

TITLE I - General provisions

CHAPTER 1 - Scope

Art. 1. [scope] (1) This Code regulates every individual and collective employment relationship, the enforcement of the regulations regarding the employment relationships and the labour jurisdiction. **(2)** This Code also applies to employment relationships regulated by special laws, unless the latter contain specific derogations.

Art. 2. [addressees] The provisions of this Code apply to: a) Romanian citizens under an individual employment contract, engaged in an activity in Romania; b) Romanian citizens under an individual employment contract and engaged in an activity abroad, under contracts concluded with a Romanian employer, unless the legislation of the country where the individual employment contract is performed is more favourable; c) foreign nationals or stateless persons under an individual employment contract, engaged in an activity for a Romanian employer on Romanian territory; d) persons having acquired the refugee status and employed under an individual employment contract on Romanian territory, under the terms of the law; e) apprentices engaged in an activity under an on-the-job apprenticeship contract; f) employers, natural and legal persons; g) trade unions and employers' organizations.

CHAPTER 2 - Fundamental principles

Art. 3. [right to work] (1) The right to work is guaranteed by the Constitution. The right to work may not be abridged. **(2)** A person shall be free to choose his/her job and profession, trade or activity to perform. **(3)** No one may be forced to work or not to work at a specific workplace or in a specific profession, whichever they may be.

(4) An employment contract concluded in breach of the provisions of paragraphs (1)-**(3)** shall be null and void.

Art. 4. [prohibition of forced labour] (1) Forced labour shall be prohibited. **(2)** "Forced labour" means any work or service imposed on a person under threat or for which he/she did not freely express his/her consent. **(3)** The work or activity imposed by the public authorities for the following purposes shall not constitute forced labour: a) pursuant to the law on the compulsory military service; b) for the fulfilment of the civic duties established by law; c) on the basis of a final judicial conviction, under the terms of the law; d) in case of an act of God, respectively in case of war, disasters or disaster danger such as: fire, flood, earthquake, serious epidemic and epizootic, animal or insect invasions and, generally, in all circumstances threatening the life or the normal living conditions of the entire population or a part of it.

Art. 5. [equal treatment] (1) The principle of equal treatment for all employees and employers shall operate within the framework of the employment relationships. **(2)** Any direct or indirect discrimination against an employee based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited. **(3)** The acts and deeds of exclusion, distinction, restriction or preference, based on one or several of the criteria referred to in paragraph (2), which have the purpose or effect of denying, restraining or removing the recognition, enjoyment or exercise of the rights provided for in the labour legislation shall constitute direct discrimination. **(4)** The acts and deeds apparently based on other criteria than those referred to in paragraph (2), but which effect to a direct discrimination, shall constitute indirect discrimination.

Art. 6. [employee protection] (1) An employee engaged in an occupation shall enjoy working conditions adequate to the activity carried out, social protection, health and safety at work, and respect of his/her dignity and conscience, without discrimination. **(2)** An employee engaged in an occupation shall be recognized the right to collective bargaining, the right to protection of personal data, and the right to protection against unlawful dismissals. **(3)** Any discrimination based on sex shall, as regards all elements and conditions of compensation, be prohibited for equal work or work of equal value.

Art. 7. [freedom of association] The employees and employers may freely associate to defend their rights and professional, economic and social interests.

Art. 8. [consent, good faith, report, consultation] (1) The employment relationships shall be based on the principle of consent and good faith. **(2)** The participants to the employment relationships, for the proper development of such relationships, shall inform and consult each other, under the terms of the laws and collective labour agreements.

Art. 9. [freedom to work abroad] Romanian citizens shall be free to work in the Member States of the European Union and in any other country, in compliance with the rules of the international labour law and bilateral treaties to which Romania is a party.

TITLE II - The individual employment contract

CHAPTER 1 - Conclusion of the individual employment contract

Art. 10. [legal definition of the individual employment contract] An individual employment contract is an agreement under which a natural person, called employee, undertakes to perform the work for and under the authority of an employer, natural or legal person, against a remuneration called wage.

Art. 11. [clauses prohibited] The terms of the individual employment contract may not contain provisions contrary to or rights below the minimum level laid down by legal provisions or collective labour agreements.

Art. 12. [length of the individual employment contract] (1) An individual employment contract shall be concluded for an unlimited duration. **(2)** By way of exception, the individual employment contract may also be concluded for a limited duration, under the terms expressly provided for in the law.

Art. 13. [legal capacity of the employee] (1) A natural person shall acquire legal capacity to work at the age of sixteen. **(2)** A natural person may also conclude a employment contract as an employee at the age of 15, with the agreement of his/her parents or legal representatives, related to activities corresponding to his/her physical development, skills and knowledge, unless his/her health, development and vocational training are harmed. **(3)** The employment of persons under the age of fifteen years shall be prohibited. **(4)** The employment of persons placed under guardianship shall be prohibited. **(5)** The employment in difficult, unhealthy or dangerous workplaces may only take place after the age of eighteen; such workplace categories shall be established by Government Decision.

Art. 14. [legal capacity of the employer] (1) For the purposes of this Code, "employer" means a natural or legal person, which, according to the law, may employ personnel under individual employment contracts. **(2)** A legal person may conclude individual employment contracts in the capacity of employer from the

moment it acquires legal personality. **(3)** A natural person may conclude individual employment contracts in the capacity of employer after acquiring full legal capacity.

Art. 15. [subject matter of the employment contract] The conclusion of an individual employment contract for the purpose of an illegal or immoral occupation or activity shall be prohibited, on pain of absolute nullity.

