present code, the provisions of the law, as well as those of the collective labour contracts applicable to employees employed under individual labour contracts for an indefinite term shall equally apply to employees employed under individual labour contracts for a definite term.

## CHAPTER VII

### Work through a temporary labour agent

**Article 87.** – (1) Work through a temporary labour agent, hereinafter called *temporary work*, is the work performed by a temporary employee who, by order of the temporary labour agent, performs work in favour of a user.

(2) A *temporary employee* is a person employed by an employer who is a temporary labour agent, and placed at the disposal of a user for the duration necessary for carrying out certain precise and temporary duties.

(3) A temporary labour agent is a trading company authorised by the Ministry of Labour and Social Solidarity, which temporarily places at the disposal of a user the skilled and/or unskilled personnel employed and paid to that effect. The terms for the temporary labour agent's establishment and operation, as well as the authorisation procedure, shall be set by Government decision.

(4) A *user* is an employer at whose disposal the temporary labour agent places a temporary employee in view of carrying out certain precise and temporary duties.

**Article 88.** – A user can call on the temporary labour agents only for carrying out a precise and temporary duty, called *temporary work assignment*, and only in the following instances:

- a) to replace an employee whose individual labour contract has been suspended, for the duration of the suspension;
- b) to perform some seasonal activities;
- c) to perform some specialised or occasional activities.

**Article 89.** – (1) A temporary work assignment shall be established for a period which cannot exceed 12 months.

(2) The duration of a temporary work assignment can be extended only once for a period which, added to the initial duration of the assignment, cannot exceed 18 months.

(3) The terms under which the duration of a temporary work assignment can be extended are stipulated in the temporary labour contract or can make the subject of a rider to that contract.

**Article 90.** – (1) The temporary labour agent shall place at the user's disposal an employee employed under a temporary labour contract, on the basis of an availability contract concluded in writing.

(2) The availability contract shall comprise:

- a) the reason why the use of a temporary employee is necessary;
- b) the term of the assignment and, if the case arises, provisions for amending the term of the assignment;
- c) the typical characteristics of the position, especially the necessary skills, the place where the assignment shall be carried out, and the work schedule;
- d) the actual work conditions;
- e) the individual protective and work equipment the temporary employee must use;
- f) any other services and facilities for the benefit of the temporary employee;
- g) the value of the contract the temporary labour agent benefits from, as well as the wages the employee is entitled to.

(3) Any clause that prohibits the user from hiring the temporary employee after the assignment has been completed is null and void.

**Article 91.** – (1) Temporary employees shall have access to all the services and facilities provided by the user, under the same terms as the latter's other employees.

(2) The user shall provide the temporary employee with individual protective and work equipment except when, based on the availability contract, this is the responsibility of the temporary labour agent.

**Article 92.** – The user shall not be allowed to benefit from the services of a temporary employee, if his goal is to replace thus one of his employees whose labour contract has been suspended as a result of his/her participation in a strike.

**Article 93.** – (1) The temporary labour contract is a labour contract which shall be concluded in writing between the temporary labour agent and the temporary employee, as a rule for the duration of an assignment.

(2) A temporary labour contract shall state, besides the elements stipulated under articles 17 and 18 (1), the terms under which the assignment is to take place, the assignment duration, the user's identity and head office, as well as the modalities for paying the temporary employee.

**Article 94.** – (1) A temporary labour contract can also be concluded for several assignments, provided the term stipulated under article 89 (2) is observed.

(2) Between two assignments, a temporary employee shall be at the disposal of the temporary labour agent and shall benefit from wages paid by the agent, which cannot be lower than the minimum gross national wages.

(3) For each new assignment, the parties shall conclude a rider to the temporary labour contract, stating all the elements stipulated under article 93 (2).

(4) The temporary labour contract ceases at the end of the last assignment it has been concluded for.

**Article 95.** – (1) Throughout the duration of the assignment, the temporary employee shall benefit from the wages paid by the temporary labour agent.

(2) The wages received by the temporary employee for each assignment shall not be lower than the wages received by the user's employee who performs the same work or one similar to the one of the temporary employee.

(3) If the user has no such employee, the wages received by the temporary employee shall be established by considering the wages of a person employed under an individual labour contract and who performs the same work or a similar one, as stipulated in the collective labour contract applicable to the user.

(4) The temporary labour agent shall be the one who deducts and transfers all the contributions and taxes due by the temporary employee to state budgets and pays for him all the contributions due according to the law.

(5) If, within 15 calendar days from the date the obligations concerning the payment of the wages and

those concerning contributions and taxes have fallen due and exigible, and the temporary labour agent does not execute them, they shall be paid by the user, based on the request of the temporary employee.

(6) The user who has paid the amounts due according to paragraph (5) is subrogated, for the amounts paid in the rights of the temporary employee against the temporary labour agent.

**Article 96.** – In the temporary labour contract there can be set up a trial period for carrying out the assignment, the duration of which shall be fixed depending on the user's request, but it shall not exceed:

a) two working days, if the temporary labour contract is concluded for a period shorter than or equal to a month;

b) three working days, if the temporary labour contract is concluded for a period between one and two months;

c) five working days, if the temporary labour contract is concluded for a period exceeding two months.

**Article 97.** – (1) Throughout the assignment, the user shall be responsible for providing the work conditions to the temporary employee, in compliance with the legislation in force.

(2) The user shall notify at once the temporary labour agent about any occupational injury or disease he has learnt about and the victim of which has been a temporary employee placed at his disposal by the temporary labour agent.

**Article 98.** – (1) At the end of the assignment, the temporary employee can conclude an individual labour contract with the user.

(2) If the user employs, after an assignment, a temporary employee, the duration of the assignment shall be taken into consideration when calculating the wages, as well as the other entitlements stipulated by the labour legislation.

(3) If the user continues to benefit from the temporary employee's work without concluding an individual labour contract, or without extending the availability contract, it is deemed that an individual labour contract for an indefinite term has been concluded between that temporary employee and the user.

**Article 99.** – The temporary labour agent who dismisses the temporary employee before the time limit provided for in the temporary labour contract, for other reasons than the disciplinary ones, shall comply with the provisions of the law on the termination of the individual labour contract for reasons which are not related to the employee's person.

**Article 100.** – Unless special provisions are made to the contrary, in this chapter, the provisions of the law and of the collective labour contracts applicable to employees employed under individual labour contracts for an indefinite term with the user shall also apply to temporary employees for the duration of their assignment with him.

## CHAPTER VIII

### Part-time individual labour contract

**Article 101.** – (1) An employer can hire employees with a work schedule corresponding to a work load fraction of at least two hours a day, by means of individual labour contracts for an indefinite term or for a definite term, called *part-time individual labour contracts*.

(2) A part-time individual labour contract shall only be concluded in writing.

(3) The weekly work period for an employee employed under a part-time individual labour contract shall be lower than that of a comparable full-time employee, but not less than 10 hours.

(4) A comparable employee is a full-time employee of the same employer, who performs the same activity or one similar to that of the employee employed under a part-time individual labour contract. When no comparable employee exists, there shall be taken into account the provisions of the collective labour contract applicable to that employer or the provisions of the legislation in force.

**Article 102.** – (1) The part-time individual labour contract shall comprise, besides the elements stipulated under article 17 (2), the following:

- a) the work period and distribution of work schedule;
- b) the terms under which the work schedule can be modified;

c) the interdiction to work overtime, except for a case of absolute necessity or other urgent works meant to prevent accidents or remove the consequences thereof.

(2) If, in a part-time individual labour contract, the elements stipulated under paragraph (1) are not stated, the contract shall be deemed a full-time contract.

**Article 103.** – (1) An employee employed under a part-time labour contract shall enjoy all the rights of full-time employees, under the terms stipulated by the law and the applicable collective labour contracts.

(2) The wage entitlements shall be granted proportional to the actual hours worked, in relation to the entitlements established for a normal work schedule.

(3) In the case of an employee who carries out his/her activity based on a part-time individual labour contract, the contribution period to the social insurance public system shall be proportional to the actual hours worked according to the law.

**Article 104.** – (1) The employer shall take into consideration, as far as possible, the employees' demands to be transferred either from a full-time job to a part-time job, or from a part-time job to a full-time job, or to have an increased work schedule, should this opportunity occur.

(2) The employer shall notify the employees in due time as regards the availability of part-time or full-time jobs, in order to facilitate transfers from part-time to full-time jobs and vice versa. This notification shall be done by means of an announcement posted up at the employer's head office.

(3) The employer shall provide, as far as possible, access to part-time jobs at all levels.

## CHAPTER IX

### Homework

**Article 105.** – (1) Homeworkers are those employees who carry out, at their home, the assignments typical of their positions.

(2) With a view to performing their job tasks, the homeworkers shall set up their own work schedule.

(3) The employer shall be entitled to check the activity of homemaker, under the terms set by the individual labour contract.

**Article 106.** – An individual homework contract shall only be concluded in a written form and shall comprise, besides the elements stipulated under article 17 (2), the following:

a) the express mention that the employee shall work at home;

b) the schedule during which the employer shall be entitled to check his employee's activity, and the actual manner of making such a control;

c) the employer's obligation to ensure transport, to and from the employee's domicile, as the case may be, of the raw materials and materials, which he/she uses in his/her activity, as well as the finished products made by him/her.