Art. 16. [form of the employment contract] (1) An individual employment contract shall be concluded on the basis of the parties' written consent, in the Romanian language. The obligation to conclude the individual employment contract in a written form lies with the employer. A legal person, a natural person authorized to perform an independent activity or a family association acting as an employer shall conclude the individual employment contract in writing, before the beginning of the employment relationships. **(2)** In case the individual employment contract has not been concluded in writing, it shall be presumed to be of unlimited duration, and the parties may prove by any other type of evidence the contractual provisions and the services provided. **(3)** The work performed under an individual employment contract shall be included in employee's length of service.

Art. 17. [information on employment contract clauses] (1) Before concluding or amending the individual employment contract, the employer shall inform the person selected for employment or, as appropriate, the employee on the essential clauses to be introduced in the contract or to be amended. **(11)** The obligation to notify to person selected for employment or the employee shall be deemed to be fulfilled by the employer upon the signature of the individual employment contract or the addendum, as the case may be. **(2)** The person selected for employment or the employee, as the case may be, shall be informed at least of the following: a) the identity of the parties; b) the workplace or, in the absence of a permanent workplace, the possibility of working in several places; c) the headquarters or, as appropriate, the domicile of the employer; d) the position/occupation according to the Romanian Classification of Occupations or other regulatory documents and the job description; e) the job-specific risks; f) the date when the contract takes effect; g) in the case of an employment contract of limited duration or of a temporary employment contract, its respective length; h) the length of the leave the employee is entitled to; i) the conditions under which the contracting parties may give notice and its length; j) the basic pay, other components of earned income, and the payment frequency for the wage the employee is entitled to; k) the normal length of work, expressed in hours per day and hours per week; l) the reference to the collective labour agreement governing the working conditions of the employee; m) the length of the probationary period. **(3)** The pieces of information provided for in paragraph **(2)** shall also be included in the individual employment contract. **(4)** Any amendment to one or more of the items provided for in paragraph **(2)** during the performance of the individual employment contract shall require the conclusion of an addendum, within 15 days from the written notification of the employee, unless such amendments are made possible by the law or by the applicable collective labour agreement. **(41)** While negotiating, concluding or amending the individual employment contract, each party may, according to its wishes, be assisted by third parties, under the provisions of paragraph (5). **(5)** As regards the information provided to the employee before the conclusion of the individual employment contract, the parties may sign a confidentiality contract.

Art. 18. [information of employees working abroad] (1) If the person selected for employment or the employee, as the case may be, should perform his/her activity abroad, the employer shall communicate him/her in good time, before the departure, the information provided for in Article 17 (2), and information on the following: a) the length of the work to be performed abroad; b) the currency of wage payment, and the payment methods; c) the benefits in money and/or in kind related to the activity performed abroad; e) the climatic conditions; e) the main labour law regulations in that country; f) the local customs whose breach would endanger his/her life, freedom or personal safety; g) employee repatriation conditions, as the case may be. **(11)** The information provided in paragraph **(1)** (a), (b) and (c) shall also be included in the individual employment contract. **(2)** The provisions of paragraph **(1)** shall be supplemented by special laws governing the specific conditions for working abroad.

g) employee repatriation conditions, as the case may be. **(11)** The information provided in paragraph **(1)** (a), (b) and (c) shall also be included in the individual employment contract. **(2)** The provisions of paragraph **(1)** shall be supplemented by special laws governing the specific conditions for working abroad.

Art. 19. [effects of failure to inform] Should the employer fail to fulfil its obligation of information, as provided for in Articles 17 and 18, the person selected for employment or the employee, as the case may be, shall be entitled to appeal, within 30 days from the failure to fulfil that obligation, to the competent court and seek redress according to the damage incurred following the employer's failure to inform.

Art. 20. [special clauses of the individual employment contract] (1) Besides the essential clauses provided for in Article 17, the parties may also negotiate and include other specific clauses in the individual employment contract. **(2)** The following shall be considered specific clauses, while the enumeration is not meant to be limitative: a) clause on vocational training; b) non-compete clause; b) mobility clause; b) confidentiality clause.

Art. 21. [non-compete clause] (1) When concluding the individual employment contract or during its performance, the parties may negotiate and include a non-compete clause in the contract, requiring the employee, after the cessation of the contract, to abstain from performing, in his/her own interest or for a third party, an activity competing with that performed for the employer, against a monthly non-compete benefit the employer undertakes to pay during the entire non-compete period. **(2)** The non-compete clause shall only take effect when the activities prohibited to the employee upon the cessation of the contract, the amount of the monthly non-compete benefit, the time limits of the non-compete clause, the third parties for whom it is prohibited to perform activities, and the geographical area where the employee may reasonably compete with the employer, have been specifically provided for in the individual employment contract. **(3)** The monthly non-compete benefit owed to the employee may not be a wage-like benefit, shall be negotiated and shall amount to at least 50% of the average gross wage income of the employee during the previous six months before the cessation of the employment contract or, if the duration of the individual employment contract was less than six months, of the average gross wage income owed to him/her during the

contract. **(4)** The non-compete benefit shall be an expense made by the employer, deductible when calculating the taxable income, and the tax shall be collected from the beneficiary natural person, according to the law.

Art. 22. [extension of the non-compete clause] (1) The non-compete clause may take effect for a period of maximum 2 years from the cessation of the individual employment contract. **(2)** The provisions of paragraph **(1)** shall not apply when the cessation of the individual employment contract occurred de jure, except for the cases provided for in Article 56 (d), (f), (g), (h) and (j), or on the initiative of the employer, for reasons not related to the employee.

Art. 23. [limits of the non-compete clause]

(1) The non-compete clause shall not have the effect of absolutely prohibiting the exercise of employee's profession or specialization.

(2) The competent court may, when referred by the employee or the territorial labour inspectorate, reduce the effects of the non-compete clause.

Art. 24. [effects of non-compete clause breach]

When wilfully infringing the non-compete clause, the employee may be required to return the benefit and, as the case may be, pay damages according to the harm caused to the employer

Art. 25. [mobility clause]

Under the mobility clause, the parties to the individual employment contract shall provide that, taking into account the specificity of the work, the employee would not perform the job in a single workplace. In such case, the employee shall enjoy supplementary benefits, in money or in kind.

Art. 26. [confidentiality clause]

(1) Under the confidentiality clause, the parties shall agree, for the entire length of the individual employment contract and after its cessation, to refrain from disclosing data or information they took knowledge of during the performance of the contract, under conditions laid down in rules of procedure, collective labour agreements or individual employment contracts.

(2) Breach of this clause by any of the parties shall incur the obligation of the liable party to pay damages.

Art. 27. [mandatory medical certificate upon employment]

(1) A person may only be employed on the basis of a medical certificate, attesting that the concerned person is able to perform the respective activity.

(2) The breach of the provisions in paragraph **(1)** shall void the individual employment contract.

(3) When the employee submits the medical certificate after the conclusion of the individual employment contract, and the content of the certificate indicates that the person concerned is able to work, the contract thus concluded shall remain valid.

(4) The competence and procedure for issuing the medical certificate, and the penalties applicable to the employer when employing or changing the place or type of work without a medical certificate shall be laid down in special laws.

(5) The request, before employment, of pregnancy tests, shall be prohibited.

(6) When employing in the health, food and beverage, education and other fields laid down in regulatory documents, specific medical tests may be required too.

Art. 28. [mandatory medical certificate – "special cases"]

A medical certificate shall also be mandatory in the following cases:

- a) when resuming the activity after a pause in excess of six months, in the case of workplaces exposed to professional nuisances, and one year, in all other cases;
- b) in case of posting or transfer to another workplace or another activity, should the working conditions change;
- c) at the beginning of a mission, for the employees employed under a temporary employment contract;
- d) in the case of apprentices, interns, pupils and students, when they are to be trained in trades or professions, and also when changing the trade during the training;
- e) regularly, for those exposed to professional nuisances, according to the regulations of the Ministry of Health and Family;
- e) regularly, for those performing activities entailing the risk of disease transmission and those working in the food and zootechnics sector, in drinking water supply plants, children communities, health units, according to the regulations of the Ministry of Health and Family;
- g) regularly, for those working in organizations with no risk factors, by medical examinations differentiated by age, sex and health status, according to the regulations in the collective labour agreements.

Art. 29. [verification of skills]

(1)) An individual employment contract shall be concluded after prior verification of the professional and personal skills of the person applying for employment.

(2)) The methods to accomplish the verification provided for in paragraph **(1)** shall be laid down in the collective labour agreement, in the staff regulations “ be they professional or disciplinary “ and in the rules of procedure, unless otherwise specified in the law.

(3) The information requested, in any form, by the employer, from the person applying for employment upon the prior verification of the skills shall have no other objective than to assess the ability to fill in the concerned position and the professional skills.

(4) An employer may ask the former employers for information on the person applying for employment, but exclusively about the duties carried out and the length of employment and with the prior approval of the person concerned.

Art. 30. [contest/examination]

(1) The employment of employees with public institutions, public authorities and other government units can only take place by contest or examination, as appropriate.

(2) The vacancies on the organization chart shall be open to contest, according to the needs of every organization provided for in paragraph (1).

(3) When no more than one applicant registers for the contest organized to fill in a vacancy, the employment shall be decided by an examination.

(4) The conditions for the organization and carrying out of the contest/examination shall be laid down in a regulation approved by Government Decision.

Art. 31. [probationary period]

(1) With a view to verifying the skills of the employee, a probationary period of maximum 30 calendar days for the operational positions and maximum 90 calendar days for the managerial positions may be agreed upon at the conclusion of the individual employment contract.

(2) The verification of the professional skills when employing persons with disabilities shall take place exclusively in the form of a probationary period of maximum 30 calendar days.

(3) For unskilled workers, the probationary period shall have an exceptional character and shall not exceed five working days.

(4) The graduates of higher education institutions shall be employed, at the beginning of their career, under a probationary period of maximum six months.

(4¹) During or at the end of the probationary period, the individual employment contract may only cease by a written notification, on the initiative of any party.

(5) During the probationary period, the employee shall enjoy all rights and duties provided for in the labour legislation, the collective labour agreement, the rules of procedure and the individual employment contract.

Art. 32. [single probationary period]

(1) During the performance of an individual employment contract, only one probationary period may be established.

(2) By way of exception, the employee may be subject to a new probationary period when he/she enters a new position or profession with the same employer or is to perform the activity in a difficult, unhealthy or dangerous workplace.

(3) The failure to inform the employee of the probationary period prior to the conclusion or amendment of the individual employment contract, within the deadline provided for in Article 17 (4), shall lead to the withdrawal of employer's right to verify in such way the skills of the employee.

(4) The probationary period shall be included in the length of service.

Art. 33. [limits of probationary periods]

The successive employment of more than three persons on probation for the same position shall be prohibited.

Art. 34. [general employee register]

(1) Each employer shall establish a general employee register.

(2) The general employee register shall first be registered with the competent public authority, according to the law, within whose precinct the headquarters, respectively the domicile of the employer is located, and it shall become an official document from the registration date.

(3) The general employee register shall be filled in according to the order of employment and shall contain the identification elements of every employee, the date of employment, the position/occupation according to the specification of the Romanian Classification of Occupations or other regulatory documents, the type of the individual employment contract and the date of cessation of the individual employment contract.