**Article 107.** – (1) A homemaker shall enjoy all the rights stipulated by the law and the collective labour contracts applicable to employees whose work place is at the employer's head office.

(2) Through the collective labour contracts there can also be established other typical terms for homework.

### TITLE III Working time and rest time

#### CHAPTER I Working time

##### *Section 1* *Length of working time*

**Article 108.** – The working time is the time an employee uses to carry out his/her tasks.

**Article 109.** – (1) For full-time employees, the normal length of the working time shall be of 8 hours per day and 40 hours per week.

(2) As far as young people are involved who are not 18 years of age yet, the length of the working time shall be of 6 hours per day and 30 hours per week.

**Article 110.** – (1) The distribution of the working time throughout the week shall, as a rule, be uniform, with 8 hours per day for 5 days, and with two days of rest.

(2) Depending on the typical features of the company or of the work performed, one can also choose an unequal distribution of the working time, provided the normal length of the working time of 40 hours per week is observed.

**Article 111.** – (1) The maximum legal length of the working time shall not exceed 48 hours per week, including overtime work.

(2) When work is done in shifts, the length of the working time can be extended to over 8 hours per day and over 48 hours per week, provided the average number of working hours, as calculated for a maximum period of 3 weeks, does not exceed 8 hours per day or 48 hours per week.

(3) The provisions of paragraphs (1) and (2) shall not apply to young people who have not turned 18 years of age yet.

**Article 112.** – (1) For certain sectors of activity, companies, or professions, there can be established, by means of collective or individual negotiations, or specific laws, a length of the working day above or below 8 hours.

(2) The length of the working day of 12 hours shall be followed by a period of rest of 24 hours.

**Article 113.** – (1) The actual manner for establishing an unequal working schedule within the 40-hour working week, as well as during the shorter working week, shall be negotiated by means of the collective labour contract at the level of the employer, or, in his absence, it shall be stipulated in the company's rules and regulations.

(2) An unequal work schedule shall operate only if it is expressly stated in the individual labour contract.

**Article 114.** – The work schedule and its distribution shall be brought to the employees' attention and posted up at the employer's head office.

**Article 115.** – (1) An employer can establish flexible working hours, with the consent or at the request of the employee in question, if such a possibility is laid down in the collective labour contracts applicable at the level of the employer, or, in his absence, in the company's rules and regulations.

(2) The flexible working hours presuppose a flexible organisation of the working time.

(3) The length of the working day shall be divided into two periods: a fixed period during which all the employees are at their work places, and a variable, mobile period in which the employee chooses the times of arrival and departure, provided the working time is observed.

(4) The flexible working hours can only operate in compliance with the provisions of articles 109 and 111.

**Article 116.** – The employer shall keep records of the number of working hours performed by each employee and shall submit such records to the control of the factory inspectorate whenever required.

*Section 2*

**Extra work**

**Article 117.** – (1) The work performed outside the normal length of the working week, as stipulated under article 109, shall be considered extra work.

(2) The extra work cannot be performed without the employee's consent, except for a case of absolute necessity or urgent works meant to prevent accidents or remove the consequences of an accident.

**Article 118.** – (1) At the employer's request, the employees can perform extra work, provided the provisions of article 111 are observed.

(2) Performance of extra work above the limit set according to the provisions of paragraph (1) is prohibited.

**Article 119.** – (1) The extra work shall be compensated for with time off paid in the next 30 days after the work has been performed.

(2) Under these terms, an employee shall benefit from the adequate wages for the hours performed beyond the normal work schedule.

**Article 120.** – (1) If the compensation with paid time off is not possible within the time limit stipulated under article 119 (1) during the next month, the extra work shall be paid to the employee by adding a supplementary wage corresponding to the duration of the work performed.

(2) The supplementary wage for extra work, granted under the terms stipulated by paragraph (1), shall be established by negotiation, within the collective labour contract or, as the case may be, the individual labour contract, and shall not be lower than 75% of the basic wages.

**Article 121.** – Young people under 18 years of age shall not perform extra work.

*Section 3*

**Night work**

**Article 122.** – (1) The work performed between 10 p.m. and 6 a.m. shall be deemed night work.

(2) The normal night work period shall not exceed 8 hours over a 24-hour period.

(3) An employer who frequently uses night work shall notify this to the territorial factory inspectorate.

**Article 123.** – The employees who perform at least 3 hours of night work shall benefit either from a work schedule an hour shorter than the normal length of the working day, without this leading to a decrease in the basic wages, or a supplementary wage of at least 15% of the basic wages for each night work hour performed.

**Article 124.** – (1) The employees who are to perform at least 3 hours of night work shall be subject to a free medical examination before starting activity and afterwards, periodically.

(2) The terms of the medical examination and its periodicity shall be set by the regulations approved by joint order of the minister of labour and social solidarity, and the minister of health and family.

(3) The employees who perform night work and have health problems recognized as being connected with the work shall be transferred to a day work they are fit for.

**Article 125.** – (1) Young people who have not turned 18 years of age shall not perform night work.

(2) Pregnant women, women after childbirth, or nursing women shall not be obliged to perform night work.

*Section 4***Work load**

**Article 126.** – A work load expresses the amount of work needed for operations or works being performed by an adequately skilled person, who works at a normal pace, under the conditions of determined operating and work processes. The work load comprises the production time, the time for interruptions caused by the evolution of the operating process, and the time for lawful breaks during the work schedule.

**Article 127.** – The work load is expressed, depending on the characteristics of the operating process or other activities, as rates of time, rates of production, rates of personnel, sphere of attributions or other forms corresponding to the features of each activity.

**Article 128.** – Work loading shall apply to all employee categories.

**Article 129.** – (1) Work loads are prepared by the employer with the consent of the trade union or, as the case may be, the employees' representatives.

(2) If work loads no longer meet the technical conditions under which they were adopted, or no longer provide a full occupancy of the normal work period, they shall be subject to re-examination.

(3) The re-examination procedure, as well as the actual conditions under which it can intervene shall be established in the applicable collective labour contract or in the company's rules and regulations.

## CHAPTER II

**Periodical rests***Section 1***Lunch break and daily rest**

**Article 130.** – (1) If the length of the working day exceeds 6 hours, the employees shall have the right to a lunch break and other breaks, under the terms laid down in the applicable collective labour contract or the company's rules and regulations.

(2) Young people under 18 years of age shall benefit from a lunch break of at least 30 minutes, if the length of the working day exceeds 4 and a half hours.

(3) Unless otherwise stipulated in the applicable collective labour contract and the company's rules and regulations, the breaks shall not be included in the normal length of the working day.

**Article 131.** – (1) Employees shall be entitled, between two working days, to a rest, which cannot be less than 12 consecutive hours.

(2) As an exception, as far as work in shifts is concerned, this rest cannot be less than 8 hours between shifts.

*Section 2***Weekly rest**

**Article 132.** – (1) The weekly rest is granted over two consecutive days, usually on Saturday and Sunday.

(2) If the rest on Saturday and Sunday would be detrimental to the public interest or the normal evolution of the activity, the weekly rest can also be granted on other days laid down in the applicable collective labour contract or the company's rules and regulations.

(3) For the purpose of paragraph (2), the employees shall benefit from a wage benefit laid down in the collective labour contract or, as the case may be, the company's rules and regulations.

(4) Under exceptional circumstances, the days of weekly rest shall be granted on a cumulative basis, after a period of continuous activity which shall not exceed 15 calendar days, with the authorisation of the territorial factory inspectorate and the consent of the trade union or, as the case may be, the employees' representatives.

(5) The employees whose weekly rest is granted under the terms of paragraph (4) shall be entitled to the double of the compensation due according to article 120 (2).

**Article 133.** – (1) In the event of urgent works, the immediate performance of which is necessary for the organisation of rescue measures for persons or salvage of goods of the employer, for preventing imminent accidents

or for removing the effects of such accidents over the company's materials, equipment or buildings, the weekly rest can be suspended for the personnel required to perform such works.

(2) The employees whose weekly rest has been suspended under the terms of paragraph (1) shall be entitled to the double of the compensation due according to article 120 (2).

*Section 3*

**Legal holidays**

**Article 134.** – (1) The legal holidays on which no work is performed shall be:

- the 1st and 2nd of January;
- the first and second Easter days;
- the 1st of May;
- the 1st of December;
- the first and second Christmas days;
- two days for each of the two annual religious holidays, declared as such by the legal religions other than Christian, for persons belonging to such religions.

(2) The days off shall be granted by the employer.

**Article 135.** – A Government decision shall establish the adequate work schedules for health and catering institutions, with a view to providing medical care and supplying people with the essential food stuffs; the implementation of such schedules shall be mandatory.

**Article 136.** – The provisions of article 134 shall not apply at work places where activity cannot be interrupted due to the nature of the operating process or to the type of activity.

**Article 137.** – (1) The employees who work in the institutions stipulated under article 135, as well as at the work places stipulated under article 136 shall be granted time off in lieu during the next 30 days.

(2) If, for justified reasons, no days off are granted, the employees shall benefit, for the work performed on legal holidays, from a rise in the basic wages which cannot be less than 100 % of the basic wages corresponding to the work performed during the normal work schedule.

**Article 138.** – Through the applicable collective labour contract the can also be established other days off.

CHAPTER III

**Holidays**

*Section 1*

**Annual holiday and employees' other holidays**

**Article 139.** – (1) The entitlement to annual paid holiday is guaranteed to all employees.

(2) The entitlement to annual holiday shall not be the object of any transfer, waiver, or limitation.

**Article 140.** – (1) The minimum length of the annual holiday is of 20 working days.

(2) The actual length of the annual holiday is established in the applicable collective labour contract, is stipulated in the individual labour contract, and is granted in proportion to the activity performed in a calendar year.

(3) The legal holiday on which no work is performed, as well as the paid days off established in the applicable collective labour contract shall not be included in the length of the annual holiday.

(4) The length of the annual holiday for employees working under a part-time individual labour contract shall be granted in proportion to the actual length of work performed.

**Article 141.** – (1) The annual holiday shall be taken each year.

(2) As an exception to the provisions of paragraph (1), taking one's holiday the next year shall only be permitted in the cases expressly stipulated by the law or those stipulated in the applicable collective labour contract.

(3) An employer shall be obliged to grant holiday, by the end of the next year, to all employees who, during a calendar year, have not taken the entire holiday they were entitled to.

(4) The cash compensation of the holiday not taken shall only be permitted in the event of termination of the individual labour contract.

**Article 142.** – The employees who work under difficult, dangerous, or harmful conditions, blind persons, other disabled people, and young people, who are not 18 years of age shall benefit from an additional holiday of at least 3 working days.

**Article 143.** – (1) Taking one's holiday shall be based on a collective or individual schedule drawn up by the employer after having consulted the trade union, or, as the case may be, the employees' representatives, as far as collective scheduling is concerned, or the employee, as far as individual scheduling is concerned. The scheduling shall be done by the end of the calendar year, for the coming year.

(2) Through the collective scheduling there can be established holiday periods, which shall not be less than 3 months per categories of personnel or work places.

(3) Through the individual scheduling there can be established the date of the annual holiday or, as the case may be, the period during which the employee is entitled to annual holiday, which period shall not exceed 3 months.

(4) Within the annual holiday periods set according to paragraphs (2) and (3), an employee can ask for the annual holiday at least 60 days before the beginning thereof.

(5) If the annual holiday scheduling is divided up, the employer is obliged to do the scheduling so that each employee can take, in one calendar year, at least 15 working days of uninterrupted annual holiday.

**Article 144.** – The employee is obliged to the annual holiday in kind, during the period he/she was scheduled for, except for the situations expressly stipulated by the law, or when, for objective reasons, the annual holiday cannot be taken.

**Article 145.** – (1) For the duration of the annual holiday, the employee shall benefit from an annual holiday allowance, which shall not be lower than the total value of the wages due for that period.

(2) The annual holiday allowance represents the daily average income in the month(s) when the holiday is taken, multiplied by the number of days off.

(3) The annual holiday allowance shall be paid by the employer at least 5 working days before the beginning of the holiday.

**Article 146.** – (1) The annual holiday can be interrupted, at the employee's request, for objective reasons.

(2) The employer can call back the employee from his/her annual holiday in case of absolute necessity or for urgent interests calling for the employee's presence at his/her work place. In this case, the employer shall bear all expenses incurred by the employee and his/her family because of coming back to the work place, as well as all possible losses caused to him/her as a result of the interruption of the annual holiday.

**Article 147.** – (1) As far as special family events are concerned, employees shall be entitled to paid days off, which shall not be included in the length of the annual holiday.

(2) The special family events and the number of paid days off shall be established by the law, the applicable collective labour contract, or the company's rules and regulations.

**Article 148.** – (1) For solving certain personal problems, employees shall be entitled to unpaid holiday.

(2) The applicable collective labour contract or the company's rules and regulations shall establish the length of the unpaid holiday.

#### *Section 2*

#### ***Vocational training leaves***

**Article 149.** – (1) The employees shall be entitled to benefit, on request, from vocational training leaves.

(2) Vocational training leaves can be paid or unpaid.

**Article 150.** – (1) The unpaid vocational training leaves shall be granted, at the employee's request, for the duration of the vocational training the employee is attending on his/her initiative.

(2) The employer can only reject the employee's request based on the consent of the trade union or, as the case may be, of the employees' representatives and only if the employee's absence would cause serious harm to the activity.

**Article 151.** – (1) The application for vocational training unpaid leave shall be submitted to the employer at least one month before its commencement and it shall state the date of commencement of the vocational training term and its duration, as well as the denomination of the vocational training institution.

(2) The vocational training unpaid leave can also be taken in fractions in the course of one calendar year, with a view to taking the examinations for graduating some education institutions or taking examinations for passing in the next year of higher education institutions, in compliance with the terms stipulated under paragraph (1).

**Article 152.** – (1) If, during one calendar year – for employees aged up to 25 years – and two consecutive calendar years – for employees aged over 25 years –, respectively, the participation in vocational training has not been provided at the employer's expense, the employee in question shall be entitled to a vocational training leave, paid by the employer, of up to 10 working days.

(2) In the instance stipulated under paragraph (1), the leave allowance shall be established according to article 145.

(3) The period during which an employee benefits from the paid leave stipulated under paragraph (1) shall be mutually agreed upon with the employer. The application for vocational training paid leave shall be submitted to the employer under the terms stipulated under article 151 (1).

**Article 153.** – The length of the vocational training leave shall not be deducted from the length of the annual holiday, and shall be considered an actual work period as regards the entitlements due to the employee other than the wages.

## TITLE IV Wage plan

### CHAPTER I

#### General provisions

**Article 154.** – (1) The wages are the equivalent of the work performed by the employee based on the individual labour contract.

(2) For the work performed based on the individual labour contract, each employee shall be entitled to wages expressed in money.

(3) When establishing and granting the wages, any discrimination is prohibited for criteria such as gender, sexual orientation, genetic characteristics, age, national origin, race, colour of skin, ethnic origin, religion, political options, social origin, disability, family situation or responsibility, trade union membership or activity.

**Article 155.** – The wages shall comprise the basic wages, allowances, benefits, as well as other additional payments.

**Article 156.** – The employers shall pay the wages before any other cash obligations.

**Article 157.** – (1) The wages are established by means of individual and/or collective negotiations between the employer and the employees or their representatives.

(2) The wage plan for the personnel of the public authorities and institutions financed entirely or mostly by the state budget, the budget of social state insurance, the local budgets, and the budgets of the special funds, shall be set by the law, after consultation with the representative trade unions.

**Article 158.** – (1) The wages are confidential, and the employer shall have the obligation to take necessary steps to keep confidentiality.

(2) With a view to promoting the employees' interests and defending their rights, the confidentiality of wages shall not be opposed to trade unions or, as the case may be, to the employees' representatives, in strict connection with their interests and in their direct relation with the employer.

### CHAPTER II

#### Minimum guaranteed wages

**Article 159.** – (1) The gross national minimum basic wages guaranteed to be paid, according to the normal work schedule, shall be established by Government decision after consultation with the trade unions and employers' organisations. If the normal work schedule is, according to the law, less than 8 hours per day, the hourly gross minimum basic wages shall be calculated by relating

the gross national minimum basic wages to the monthly average number of hours according to the lawful work schedule approved.

(2) An employer shall not negotiate or establish basic wages by means of the individual labour contract below the national hourly gross minimum basic wages.

(3) The employer shall be obliged to guarantee the payment of monthly gross wages at least equal to the gross national minimum basic wages. These provisions shall also apply if the employee is present for work, according to the schedule, but he/she cannot carry out his/her activity due to reasons not imputable to him/her, except for strikes.

(4) The employer shall see that the gross national minimum basic wages guaranteed to be paid are notified to the employees.

**Article 160.** – For employees to whom the employer, in compliance with the collective or individual labour contract, provided food, housing or other facilities, the amount of money due for the work performed shall not be lower than the gross national minimum wages stipulated by the law.

### CHAPTER III

#### Payment of wages

**Article 161.** – (1) The wages shall be paid in cash at least once a month, on the date stipulated in the individual labour contract, in the applicable collective labour contract, or in the company's rules and regulations, as the case may be.

(2) The payment of the wages can be made by transfer to a bank account, if such a modality is stipulated in the applicable collective labour contract.

(3) The payment in kind of part of the wages, according to the terms stipulated under article 160, shall only be possible if expressly stipulated in the applicable collective labour contract or the individual labour contract.

(4) The unjustified delay in the payment of the wages or the failure to pay it can cause the employer to be obliged to pay damages to cover the loss caused to the employee.

**Article 162.** – (1) The wages shall be paid directly to the incumbent or his/her representative.

(2) In the event of the employee's death, the wages due up to the date of his/her death shall be paid, in sequence, to the surviving spouse, the deceased employee's major children, or parents. If none of these categories of persons exists, the wages shall be paid to other heirs, in compliance with the common law.

**Article 163.** – (1) The payment of the wages shall be proved by the employee signing the payroll, as well as any other documentary evidence proving the payment has been made to the entitled employee.