(4) The general employee register shall be kept at the domicile, respectively the headquarters of the employer, and shall be made available to the labour inspector or any other authority requesting it, under the terms of the law.

(5) At the request of the employee, the employer shall issue a document certifying the activity performed by him/her, and the length of service - in profession and specialization.

(6) In case the employer ceases its activity, the general employee register shall be submitted to the competent public authority, according to the law, within whose precinct is located the headquarters or the domicile of the employer, as the case

may be.

(7) The methodology necessary to prepare the general employee register, the records to be made and any other elements regarding their preparation shall be laid down by Government Decision.

Art. 35. [multiple jobs]

(1) An employee shall have the right to hold multiple jobs, on the basis of individual employment contracts, and receive the corresponding wage for each of them.

(2) The cases where the law provides for incompatibilities regarding the right to hold multiple jobs shall be excepted from the provisions of paragraph (1).

(3) The employees holding multiple jobs shall notify each employer of the place where they have the position considered to be primary.

Art. 36. [employment of foreign nationals and stateless persons]

The foreign nationals and the stateless persons may be employed by individual employment contract on the basis of the work permit issued according to the law.

Art. 37. [principle of negotiation]

The rights and obligations regarding the employment relationships between the employer and the employee shall be established according to the law, by negotiation, within collective labour agreements and individual employment contracts.

Art. 38. [prohibition to waive legal rights]

The employees may not waive the rights granted under the law. Any transaction designed to waive the rights granted under law to the employees or to abridge such rights shall be void.

Art. 39. [main rights and obligations of the employee]

(1) An employee shall have, mainly, the following rights:

- a) right to wage for the work carried out;
- b) right to daily and weekly rest period;
- c) right to annual leave;
- d) right to equal opportunities and treatment;
- e) right to dignity at work;
- f) right to health and safety at work;
- g) right to access to vocational training;
- h) right to information and consultation;
- i) right to participate to the determination and improvement of the working conditions and environment;
- j) right to protection in case of dismissal;
- k) right to collective and individual bargaining;
- l) right to participate to collective actions;
- m) right to set up or join a trade union.

(2) An employee shall have, mainly, the following obligations:

- a) obligation to achieve the work quotas or, as the case may be, to fulfil the tasks assigned according to the job description;
- b) obligation to comply with the labour discipline;
- c) obligation to comply with the provisions contained in the rules of procedure, in the applicable collective labour agreement and in the individual employment contract;
- d) obligation of loyalty towards the employer in the course of their duties;
- e) obligation to comply with the work safety and health measures within the

organization;

f) obligation to observe the professional secrecy.

Art. 40. [main rights and obligations of the employer]

(1) An employer shall have, mainly, the following rights:

- a) to lay down the organization and operation of the unit;
- b) to establish the corresponding tasks of each employee, under the terms of the law and/or the applicable collective labour agreement, concluded at national level, branch level or group of employers level;
- c) to issue orders with a compulsory character for the employee, subject to their legality;
- d) to exert control over the performance of the tasks;
- e) to assess the disciplinary offences and apply the corresponding penalties, according to the law, the applicable collective labour agreement and the rules of procedure.

(2) An employer shall have, mainly, the following obligations:

- a) to notify the employees of the working conditions and of issues related to the employment relationships;
- b) to permanently provide the technical and organizational conditions taken into account when preparing the work standards and the corresponding working conditions;
- c) to ensure the employees all rights under the law, applicable collective labour agreements and individual employment contracts;
- d) to regularly notify the employees of the economic and financial situation of the organization, except for sensitive or classified information whose disclosure is likely to harm its activity. The frequency of the notifications shall be established by negotiation within the applicable collective labour agreement;
- e) to consult the trade union or, as appropriate, the representatives of the employees on the decisions liable to substantially affect their rights and interests;
- f) to pay all contributions and taxes due, and to retain and transfer the contributions and taxes owed by the employees, under the terms of the law;
- g) to establish the general employee register and enter the data provided for in the law;
- h) to issue, upon request, all documents stating the employee quality of the applicant;
- i) to ensure the confidentiality of the employee data having a private character.

CHAPTER 3 - Amendments to the individual employment contract

Art. 41. [amendment of the employment contract]

(1) An individual employment contract may only be amended with the agreement of the parties.

(2) By way of exception, the unilateral amendment of the individual employment contract shall only be possible in the cases and under the conditions provided for in this Code.

(3) The amendment of the individual employment contract regards any of the following:

- a) length of the contract;
- b) place of work;
- c) type of work;

- e) working conditions;
- e) wage;
- f) working time and rest period.

Art. 42. [unilateral change of work place]

(1) The place of the work may be unilaterally modified by the employer by delegating or posting the employee to another workplace than the one provided for in the individual employment contract.

(2) During the delegation or the posting, the employee shall retain his/her position and every right provided for in the individual employment contract.

Art. 43. [delegation]

A delegation is the temporary exercise by the employee, on employer's direction, of works or tasks similar to his/her usual tasks, outside his/her workplace.

Art. 44. [duration of delegation]

(1) A delegation may be directed for a period of maximum 60 days and may be extended, with the agreement of the employee, with maximum 60 days.

(2) A delegated employee shall have the right to payment of transport and accommodation expenses, and to a delegation benefit, under the terms provided for in the law or the applicable collective labour agreement.

Art. 45. [posting]

A posting is an act by which the employer directs the temporary change of the workplace to another employer, for the performance of certain works in its interest. By way of exception, the type of work may be changed during the posting, but only with the written agreement of the employee.

Art. 46. [duration of posting]

(1) A posting may be directed for a period of maximum one year.