(2) The payroll, as well as the other documentary evidence, shall be kept and archived by the employer under the same conditions and for the same terms as the accounting documents, according to the law.

**Article 164.** – (1) No amount shall be withheld from the wages, except for the cases and under the circumstances stipulated by the law.

(2) No amounts shall be withheld as damages caused to the employer unless the employee's debt is due, liquid and exigible, and has been found as such by a judgment which is final and irrevocable.

(3) If several creditors of the employee exist, the following sequence shall be observed:

- a) child support, according to the Family Law;
- b) contributions and taxes due to the state;
- c) damages caused to public property by means of illicit actions;
- d) to cover other debts.

(4) The cumulated amounts withheld from the wages per month shall not exceed half of the net wages.

**Article 165.** – The acceptance without reserve of part of the wages or the signature of the payment documents under such circumstances shall not be construed as a waiver by the employee to the entire wages due to him/her, according to the provisions of the law or of the contract.

**Article 166.** – (1) The right to take action as regards the wage rights, as well as regards the damages resulting from the failure to comply, entirely or partially, with the

obligations concerning wage payment, shall be prescribed within 3 years from the date on which such rights were due.

(2) The term of prescription stipulated under paragraph (1) shall be discontinued if the debtor admits the wage rights or deriving from the payment of the wages.

#### CHAPTER IV

##### **Guarantee fund for the payment of wage debts**

**Article 167.** – (1) The employer shall have to contribute to the guarantee fund for the payment of wage debts resulting from the individual labour contracts, according to the law.

(2) The guarantee fund for the payment of wage debts shall underwrite the payment thereof.

**Article 168.** – When establishing and using the guarantee fund for the payment of wage debts, the following principles shall be observed:

a) the patrimony of the fund administration institutions must be independent from the working capital of the companies and must be established so that it cannot be seized during an insolvency procedure;

b) the employers shall contribute to the financing if this is not fully covered by the public authorities;

c) the payment obligation of the fund administration authorities shall exist independently from meeting the obligation to contribute to the financing.

#### CHAPTER V

##### **Protection of employees' rights in the event of a transfer of the company, of the unit, or of parts thereof**

**Article 169.** – (1) The employees shall benefit from the protection of their rights in the event a transfer of the company, of the unit, or of parts thereof takes place to another employer, according to the law.

(2) The transferer's rights and obligations, which derive from a labour contract or relationship existing on the date of the transfer, shall be fully transferred to the transferee.

(3) The transfer of the company, of the unit, or of parts thereof shall not constitute the grounds for the individual or collective dismissal of the employees by the transferer or the transferee.

**Article 170.** – The transferer and the transferee must inform and consult, prior to the transfer, the trade union or, as the case may be, the employees' representatives as regards the legal, economic, and social consequences for the employees deriving from the transfer of the property right.

#### TITLE V

##### **Labour health and safety**

#### CHAPTER I

##### **General rules**

**Article 171.** – (1) The employer shall take all the necessary steps to protect the employees' lives and health.

(2) The employer must ensure the employees' safety and health in all work-related aspects.

(3) If an employer turns to outside persons or services, this shall not exonerate him from liability in this domain.

(4) The employees' obligations as regards labour safety and health shall not affect the employer's liability.

(5) The steps concerning labour safety and health shall, by no means, cause financial obligations to the employees.

**Article 172.** – (1) The provisions of the present title shall be completed by the provisions of the special law, the applicable collective labour contracts, as well as by the labour safety norms and regulations.

(2) The labour safety norms and regulations can set up:

a) general labour safety measures for preventing industrial accidents and diseases, applicable to all employers;

b) labour safety measures typical of certain professions or activities;

c) typical safety measures applicable to certain categories of personnel;

d) provisions concerning the organisation and operation of special bodies ensuring labour safety and health.

**Article 173.** – (1) Within his own responsibilities, an employer shall take all the necessary steps with a view to protecting the safety and health of employees, including the activities of occupational risks prevention, to providing information and training, as well as to implementing the organisation of labour safety and the necessary means for this.

(2) In adopting and implementing the steps stipulated under paragraph (1), the following general prevention principles shall be taken into consideration:

- a) avoiding risks;
- b) assessing risks which cannot be avoided;
- c) source control of risks;
- d) adjusting work to each person, especially as regards the design of work places and the choice of work and production equipment and methods, with special emphasis on lessening monotonous work and repetitive work, as well as the reduction of their effects on health;
- e) taking into consideration the technical progress;
- f) replacing dangerous items with safe or less dangerous ones;
- g) planning the prevention;
- h) adopting collective safety measures with priority as against the individual safety measures;
- i) informing the employees about the adequate instructions.

**Article 174.** – (1) The employer shall be responsible for the organisation of the labour health and safety activity.

(2) The company's rules and regulations shall stipulate in a mandatory manner rules for labour safety and health.

(3) In drawing up the safety and health measures, the employer shall consult the trade union or, as the case may be, the employees' representatives, as well as the labour safety and health committee.

**Article 175.** – The employer shall provide all the employees with insurances for industrial accidents and diseases, according to the law.

**Article 176.** – (1) The employer shall organise the instruction of his employees in labour safety and health.

(2) The instruction shall be periodical, using specific means mutually agreed upon by the employer together with

the labour safety and health committee and the trade union or, as the case may be, the employees' representatives.

(3) The instruction stipulated under paragraph (2) shall be mandatory in the case of new employees, of those who change the work place or the kind of work, and of those who resume activity after an interruption exceeding 6 months. In all these cases, the instruction shall be carried out before the actual commencement of work.

(4) The instruction shall also be mandatory if amendments to the applicable legislation occur.

**Article 177.** – (1) Work places shall be organised so as to guarantee employees' safety and health.

(2) The employer shall organise a permanent control of the condition of materials, equipment, and substances used in the work process, with a view to protecting employees' health and safety.

(3) The employer shall be responsible for ensuring the conditions for providing the first aid in the event of industrial accidents, for creating fire prevention conditions, as well as for evacuating the employees under special conditions and in the event of an imminent danger.

**Article 178.** – (1) To ensure labour safety and health, the institution authorised by the law can order the limitation or prohibition of manufacturing, selling, importing, or using under any title substances and preparations which are hazardous for the employees.

(2) Based on the approval by the factory doctor, the factory inspector can oblige the employer to request the competent bodies to perform, for a charge, tests and examinations of products, substances, or preparations which are deemed hazardous, in order to know their composition and the effects they could have on human body.

## CHAPTER II

### Labour safety and health committee

**Article 179.** – (1) At the level of each employer, a labour safety and health committee shall be established for the purpose of making sure the employees are involved in the drawing up and implementation of labour safety decisions.

(2) The labour safety and health committee shall be established amongst the legal entities in the public, private, and co-operative sector, including those having foreign capital, which carry out activities on the Romanian territory.

**Article 180.** – (1) The labour safety and health committee shall be established by employers who are legal entities and have at least 50 employees.

(2) If the work conditions are difficult, harmful or dangerous, the factory inspector can request the establishment of such committees even for employers who have less than 50 employees.

(3) If the activity takes place in units spread in the territory, several labour safety and health committees can be established. Their number shall be decided in the applicable collective labour contract.

(4) The labour safety and health committee also co-ordinates the labour safety and health measures as far as activities which take place on a temporary basis are concerned, for a duration exceeding 3 months.

(5) In case the setting up of a labour safety and health committee is not necessary, the person in charge of labour safety appointed by the employer shall carry out its typical duties.

**Article 181.** – The composition, typical duties, and operation of the labour safety and health committee shall be regulated by order of the minister of labour and social solidarity.

### CHAPTER III

#### Employees' protection by means of medical services

**Article 182.** – The employers shall ensure the employees' access to the medical service of industrial medicine.

**Article 183.** – (1) The medical service of industrial medicine can be an autonomous service organised by the employer or a service provided by an employers' organisation.

(2) The length of the work performed by the factory doctor shall be calculated depending on the number of employees of that employer, according to the law.

**Article 184.** – (1) The factory doctor shall be an employee, certified in his/her profession according to the law, holder of a labour contract concluded with an employer or an employers' organisation.

(2) The factory doctor shall be independent in exercising his/her profession.

**Article 185.** – (1) The main duties of the factory doctor shall consist of:

- a) preventing industrial accidents and diseases;
- b) actually monitoring the labour hygiene and health standards;
- c) providing the employees' medical check both when commencing employment and throughout the execution of the individual labour contract.

(2) With a view to accomplishing his/her duties, the factory doctor can suggest the employer to change the work place or the kind of work for certain employees, due to their health condition.

(3) The factory doctor shall be a *de jure* member of the labour safety and health committee.

**Article 186.** – (1) The factory doctor shall set up, each year, a programme of activities aimed at improving the work environment as far as labour health is concerned for each employer.

(2) The elements of such a programme are typical of each employer and subject to the approval by the labour safety and health committee.

**Article 187.** – A special law shall regulate the typical duties, the manner of activity organisation, the control bodies, as well as the typical professional status of the factory doctors.

## TITLE VI Vocational training

### CHAPTER I

#### General provisions

**Article 188.** – (1) The vocational training of employees shall have the following main objectives:

- a) the employee's adjustment to the requirements of the position or work place;
- b) the employee obtaining professional qualifications;
- c) the updating of the knowledge and skills typical of the position and work place and the improvement of the vocational training for the basic occupation;
- d) the vocational retraining caused by social-economic restructuring;
- e) the acquisition of advanced knowledge, modern methods and procedures, needed for accomplishing the vocational activities;
- f) the prevention of the risk of unemployment;
- g) the career advancement and development.

(2) The vocational training and knowledge assessment shall take place based on occupational standards.

**Article 189.** – The employees' vocational training shall be achieved through the following forms:

- a) participation in courses organised by the employer or by the providers of vocational training services in Romania or abroad;
- b) periods of vocational adjustment to the requirements of the position or work place;
- c) periods of practice and specialisation in Romania and abroad;
- d) on-the-job apprenticeship;
- e) individual training;
- f) other training forms agreed upon by the employer and the employee.

**Article 190.** – The employer shall provide the employees with periodical access to vocational training.

**Article 191.** – (1) The employer who is a legal entity shall prepare annual vocational training plans, after consulting the trade union or, as the case may be, the employees' representatives.

(2) The vocational training plan shall be an integral part of the applicable collective labour contract.

(3) The employees shall have the right to be informed about the contents of the vocational training plan.

**Article 192.** – The individual vocational training shall be set up by the employer together with the employee in

question, taking into consideration the criteria considered for the annual vocational training plan and the conditions of activity at the work place.

**Article 193.** – The actual vocational training modality, the parties' rights and obligations, the length of the vocational training, as well as any other aspects related to the vocational training shall make the object of some riders to the individual labour contracts.

**Article 194.** – (1) If the participation in vocational training courses or periods is initiated by the employer, all the expenses incurred for that participation shall be covered by him.

(2) If, under the terms stipulated under paragraph (1), the participation in vocational training courses or periods involves a partial interruption of activity, the participating employee shall benefit from wage entitlements as follows:

a) if the participation involves the interruption of the employee's activity for a period not exceeding 25 % of the normal length of the working day, he/she shall benefit, for the entire duration of the vocational training, from the full wages corresponding to his/her position and office, with all allowances, benefits and additions to them;

b) if the participation involves the interruption of the employee's activity for a period exceeding 25 % of the normal length of the working day, he/she shall benefit from the basic wages and, as the case may be, the seniority bonus.

(3) If the participation in vocational training courses or periods involves a full interruption of activity, the individual labour contract of that employee shall be suspended, and he/she shall benefit from an allowance paid by the employer, as stipulated in the applicable collective labour contract or in the individual labour contract, as the case may be.

(4) For the period of individual labour contract suspension according to the provisions stipulated under paragraph (3), the employee shall benefit from seniority in that job, that period being considered as a period of contribution to the system of social state insurance.

**Article 195.** – (1) The employees who have benefited from a vocational training course or period exceeding 60 days under the terms of article 194 (2) b) and (3) shall not be allowed to request the termination of the individual labour contract for a period of at least 3 years from the date of graduation of the vocational training courses or period.

(2) The duration of the employee's obligation to work for the employer who covered the expenses incurred for the vocational training, as well as any other aspects related to the employee's obligations, subsequent to the vocational training, shall be set up in a rider to the individual labour contract.

(3) The failure by the employee to comply with the provision stipulated under paragraph (1) shall cause him/her to cover all the expenses incurred for his/her vocational training, in proportion to the period not worked from the period established according to the rider to the individual labour contract.

(4) The obligation stipulated under paragraph (3) shall also apply to employees who have been dismissed during the period established in the rider, for disciplinary reasons, or whose individual labour contract has ceased due to them being taken into preventive custody for a period exceeding 60 days, being sentenced by means of a judgment, which was final, for an offence related to their job, as well as if a criminal court has placed on him/her a temporary or permanent interdiction to exercise his/her profession.

**Article 196.** – (1) If the employee has the initiative of participating in an off-the-job vocational training form, the employer shall review the employee's request together with the trade union or, as the case may be, the employees' representatives.

(2) The employer shall decide on the request filed by the employee according to paragraph (1) within 15 days from the receipt of the request. At the same time, the employer shall decide on the terms under which he will allow the employee to participate in the vocational training form, including whether he will cover the cost of this entirely or partially.

**Article 197.** – The employees who have concluded a rider to the individual labour contract in connection with vocational training can receive, apart from the wages corresponding to their job, other advantages in kind for vocational training.

## CHAPTER II

### **Special contracts for vocational training organised by the employer**

**Article 198.** – Special contracts for vocational training are deemed the professional qualification contract and the vocational adjustment contract.

**Article 199.** – (1) A professional qualification contract is a contract based on which an employee undertakes to attend the training courses organised by the employer with a view to acquiring professional qualifications.

(2) Professional qualification contracts can be concluded by employees over 16 years old, who have not acquired a qualification or have acquired a qualification which does not allow them to keep their job with that employer.

(3) A professional qualification contract shall be concluded for a period of 6 months to 2 years.

**Article 200.** – (1) Professional qualification contracts can only be concluded by employers licensed to this effect by the Ministry of Labour and Social Solidarity and the Ministry of Education and Research.

(2) The licensing procedure, as well as the certification of the professional qualification shall be stipulated in a special law.

**Article 201.** – A vocational adjustment contract shall be concluded in view of the beginners' adjustment to a new position, a new work place, or a new team.

(2) A vocational adjustment contract shall be concluded at the same time as the individual labour contract or, as the case may be, when the employee commences work in the new position, the new work place, or the new team, according to the law.

**Article 202.** – (1) The vocational adjustment contract is a contract concluded for a limited duration, which shall not exceed one year.

(2) On the expiry of the vocational adjustment contract time limit, the employee can be subject to an assessment with a view to seeing to what extent he/she can cope with the new position, new work place, or new team where he/she is to work.

**Article 203.** – (1) A trainer shall carry out the vocational training at the employer's level by means of special contracts.

(2) The trainer shall be appointed by the employer from amongst the qualified employees, with a vocational experience of at least 2 years in the field in which the vocational training is to take place.

(3) A trainer can provide training, at the same time, to 3 employees at the most.

(4) The exercise of the vocational training activity shall be included in the trainer's normal work schedule.

**Article 204.** – (1) The trainer must receive, help, inform, and guide the employee throughout the duration of the special vocational training contract, and supervise the compliance with the job duties corresponding to the position of the trainee.

(2) The trainer shall facilitate the co-operation with other training bodies, and participate in the assessment of the employee having benefited from vocational training.

### CHAPTER III

#### **On-the-job apprenticeship contract**

**Article 205.** – (1) An on-the-job apprenticeship contract is a particular type of individual labour contract, based on which:

a) the employer, as a legal or natural entity, shall undertake to provide the apprentice with vocational training in a certain trade, besides the payment of wages;

b) the apprentice undertakes to attend the vocational training courses and to work as a subordinate of that employer.

(2) The on-the-job apprenticeship contract shall be concluded for a limited duration, which cannot exceed 3 years.

**Article 206.** – The employer licensed by the Ministry of Labour and Social Solidarity shall conclude the on-the-job apprenticeship contract.

**Article 207.** – (1) There can be employed as an apprentice any young person who holds no professional qualification and who, by the beginning of the apprenticeship period, has not turned 25 years of age.

(2) An apprentice shall benefit from the provisions applicable to the other employees unless they are contrary to those typical of the apprentice's status.

**Article 208.** – The time needed by the apprentice to participate in theoretical activities related to his/her vocational training shall be included in the normal work schedule.

**Article 209.** – Apprentices are prohibited from performing:

- a) work under difficult, harmful, or dangerous conditions;
- b) overtime;
- c) night work.

**Article 210.** – The on-the-job apprenticeship contract shall comprise, besides the mandatory provisions stipulated in the individual labour contract, the following:

a) the mention of the person who is to take care of the apprentice's training, called *apprenticeship foreman*, and the qualification thereof;

b) the duration needed for obtaining the qualification in that trade;

c) the benefits in kind granted to the apprentice in view of the professional qualification.

**Article 211.** – (1) The apprenticeship foreman shall be an employee of the employer, being certified for apprentices' training.

(2) The Ministry of Labour and Social Solidarity shall certify the apprenticeship foreman.

**Article 212.** – (1) The apprentice's abilities of performing the trade for which he is being trained through the on-the-job apprenticeship contract shall make the object of a final check by the employer.

(2) The employees whose vocational training has made the object of an on-the-job apprenticeship contract shall not be obliged to cover the training expenses incurred by the employer.

**Article 213.** – The control of the on-the-job apprenticeship activity, the apprentice’s status, the conclusion and execution of the on-the-job apprenticeship contract, the licensing of employers for concluding on-the-job apprenticeship contracts, the certification of the apprenticeship foreman, the final check of the apprentice’s abilities, as well as any other aspects related to the on-the-job apprenticeship contract shall be regulated by a special law.

## TITLE VII Social dialogue

### CHAPTER I

#### General provisions

**Article 214.** – To ensure the climate of stability and social peace, the law shall regulate the modalities of consultations and permanent dialogue between the social partners.