(2) By way of exception, the period of the posting may be extended every six months, with the agreement of both parties, for objective reasons that require the presence of the employee with the employer where the posting was directed.

(3) An employee may refuse the posting directed by his/her employer only by way of exception and for duly justified personal reasons.

(4) A delegated employee shall have the right to the payment of transport and accommodation expenses, and a delegation benefit, under the terms provided for in the law or the applicable collective labour agreement.

Art. 47. [protection of posted employee]

(1) The rights due to a posted employee shall be provided by the employer where the posting was directed.

(2) During the posting, an employee shall enjoy the rights more favourable to him/her " either the rights with the employer directing the posting, or the rights with the employer he/she is posted to.

(3) The employer providing the posting shall take all measures necessary so that the employer where the posting was directed fulfils completely and in good time all obligations towards the posted employee.

(4) Should the employer where the posting was directed fail to fulfil completely and in good time all obligations towards the posted employee, those obligations shall be fulfilled by the employer having directed the posting.

(5) Should any divergence arise between the two employers or should none of them fulfil their obligations according to the provisions of paragraphs **(1)** and **(2)**, the

posted employee shall have the right to return to his/her workplace provided by the employer having posted him/her, to bring an action against any of the two employers and to demand the enforcement of the unfulfilled obligations.

Art. 48. [unilateral change of place and type of work]

An employer may temporarily change the place and type of work, without the consent of the employee; it can also change them in cases of acts of God, or as a disciplinary sanction or employee safety precaution, in the cases and under the terms provided for in this Code.

CHAPTER 4 - Suspension of the individual employment contract

Art. 49. [types and effects of suspension]

(1) The suspension of the individual employment contract may occur de jure, by agreement of the parties or through a unilateral act of one of the parties.

(2) Following the suspension of the individual employment contract, the employee shall suspend the provision of work and the employer shall suspend the payment of the wage.

(3) During the suspension, rights and obligations of the parties, other than those provided for in paragraph (2), may persist, should they be specified in special laws, in the applicable collective labour agreement, in individual employment contracts or in the rules of procedures.

(4) In case of individual employment contract suspension due to an act attributable to the employee, the latter shall not enjoy any right arising from his/her quality of employee during the suspension.

Art. 50. [suspension de jure]

An individual employment contract shall be suspended de jure in the following cases:

- a) maternity leave;
- b) temporary disability leave;
- c) quarantine;
- d) fulfilment of the compulsory military service;
- e) exercise of a function within an executive, legislative or judicial body, during the entire term, unless the law provides otherwise;
- f) employment in a paid trade union management position;
- g) act of God;
- h) when an employee is taken into preventive custody, under the terms of the Code of Criminal Procedure;
- i) in other cases expressly provided for in the law.

Art. 51. [suspension on the initiative of the employee]

(1) An individual employment contract may be suspended on the initiative of the employee in the following cases:

- a) parental leave for children under two years of age or, in the case of a disabled child, up to the age of three years;
- b) leave for care of sick child under the age of seven years or, in the case of a disabled child, for intercurrent diseases, up to the age of eighteen years;
- c) paternity leave;
- d) vocational training leave;
- e) exercise of elective offices within professional bodies established at central or local level, during the entire term;

- f) participation to strike;
- g) repealed.

(2) An individual employment contract may be suspended in case of employee absences without leave, under the terms provided for in the applicable collective labour agreement, individual employment contract, and the rules of procedure.

Art. 52. [suspension on the initiative of the employer]

(1) An individual employment contract may be suspended on the initiative of the employer in the following cases:

- a) during the preliminary disciplinary hearing, under the terms of the law;
- b) as a disciplinary sanction;
- c) when the employer has lodged a criminal complaint against the employee or he/she was prosecuted for criminal acts incompatible with the position held, until a final judgment has been issued;
- d) in case of temporary interruption of the activity, without a cessation of the employment relationship, in particular for economic, technological, structural or similar reasons;
- e) during the posting.

(2) In the cases provided for in paragraph **(1)** (a), (b) and (c), should the innocence of the person concerned be established, the employee shall resume the prior activity and shall, under the rules and principles of civil contractual liability, receive an indemnification equal to the wage and the other rights he/she was deprived of during the suspension of the contract.

Art. 53. [interruption of employer's activity]

(1) During the temporary interruption of the employer's activity, the employees shall receive a benefit, to be paid from the wage fund, which may not be lower than 75% of the basic pay corresponding to the position held.

(2) During the temporary interruption provided for in paragraph (1), the employees shall be available to the employer, which shall have the possibility to order the resumption of the activity at any time.

Art. 54. [suspension with the agreement of the parties]

An individual employment contract may be suspended, with the agreement of the parties, in case of unpaid leave for studies or personal interests.

CHAPTER 5 - Cessation of the individual employment contract

Art. 55. [types of individual employment contract cessation]

An individual employment contract may cease as follows:

- a) de jure;
- b) after the agreement of the parties, on the date agreed upon by them;
- c) after the unilateral decision of one party, in the cases and under the terms restrictively provided for in the law.

SECTION 1 - Cessation de jure of the individual employment contract

Art. 56. [cases of cessation de jure of the individual employment contract]

An individual employment contract shall cease de jure:

- a) on the date of employee death;
- b) on the date of the final judgment certifying the death or legal guardianship of the employee;
- c) repealed;
- d) on the date the decision of employee old-age retirement, full or partial early

retirement or invalidity retirement has been notified according to the law;

- e) following the establishment of the absolute nullity of the individual employment contract, from the date the nullity was established by agreement of the parties or by final judgment;
- f) when the demand of reinstatement in the position held by a person unlawfully or groundlessly dismissed has been admitted, from the date of the final reinstatement judgment;
- g) following the conviction to a prison term, from the date of the final judgment;
- h) from the date the competent authorities or bodies withdraw the approvals, authorizations or attestations necessary for the exercise of the profession;
- i) following the interdiction to practice a profession or a function, as a safety measure or complementary punishment, from the date of the final interdiction judgment;
- j) at the end of the individual employment contract of limited duration;
- k) following the withdrawal of the agreement of the parents or legal representatives, for the employees from fifteen to sixteen years old.