**Article 215.** – The Economic and Social Council is a tripartite, autonomous public institution of national interest, established for the purpose of facilitating nationwide social dialogue.

**Article 216.** – Within ministries and prefect’s offices, according to the law, consultative social-dialogue commissions shall operate among the public administration, trade unions, and employers’ organisation.

### CHAPTER II

#### Trade unions

**Article 217.** – (1) The trade unions are independent legal entities, without a patrimony purpose, established for the purpose of defending and promoting the collective and individual rights, as well as the professional, economic, social, cultural, and sporting interests of their members.

(2) A special law shall regulate the terms and the procedure for trade unions acquiring legal status.

(3) The trade unions shall have the right to regulate, in their own statutes, their manner of organisation, association and administration, provided the statutes are

adopted by means of a democratic procedure, according to the law.

**Article 218.** – The trade unions shall participate by means of their own representatives, according to the law, in negotiations and the conclusion of collective labour contracts, in talks or agreements with the public authorities and the employers’ organisations, as well as in the structures typical of the social dialogue.

**Article 219.** – The trade unions can become associated freely, according to the law, in federations, confederations, or territorial unions.

**Article 220.** – The exercise of the trade union right by the employees shall be recognised at the level of all employers, observing the rights and freedoms guaranteed in the Constitution and in compliance with the provisions of the present code and of the special laws.

**Article 221.** – (1) Any intervention by the public authorities liable to limit the trade union rights or to prevent their lawful exercise shall be prohibited.

(2) Also, all interference by the employers or employers’ organisations, either directly or by means of their representatives or members, in the establishment of trade unions or in the exercise of their rights shall be prohibited.

**Article 222.** – At the request of their members, the trade unions can represent them in conflicts of rights.

**Article 223.** – (1) The representatives elected in the management bodies of the trade unions shall be protected by the law against all forms of conditioning, constraint or limitation of the exercise of their functions.

(2) For the duration of their office, as well as for 2 years after its termination, the representatives elected in the trade union management bodies cannot be dismissed for reasons not connected with the employee’s person, for being professionally unfit, or for reasons related to the office received from the employees in the company.

(3) Other steps for protecting the persons elected in trade union management bodies shall be provided in special laws and in the applicable collective labour contract.

## CHAPTER III

**Employees' representatives**

**Article 224.** – (1) With employers where no more than 20 employees exist and if none of them is a trade union member, their interests can be promoted and defended by their representatives, specially elected and authorised for this purpose.

(2) The employees' representatives shall be elected in the employees' general meeting, based on the vote by at least half of the total number of employees.

(3) The employees' representatives shall not carry out activities which are, according to the law, exclusive to trade unions.

**Article 225.** – (1) As employees' representatives there can be elected the employees who have turned 21 years of age and have worked with the employer for at least one year without interruptions.

(2) The condition of the length of service stipulated under paragraph (1) is not required to the election of the employees' representatives in newly established companies.

(3) The number of elected employees' representatives shall be mutually agreed upon with the employer, in relation to the number of his employees.

(4) The length of the term of office of the employees' representatives shall not exceed 2 years.

**Article 226.** – The employees' representatives shall have the following main duties:

a) to see that the employees' rights are complied with, in accordance with the legislation in force, the applicable collective labour contract, the individual labour contracts, and the company's rules and regulations;

b) to participate in the drawing up of the company's rules and regulations;

c) to promote the employees' interests concerning wages, work conditions, working time and rest time, labour stability, as well as any other professional, economic and social interests related to labour relationships;

d) to notify the labour inspectorate about the non-observance of the provisions of the law and the applicable collective labour contract.

**Article 227.** – The duties of the employees' representative, the way these are met, as well as the length and limits of their term of office shall be established during the employees' general meetings, according to the law.

**Article 228.** – The time devoted to the employees' representatives in view of carrying out the term of office shall be 20 hours per month and shall be deemed as actual working time, being paid accordingly.

**Article 229.** – During the exercise of their term of office, the employees' representatives shall not be dismissed for reasons not connected with the employee's person, for being professionally unfit, or for reasons related to the carrying out of the term of office.

## CHAPTER IV

**Employers' organisations**

**Article 230.** – The owner, called *employer* in the present code, is a registered legal entity or a natural entity certified according to the law, who manages and uses the capital, irrespective of its kind, for the purpose of obtaining a profit under conditions of competition, and who employs paid work.

**Article 231.** – (1) The employers' organisations are autonomous organisations of the owners, without a political character, established as private law legal entities, without a patrimony purpose.

(2) The employer's organisations can constitute employers' unions, federations, confederations, or other associative structures.

**Article 232.** – (1) The employers' organisations represent, support, and defend the interests of their members in their relationships with the public authorities, trade unions and other legal and natural entities, depending on the object and purpose of their activity, according to their own statutes and the provisions of the law.

(2) At the request of their members, the employers' organisations can represent them in the event of conflicts of rights.

**Article 233.** – The law against all forms of discrimination, conditioning, constraint or limitation of the exercise of their functions shall protect the members of the elected management bodies of the employers' organisations.

**Article 234.** – The employers' organisations shall be social partners in collective labour relationships, participating, by means of their own representatives, in the negotiation and concluding of collective labour contracts, in talks and agreements with the public authorities and the trade unions, as well as in the structures typical of the social dialogue.

**Article 235.** – (1) The establishment and operation of employers' associations, as well as the exercise of their rights and obligations, shall be regulated by the law.

(2) Any intervention by the public authorities, which is likely to limit the exercise of employers' rights or to prevent their lawful exercise, shall be prohibited.

(3) Any interference by the employees or the trade union, directly or by means of their representatives or trade union members, in the establishment of employers' associations or in the exercise of their rights shall also be prohibited.

## TITLE VIII

### Collective labour contracts

**Article 236.** – (1) The collective labour contract is the agreement concluded in a written form between the employer or the employers' organisation, on the one hand, and the employees, represented by the trade unions or in any other manner stipulated by the law, on the other, by means of which clauses are set up concerning the work conditions, the wages, as well as other rights and liabilities deriving from the labour relationships.

(2) The collective negotiation is mandatory, except when the employer has less than 21 employees.

(3) When negotiating the clauses and concluding the collective labour contracts, the parties shall be equal and free.

(4) The collective labour contracts, concluded in compliance with the provisions of the law, shall constitute the law of the parties.

**Article 237.** – The parties, their representation, and the procedure for negotiating and concluding the collective labour contracts, shall be established according to the law.

**Article 238.** – (1) The collective labour contracts shall not contain clauses which set up rights at a lower level than the one set up in the collective labour contracts concluded at a higher level.

(2) The individual labour contracts shall not contain clauses setting up rights at a lower level than the one set up in the collective labour contracts.

(3) When concluding the collective labour contract, the provisions of the law concerning the employees' rights shall have a minimum level.

**Article 239.** – The provisions of the collective labour contract shall cause effects for all employees, irrespective of their date of employment or affiliation to a trade union.

**Article 240.** – (1) The collective labour contracts can be concluded at the level of the employers, branches of activity, or at a national level.

(2) The collective labour contracts can also be concluded at the level of groups of employers, hereinafter called *groups of employers*.

**Article 241.** – (1) The clauses of the collective labour contracts shall cause effects as follows:

a) for all employer's employees, in the case of the collective labour contracts concluded at such level;

b) for all employees hired by employers who belong to the group of employers for which the collective labour contract has been concluded at this level;

c) for all employees hired by all the employers in the branch of activity for which the collective labour contract has been concluded at this level;

d) for all employees hired by all the employers in the country, in the case of the collective labour contract at a national level.

(2) At each of the levels stipulated under article 240, a single collective labour contract shall be concluded.

**Article 242.** – The collective labour contract shall be concluded for a limited period, which cannot be of less than 12 months, or for the duration of a certain work.

**Article 243.** – (1) The execution of the collective labour contract shall be mandatory for the parties.

(2) The failure to meet the obligations assumed in the collective labour contract entails the liability of the parties which are to blame for this.

**Article 244.** – The clauses of the collective labour contract can be amended throughout its execution, according to the law, whenever the parties agree to do this.

**Article 245.** – The collective labour contract shall be terminated:

a) at the end of the time limit or work for which it has been concluded, unless the parties agree to extend the period for its implementation;

b) on the date of the employer's dissolution or legal liquidation;

c) based on the parties' consent.

**Article 246.** – The implementation of the collective labour contract can be suspended based on the parties' wilful agreement or in case of absolute necessity.

**Article 247.** – If, at the level of an employer, group of employers, or at the branch level, there is no collective labour contract, the collective labour contract concluded at a higher level shall apply.

## TITLE IX Industrial conflicts

### CHAPTER I

#### General provisions

**Article 248.** – (1) An industrial conflict means any disagreement between the social partners, in their work relationships.

(2) The industrial conflicts whose object is the establishment of the work conditions on the occasion of

the negotiations for the collective labour contracts are conflicts referring to employees' professional, social, or economic interests, called *conflicts of interests*.

(3) The industrial conflicts whose object is the exercise of some rights or the meeting of certain obligations deriving from laws or other regulations, as well as from the collective or individual labour contracts are conflicts referring to the employees' rights, called *conflicts of rights*.

**Article 249.** – The procedure for resolving industrial conflicts shall be set by a special law.

### CHAPTER II

#### Strike

**Article 250.** – The employees shall have the right to strike with a view to defending their professional, economic, and social interests.

**Article 251.** – (1) A strike means a voluntary or collective cessation of work by the employees.

(2) The employees' participation in the strike is free. No employee shall be constrained to participate in a strike or not.

(3) The limitation or prohibition of the right to strike can only take place in the cases and for the employee categories expressly stipulated by the law.

**Article 252.** – The participation in a strike, as well as its organisation in accordance with the law, shall not mean a violation of the employees' obligations and cannot have as a consequence disciplinary sanctions against the employees on strike or the organisers of the strike.

**Article 253.** – The manner in which the right to strike is exercised, the organisation, the start and the progress of the strike, the procedures prior to the start of the strike, the suspension and termination of the strike, as well as other aspects related to the strike shall be regulated by a special law.

## TITLE X Factory Inspectorate

**Article 254.** – The implementation of the general and special regulations in the field of labour relationships,

labour safety and health is subject to the control of the Factory Inspectorate, as a specialised body of the central public administration, having a legal status, under the Ministry of Labour and Social Solidarity.

**Article 255.** – Territorial factory inspectorates, organised in each county and in Bucharest municipality, shall be subordinated to the Factory Inspectorate.

**Article 256.** – A special law shall regulate the establishment and organisation of the Factory Inspectorate.

## TITLE XI Legal liability

### CHAPTER I

#### Company's rules and regulations

**Article 257.** – The employer shall draw up the company's rules and regulations after consultations with the trade union or the employees' representatives, as the case may be.

**Article 258.** – The internal regulations shall comprise at least the following categories of provisions:

- a) rules on labour protection, hygiene, and safety within the company;
- b) rules on the observance of the principle of non-discrimination and removal of all forms of dignity violation;
- c) rights and obligations of the employer and employees;
- d) the procedure for solving the employees' individual requests or complaints;
- e) actual rules on labour discipline in the company;
- f) misbehaviour and applicable sanctions;
- g) rules concerning the disciplinary procedure;
- h) modalities for implementing other typical provisions of the law or contract.

**Article 259.** – (1) The company's rules and regulations shall be notified to the employees' knowledge through the good offices of the employer and shall start its effects on the employees from the time of such notification.

(2) The employer shall have the obligation to inform the employees about the contents of the company's rules and regulations.

(3) The actual manner in which each employee is informed about the contents of the company's rules and regulations shall be set in the collective labour contract or, as the case may be, in the contents of the company's rules and regulations.

(4) The company's rules and regulations shall be displayed at the employer's head office.

**Article 260.** – Any amendment in the contents of the company's rules and regulations shall be subject to the notification procedures stipulated under article 259.

**Article 261.** – (1) Any interested employee can notify the employer about the provisions of the company's rules and regulations as far as it is made the proof of the violation of one of his/her rights.

(2) The check of the lawfulness of the provisions of the company's rules and regulations shall be in the jurisdiction of the courts of law, which shall be notified within 30 days from the date of the employer's answer concerning the solution to the notification filed under paragraph (1).

**Article 262.** – (1) The drawing up of the company's rules and regulations at the level of each employer shall be done within 60 days from the date of coming into force of the present code.

(2) In the case of employers established after the coming into force of the present code, the 60-day time limit stipulated under paragraph (1) shall start on the day when they acquire legal personality.

### CHAPTER II

#### Disciplinary liability

**Article 263.** – (1) The employer shall have a disciplinary prerogative, being entitled to apply, according to the law, disciplinary sanctions onto his employees whenever he finds they have committed an infraction of discipline.

(2) An infraction of discipline is a deed related to work, which consists of an action or non-action guiltily performed by an employee, who has thus violated the provisions of the law, the company's rules and regulations, the individual labour contract or the applicable individual labour contract, the lawful orders and decisions of his/her superiors.

**Article 264.** – (1) The disciplinary sanctions that the employer can apply if the employee commits an infraction of discipline shall be:

- a) a written warning;
- b) the suspension of the individual labour contract for a period which cannot exceed 10 working days;
- c) demotion, with wages corresponding to the position to which the demotion has taken place, for a duration which cannot exceed 60 days;
- d) a reduction in the basic wages for a duration of 1 to 3 months, by 5–10%;
- e) a reduction in the basic wages and/or, as the case may be, in the management allowance for a period of 1 to 3 months, by 5–10%;
- f) termination of the individual labour contract for disciplinary reasons.

(2) If, by means of vocational statutes approved in a special law, another sanction regime is established, the latter shall apply.

**Article 265.** – (1) Disciplinary fines are prohibited.

(2) Only one sanction can be applied for the same infraction of discipline.

**Article 266.** – The employer shall establish the applicable disciplinary sanction in relation to the severity of the infraction of discipline committed by the employee, taking into account:

- a) the circumstances under which the deed took place;
- b) the employee's guilt degree;
- c) the consequences of the infraction of discipline;
- d) the employee's general behaviour at work;
- e) possible disciplinary sanctions previously undergone by him/her.

**Article 267.** – (1) Under the sanction of absolute nullity, no step, except for the one stipulated under article 264 (1), a), shall be ordered before a preliminary disciplinary inquiry is carried out.

(2) In view of the preliminary disciplinary inquiry, the person authorised by the employer to make the inquiry shall summon the employee in writing, stating the object, date, time, and place of the meeting.

(3) The employee's failure to come to the meeting summoned under paragraph (2) without an objective reason shall entitle the employer to order sanctions, without the preliminary disciplinary inquiry.

(4) During the preliminary disciplinary inquiry, the employee shall have the right to formulate and support all evidence in his/her defence, and to offer the person in charge of the inquiry all the evidence and motivations he/she deems necessary, as well as the right to be assisted, at his/her request, by a representative of the trade union whose member he/she is.

**Article 268.** – (1) The employer shall order the implementation of the disciplinary sanction by means of a written order, within 30 calendar days from the date of learning about the infraction of discipline, but no later than 6 months from the date the deed was committed.

(2) Under the sanction of absolute nullity, the decision shall comprise in a mandatory manner:

- a) the description of the deed representing an infraction of discipline;
- b) the mention of the provisions of the personnel statute, the company's rules and regulations, or applicable collective labour contract, which have been violated by the employee;
- c) the reasons for which the defending arguments submitted by the employee during the preliminary disciplinary inquiry have been disregarded, or the reasons for which, under the terms of article 267 (3), no such inquiry has been carried out;
- d) the *de jure* grounds of the disciplinary sanction applied;
- e) the term within which the sanction can be challenged;
- f) the competent court of law before which the sanction can be challenged.

(3) The sanction decision shall be notified to the employee within 5 calendar days at the latest from the date of its issuance and shall cause effects from the date of notification.

(4) The notification shall be handed over to the employee himself/herself, against signature of receipt, or

in case of refusal by registered mail, sent to the domicile or residence communicated by him/her.

(5) The employee can challenge the sanction decision before the competent courts of law within 30 calendar days from the date of notification.

### CHAPTER III

#### Property liability

**Article 269.** – (1) Based on the norms and principles of contractual civil liability, the employer shall indemnify the employee if the latter has undergone a material prejudice because of the employer's fault when meeting his/her job duties or in relation to the job.

(2) If the employer refuses to indemnify the employee, the latter shall be entitled to file a complaint with the competent courts of law.

(3) An employer who has paid the indemnity shall recover the respective amount from the employee who was to blame for the damage, under the terms of article 270 and the subsequent ones.

**Article 270.** – (1) The employees shall be liable, according to the norms and principles of contractual civil liability, for the material damages caused to the employer because of their fault and in relation to their work.

(2) The employees shall not be liable for damages caused by a case of absolute necessity or other unpredictable causes which could not have been prevented, or damages included in the normal risk of the job.

**Article 271.** – (1) When the damage has been caused by several employees, the amount of liability for each one shall be established in relation to the extent to which they have contributed to the damage.

(2) If the extent to which they have contributed to the damage cannot be established, the liability of each one shall be in proportion to his/her net wages on the date of finding the damage and, if need be, also depending on the time of work actually completed since its last inventory.

**Article 272.** – (1) An employee who has cashed in from the employer an amount not due to him/her shall have to return it.

(2) If the employee has received goods which were not due to him/her and which can no longer be returned in kind or if services have been provided to him/her he/she was not entitled to, he/she shall have to cover their value. The value of the goods or services in question shall be established based on their value on the date of payment.

**Article 273.** – (1) The amount established for covering the damage shall be retained in monthly instalments from the wages due to the person in question by his/her employer.

(2) Instalments shall not exceed one third of the net monthly wages, and shall not exceed, along, with the other possible amounts retained from the person in question, one half of that wages.

**Article 274.** – (1) If the individual labour contract is terminated before the employee has indemnified the employer and he/she becomes employed by another employer or becomes a civil servant, the due amounts shall be retained from his/her wages by the new employer or new institution of public authority, as the case may be, based on the executory title transmitted to this effect by the employer having undergone the damage.

(2) If the person in question has not been hired by another employer, based on an individual labour contract or as a civil servant, the damage shall be covered by foreclosure of his/her assets, under the Civil Procedure Code.