Art. 57. [nullity of the employment contract]

- (1) The breach of any legal condition required for the valid conclusion of the individual employment contract shall void it.
- (2) The establishment of the nullity of the individual employment contract shall take effect for the future.
- (3) The nullity of the individual employment contract may only be covered by the subsequent fulfilment of the conditions imposed by the law.
- (4) Should a clause be affected by nullity, for having established rights or obligations for the employees contrary to mandatory statutory provisions or applicable collective labour agreements, it shall be replaced de jure with the statutory provisions or the provisions of the collective agreement, and the employee shall have the right to indemnification.
- (5) A person having carried out an activity under a voided individual employment contract shall have the right to remuneration, according to the accomplishment of the duties.
- (6) The establishment of the nullity and, according to the law, of its effects may be take place by agreement of the parties.
- (7) Should the parties fail to agree, the nullity shall be pronounced in court.

SECTION 2 - Dismissal

Art. 58. [legal definition and types of dismissal]

- (1) A dismissal is the cessation of the individual employment contract on the initiative of the employer.
- (2) A dismissal may be decided for reasons related to the person of the employee or for reasons not related to the employee.

Art. 59. [prohibition of permanent dismissal]

The dismissal of the employees shall be prohibited:

- a) based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity;
- b) based on the exercise, under the terms of the law, of the right to strike and to unionisation.

Art. 60. [prohibition of temporary dismissal]

(1) The dismissal of the employees may not be decided:

- a) during the temporary disability, as certified by a medical certificate according to the law;
- b) during the quarantine leave;
- c) during the pregnancy of the employee, insofar as the employer took knowledge of it prior to issuing the dismissal decision;
- d) during the maternity leave;
- e) during the parental leave for children under two years of age or, in the case of a disabled child, up to the age of three years;
- f) during the parental leave for children under seven years of age or in the case of a disabled child, for intercurrent diseases, up to the age of eighteen years;
- g) during the compulsory military service;
- h) during the exercise of an elective office in a trade union, except for the case where the dismissal is decided for serious or repeated disciplinary offences of that employee;
- i) during the leave.

(2) The provisions of paragraph **(1)** shall not apply in the case of dismissal due to reasons related to the legal reorganization or bankruptcy of the employer, under the terms of the law.

Art. 61. [cases of dismissal for subjective reasons]

An employer may decide the dismissal for reasons related to the person of the employee in the following cases:

- a) when the employee has committed a serious or repeated disciplinary offence related to the labour discipline rules or the rules laid down in the individual employment contract, applicable collective labour agreement or rules of procedure, as a disciplinary sanction;
- b) when the employee has been taken into preventive custody for more than 30 days, under the terms of the Code of Criminal Procedure;
- c) when, by decision of the competent medical examination bodies, a physical and/or mental inability of the employee is found, not allowing him/her to fulfil the duties corresponding to the position held;
- d) when the employee is not professionally fit to the workplace where he/she is employed;
- e) when the employee fulfils the standard age and period of contribution conditions and has not requested retirement, under the terms of the law.

Art. 62. [dismissal decision]

(1) (1) When the dismissal has been caused by one of the reasons provided for in Article 61 (b)-(d), the employer shall issue the dismissal decision within 30 calendar days from the establishment of the cause of dismissal.

(1¹) When the dismissal has been caused by the reason provided for in Article 61 (a), the employer may only issue the dismissal decision under the provisions of Articles 263-268.

(2) The decision shall be issued in writing and shall, on pain of absolute nullity, be motivated in fact and in law and shall specify the appeal deadline and the competent court.

Art. 63. [preliminary hearing]

(1) The dismissal caused by serious or repeated disciplinary offence against the labour discipline rules may only be decided after the employer carries out the preliminary disciplinary hearing and within the deadline laid down in this Code.

(2) The dismissal of the employee for the reason provided in Article 61 (d) may only be decided after a prior assessment of the employee, according to the assessment procedure established in the applicable collective labour agreement, concluded at national level, branch level or group of employers level, and in the rules of procedure.

Art. 64. [mandatory reallocation proposal]

(1) When the dismissal is decided for the reasons provided for in Article 61 (c) and (d) or when the individual employment contract ceases de jure on the basis of Article 56 (f), the employer shall propose the employee other vacant positions in the organization, which are compatible with his/her professional background or, as the case may be, with the work capacity, as established by the occupational medicine physician.

(2) When the employer has no vacancy in the meaning of paragraph (1), it shall request the support of the local public employment office in order to reallocate the employee, according to his/her professional background and/or, as the case may be, according to the work capacity, as established by the occupational medicine physician.

(3) An employee shall have a deadline of three working days from the notification of the employer, according to the provisions of paragraph (1), for the expression of his/her written agreement on the newly offered workplace.

(4) If the employee does not express his/her agreement within the deadline provided for in paragraph (3), and after notifying the local public employment office of the case according to paragraph (2), the employer may dismiss the employee.

(5) In case of dismissal for the reason provided for in Article 61 (c), the employee shall receive a benefit, under the terms of the applicable collective labour agreement or the individual employment contract, as the case may be.