**Article 275.** – If the damage cannot be covered by means of amounts retained from the wages within a term of 3 years at most from the date the first retained instalment was made, the employer shall be entitled to call on a court executor under the Civil Procedure Code.

### CHAPTER IV

#### Contraventional liability

**Article 276.** – (1) The following actions shall be seen as contraventions and sanctioned as follows:

a) the non-compliance with the provisions concerning the payment guarantee of the national gross minimum wages – a fine from ROL 3 000 000 to ROL 20 000 000;

b) the violation by the employer of the provisions of article 34 (5) – a fine from ROL 3 000 000 to ROL 10 000 000;

c) preventing an employee or group of employees from participating in a strike or obliging them to work during a strike, by means of threats or violence – a fine from ROL 15 000 000 to ROL 30 000 000;

d) accepting to work of a person for whom no individual labour contract has been concluded or stipulating clauses contrary to the provisions of the law in the individual labour contract – a fine from ROL 20 000 000 to ROL 50 000 000;

e) employing minors with the failure to comply with the provisions of the law as regards the age or the use of such persons for performing certain activities in violation of the provisions of the law on the work regime of minors – a fine from ROL 50 000 000 to ROL 100 000 000;

f) the violation by the employer of the provisions of articles 134 and 137 – a fine from ROL 50 000 000 to ROL 100 000 000;

g) the violation of the obligation stipulated under article 135 – a fine from ROL 100 000 000 to ROL 200 000 000;

(2) The finding of the contraventions and the application of sanctions shall be done by the factory inspectors.

(3) The provisions of the laws in force shall apply to the contraventions stipulated under paragraph (1).

## CHAPTER V

### Criminal liability

**Article 277.** – The failure to implement a final court decree on the payment of the wages within 15 days from the date of the implementation request sent to the employer by the interested party shall constitute a crime punishable by prison from 3 to 6 months or a fine.

**Article 278.** – The failure to enforce a final judgment on an employee's reemployment shall constitute a crime punishable by prison from 6 months to 1 year or a fine.

**Article 279.** – (1) In the case of the crimes stipulated by articles 277 and 278, the criminal action shall be started by a complaint from the injured party.

(2) An agreement reached by the parties shall remove the criminal liability.

**Article 280.** – The failure by the employer to deposit, within 15 days, in the established accounts, the amounts cashed in from the employees as contributions to the social security public system, to the unemployment insurance budget or the social health insurance budget shall constitute a crime punishable by prison from 3 to 6 months or a fine.

## TITLE XII Labour jurisdiction

### CHAPTER I

#### General provisions

**Article 281.** – The object of the labour jurisdiction is to solve industrial conflicts concerning the conclusion, execution, amendment, suspension, and termination of the individual or, as the case may be, collective labour contracts stipulated in the present code, as well as the requests concerning the legal relationships between social partners, established according to the present code.

**Article 282.** – Parties in industrial conflicts can be the following:

a) the employees, as well as any other person having a right or obligation under the present code, other laws, or the collective labour contracts;

b) the employers – natural and/or legal entities –, temporary labour agents, users, as well as any other person benefiting from work performed under the present code;

c) the trade unions and employers' organisations;

d) other legal or natural entities having this vocation based on special laws or the Civil Procedure Code.

**Article 283.** – (1) The petitions for the solution of an industrial contract shall be filed:

a) within 30 calendar days from the date the employer's unilateral decision concerning the conclusion, execution,

amendment, suspension, or termination of the individual labour contract has been notified;

b) within 30 calendar days from the date the disciplinary sanction decision has been notified;

c) within 3 years from the date of onset of the action right, if the object of the individual labour conflict consists of the payment of unpaid wages or damages to the employee, as well as well as in the case of the employees' patrimony liability to the employer;

d) throughout the existence of the contract, if the request is made to find the nullity of an individual or collective labour contract or of the clauses thereof;

e) within 6 days from the date of onset of the action right, in the event of the non-execution of the collective labour contract or of clauses thereof.

(2) In all circumstances other than the ones stipulated under paragraph (1), the term is 3 years from the setting on date of the right.

## CHAPTER II

### Material and territorial competence

**Article 284.** – (1) The competence for judging industrial conflicts shall belong to the courts established according to the Civil Procedure Code.

(2) The petitions concerning the causes stipulated under paragraph (1) shall be filed with the competent court having jurisdiction over the petitioner's domicile or residence or, as the case may be, head office.

## CHAPTER III

### Special procedure rules

**Article 285.** – The causes stipulated under article 281 shall be exempted from the legal fee and the legal stamp.

**Article 286.** – (1) The petitions concerning the solution to industrial conflicts shall be judged as emergencies.

(2) The trial terms shall not exceed 15 days.

(3) The procedure for the parties' summoning shall be deemed as lawfully accomplished if completed at least 24 hours before the trial deadline.

**Article 287.** – The employer shall be responsible for providing the evidence in industrial conflicts, being obliged to submit evidence in his defence by the first day of trial.

**Article 288.** – The evidence shall be produced as a matter of urgency, and the court shall be entitled to deny the benefit of the admissible evidence to the party delaying its submittal without good grounds.

**Article 289.** – The judgment delivered in a court of first instance shall be final and enforceable by right.

**Article 290.** – The procedure for solving industrial conflicts shall be regulated by a special law.

**Article 291.** – The provisions of the Civil Procedure Code shall complete the provisions of the present title.

## TITLE XIII

### Transitory and final provisions

**Article 292.** – In compliance with the international obligations assumed by Romania, the labour legislation shall be kept permanently in harmony with the European Union norms, the agreements and recommendations of the International Labour Organisation, and the norms of the international labour law.

**Article 293.** – Romania shall accomplish, by the date of its accession to the European Union, the transposition into the national legislation of the community provisions on the European company committee in community-size units, as such companies appear and develop in the economy, as well as those on the secondment of employers to service providing activities.

**Article 294.** – For the purpose of the present code, *employees in a management position* shall mean the managers salaried employers, including the chairman of the board of directors if he is also a salaried employee, general directors and directors, assistant general directors and assistant directors, heads of work compartments – divisions, departments, sections, workshops, services, offices –, as well as those similar to them, as set by the law or the collective labour contracts or, as the case may be, the company's rules and regulations.

**Article 295.** – (1) The provisions of the present code shall be completed by the other provisions in the labour legislation and, unless inconsistent with the typical labour relationships stipulated in the present code, the provisions of the civil legislation.

(2) The provisions of the present code shall also apply as common law to those legal labour relationships not based on an individual labour contract, unless the special regulations are complete, and their implementation is inconsistent with such typical labour relationships.

**Article 296.** – (1) The employment record book shall prove the length of service existing by 31 December 2003. If a person does not have an employment record book, his/her length of service shall be reconstituted on request by the competent court of law solving industrial conflicts, based on records or other evidence proving the presence of labour relationships.

(2) By the date stipulated under paragraph (1), the employers or, as the case may be, the territorial factory inspectorates which hold the employees' employment record books shall gradually deliver those books to their holders, based on individual hand-over/receipt reports.

**Article 297.** – On the date of the present code coming into force, the causes concerning industrial conflicts appearing in the lists of cases of the courts of law shall continue to be tried based on the trial provisions applicable on the date the courts of law were notified.

**Article 298.** – (1) The present code shall come into force on 1 March 2003.

(2) On the date the present code comes into force, the following documents shall be repealed:

– The Labour Code of the Socialist Republic of Romania, Law no. 10/1972, published in the Official Bulletin, Part I, no. 140 of 1 December 1972, with subsequent amendments and additions;

– Law no. 1/1970 – Law of labour organisation and discipline in socialist companies, published in the Official Bulletin, Part I, no. 27 of 27 March 1970, with subsequent amendments and additions;

– Decree no. 63/1981 on the recovery of damages caused to public wealth, published in the Official Bulletin, Part I, no. 17 of 25 March 1981;

– Law no. 30/1990 on hiring employees based on their competence, published in the Official Gazette of Romania, Part I, no. 125 of 16 November 1990;

– Law no. 2/1991 on the plurality of offices, published in the Official Gazette of Romania, Part I, no. 1 of 8 January 1991;

– The law of the salary scheme no. 14/1991, published in the Official Gazette of Romania, Part I, no. 32 of 9 February 1991, with subsequent amendments and additions;

– Law no. 6/1992 on the annual holiday and other holidays of employees, published in the Official Gazette of Romania, Part I, no. 16 of 10 February 1992;

– Law no. 68/1993 on the guaranteed payment of the minimum wages, published in the Official Gazette of Romania, Part I, no. 246 of 15 October 1993;

– Law no. 75/1996 on establishing the legal holidays, when no work is performed, published in the Official Gazette of Romania, Part I, no. 150 of 17 July 1996, with subsequent amendments and additions;

– articles 34 and 35 of Law no. 130/1996 on the collective labour contract, republished in the Official Gazette of Romania, Part I, no. 184 of 19 May 1998;

– any other provisions to the contrary.

(3) Starting on 1 January 2004, the provisions of Decree no. 92/1976 on the employment record book, published in the Official Bulletin, Part I, no. 37 of 26 April 1976, shall be repealed.