SECTION 4 - Dismissal for reasons not related to the person of the employee

Art. 65. [dismissal for objective reasons]

(1) A dismissal for reasons not related to the person of the employee is the cessation of the individual employment contract determined by the elimination of the workplace of the employee, for one or several reasons not connected to employee's person.

(2) The elimination of the workplace must be effective and have a real and serious cause.

Art. 66. [types of dismissal for objective reasons]

The dismissal for reasons not related to the person of the employee may be individual or collective.

Art. 67. [rights of employees dismissed for objective reasons]

The employees dismissed for reasons not related to their person shall benefit from active measures designed to fight unemployment and may enjoy compensations under the terms of the law and the applicable collective labour agreement.

SECTION 5 - Collective redundancy. Information, consultation and procedure of collective redundancies of employees

Art. 68. [legal definition of collective redundancy]

(1) (1) "Collective redundancy" means the dismissal, within a timeframe of 30 calendar days, on one or several reasons not related to employee's person, of a number of:

- a) at least 10 employees, when the dismissing employer has more than 20 employees, but less than 100 employees;
- a) at least 10% of the employees, when the dismissing employer has at least 100 employees, but less than 300 employees;
- a) at least 30 employees, when the dismissing employer has at least 300 employees.

(2) When establishing the actual number of employees under collective redundancy, according to paragraph (1), the employees whose individual employment contracts ceased on employer's initiative, on one or several reasons not related to employee's person, shall also be taken into account, provided that at least five dismissals exist.

Art. 69. [notification of the intended collective redundancy]

(1) When the employer contemplates a collective redundancy, it shall initiate, in good time and with a view to reaching an agreement, under the terms provided for in the law, consultations with the trade union or, as the case may be, with the representatives of the employees, at least on the following issues:

- a) methods and means to avoid the collective redundancies or to reduce the number of employees to be dismissed;
- b) mitigation of the collective redundancy consequences by relying on social measures aiming, among others, at the vocational training or retraining of the dismissed employees.

(2) During the consultations, according to paragraph (1), with a view to allowing the trade union or the representatives of the employees to draft proposals in good time, the employer shall provide all relevant information and notify them in writing of the following:

- a) the total number and categories of employees;
- b) the reasons leading to the considered collective redundancy;
- c) the number and categories of employees to be affected by dismissal;
- d) the criteria taken into account, according to the law and/or collective labour agreements, for ranking the dismissals;
- e) the measures considered with a view to limiting the number of dismissals;
- f) the measures to reduce the consequences of the collective redundancy and the compensations to be granted the dismissed employees, according to the legal provisions and/or the applicable collective labour agreement;
- g) the starting date or the period of the dismissals;
- h) the deadline for the proposals of the trade union or, as the case may be, of the representatives of the employees, to avoid or reduce the number of dismissed employees.

(3) The obligations provided for in paragraphs **(1)** and **(2)** shall be observed no matter whether the decision determining the collective redundancy is taken by the employer or an undertaking controlling the employer.

(4) Should the decision determining the collective redundancy be taken by an undertaking controlling the employer, the latter cannot invoke, as a reason for not complying with the obligations provided for in paragraphs **(1)** and **(2)**, the fact that the undertaking has not provided the necessary information.

Art. 70. [communication of the intended collective redundancy to the authorities]

An employer shall forward a copy of the notification provided for in Article 69 (2) to the territorial labour inspectorate and the local public employment office on the same date it has been forwarded to the trade union or, as the case may be, to the representatives of the employees.

Art. 71. [employee consultation]

(1) The trade union or, as the case may be, the representatives of the employees, may propose the employer measures to avoid the dismissals or to reduce the number of dismissed employees, within 10 calendar days after receiving the notification.

(2) The employer shall give a written and grounded answer to the proposals prepared according to the provisions of paragraph (1), within five calendar days from their reception.

Art. 72. [notification of collective redundancy]

(1) When, following the consultations with the trade union or the representatives of the employees, according to the provisions of Articles 69 and 71, the employer decides to apply the collective redundancy measure, it shall notify in writing the territorial labour inspectorate and the local public employment office, at least 30 calendar days before issuing the dismissal decisions.

(2) The notification provided for in paragraph (1) shall include all relevant information concerning the intended collective redundancy, as provided for in Article 69 (2), and the outcome of the consultations with the trade union or the representatives of the employees, as provided for in Article 69 (1) and 71, in particular the reasons of the dismissals, the total number of employees, the number of employees affected by dismissal and the starting date or the period of the dismissals.

(3) An employer shall forward a copy of the notification provided for in paragraph (1) to the trade union or the representatives of the employees, on the same date it has been forwarded to territorial labour inspectorate and the local public employment office.

(4) The trade union or the representatives of the employees may forward their potential opinions to the territorial labour inspectorate.

(5) At the reasoned request of any party, the territorial labour inspectorate, after receiving the opinion of the local public employment office, may order the reduction of the period provided for in paragraph (1), without prejudice to the individual rights concerning the notice period.

(6) The territorial labour inspectorate shall notify in good time the employer and the trade union or the representatives of the employees, as the case may be, of the reduction of the period provided for in paragraph (1), and of the reasons of such decision.

Art. 73. [postponement of collective redundancy]

(1) During the period provided for in Article 71¹ (1), the local public employment office shall explore solutions for the issues raised by the intended collective redundancy and notify them in good time to the employer and the trade union or, as the case may be, the representatives of the employees.

(2) At the reasoned request of any party, the territorial labour inspectorate, after consulting the local public employment office, may order the postponement of the

decision with maximum 10 calendar days, in case the issues related to the collective redundancy envisaged may not be solved within the deadline set in the collective redundancy notification provided for in Article 71¹ **(1)** as the date of the dismissal decisions.

(3) The territorial labour inspectorate shall notify in writing the employer and the trade union or the representatives of the employees, as the case may be, of the postponement of the dismissal decisions, and of the reasons of such decision, before the end of the original period provided for in Article 71¹ (1).

Art. 74. [employment of new personnel after the collective redundancy]

(1) An employer deciding a collective redundancy may not employ new personnel for the workplaces of the dismissed employees for a period of nine months from the date of their dismissal.

(2) If, during this period, the activities whose interruption led to the collective redundancy are resumed, the employer shall send the dismissed employees a written communication for this purpose and employ them again in the same workplaces as before, without any examination, contest or probationary period.

(3) The employees shall have a deadline of maximum 10 working days from the notification of the employer, according to the provisions of paragraph (2), to express their written agreement on the proposed workplace.

(4) If the employees entitled to be employed again according to paragraph **(2)** do not agree in writing within the deadline provided in paragraph **(3)** or refuse the workplace provided, the employer may employ new personnel for the vacant positions.

SECTION 6 - Right to notice

Art. 75. [notice]

(1) The persons dismissed on the basis of Articles 61 (c) and (d), 65 and 66 shall have the right to a notice of at least 15 working days.

(2) The persons in a probationary period and those dismissed under Article 61 (d), shall be excepted from the provisions of paragraph (1).

(3) When the individual employment contract has been suspended during the notice period, the term of notice shall be suspended accordingly, except for the case provided for in Article 51 (2).

Art. 76. [contents of dismissal decision]

(1) A dismissal decision shall be communicated in writing to the employee and shall include:

- a) the reasons leading to the dismissal;
- b) the length of the notice;

the dismissal priority criteria, according to Article 69 **(2)** (d), only in the case of collective redundancy;

d) the list of all workplaces available in the organization and the deadline within which the employees may choose to fill in a vacancy, under the terms of Article 64.

(2) Repealed.

Art. 77. [effective date of dismissal decision]

A dismissal decision shall take effect from the date it has been notified to the employee.

SECTION 7 - Control and punishment of unlawful dismissals

Art. 78. [effects of unlawful dismissal]

A dismissal decided by infringing the procedure provided for in the law shall be null and void.

Art. 79. [motivation of the dismissal decision]

In case of labour dispute, the employer may not plead in court other reasons in fact or law than those mentioned in the decision of dismissal.

Art. 80. [effects of dismissal cancellation on the employees]

(1) If the dismissal was groundless or illegal, the court shall order its cancellation and shall demand the employer to compensate the employee with an amount equal to the indexed, increased and updated wages and other rights the employee would have benefited from.

(2) At the request of the employee, the court having ordered the cancellation of the dismissal shall put the parties back in the state before issuing the dismissal act.

SECTION 8 - Resignation

Art. 81. [legal definition, procedure and effects of the resignation]

(1) "Resignation" means the unilateral act of the employee who, by a written notification, communicates to the employer the cessation of the individual employment contract at the end of the notice period. .

(2) The refusal of the employer to register the resignation shall give the employee the right to prove it by any type of evidence.

(3) An employee shall have the right not to motivate his/her resignation.

(4) The term of notice shall be the one agreed upon by the parties in the individual employment contract or, as appropriate, the one provided for in the applicable collective labour agreements and shall not exceed 15 calendar days for the employees in operational positions, respectively 30 calendar days for the employees in management positions.

(5) During the notice, the individual employment contract shall continue to take full effect.

(6) If the individual employment contract has been suspended during the notice period, the term of notice shall be suspended accordingly.

(7) The individual employment contract shall cease at the end of the term of notice or at the date of total or partial renunciation to that term by the employer.

(8) An employee may resign without notice if the employer has not met his/her obligations undertaken in the individual employment contract.

CHAPTER 6 - The individual employment contract of limited duration

Art. 82. [form and conditions of the individual employment contract of limited duration]

(1) By way of exception to the rule provided for in Article 12 (1), the employers shall have the possibility to employ, in the cases and under the terms of this Code, personnel under an individual employment contract of limited duration.

(2) An individual employment contract of limited duration may only be concluded in writing, with the express mention of its length.

(3) An individual employment contract of limited duration may be extended beyond its original end date, with the written agreement of the parties, but only within the deadline provided for in Article 82 and no more than two times consecutively.

(4) The same parties may successively conclude at most 3 individual employment contracts of limited duration, but only within the deadline provided for in Article 82.

(5) The individual employment contracts of limited duration, concluded within three months from the cessation of an employment contract of limited duration, shall be considered successive contracts.

Art. 83. [cases when an individual work contract of limited duration may be concluded]

An individual work contract may be concluded for a limited duration only in the following cases:

- a) replacement of an employee when his/her work contract has been suspended, unless that employee participates to a strike;
- b) temporary increase of the employer's activity;
- c) performance of a seasonal activity;
- d) when it has been concluded under legal provisions issued in order to temporarily benefit certain categories of unemployed persons;
- d¹) employment of a person who, within 5 years from the date of employment, fulfils the old age retirement conditions;
- d²) filling in an elective position within trade unions, employers' organizations or non-governmental organizations, during the mandate;
- d³) employment of retired persons who, under the terms of the law, may cumulate the retirement benefit with the wage;
- e) in other cases expressly provided for in special laws or for the achievement of works, projects, programs, under the terms established in the collective work agreement concluded at national level and/or at branch level.

Art. 84. [length and cessation of the individual employment contract of limited duration]

(1) An individual employment contract of limited duration may not exceed 24 months.

(2) If the individual employment contract of limited duration has been concluded for the replacement of an employee whose individual employment contract has been suspended, the contract shall end when the reasons determining the suspension of the individual employment contract of the tenured employee have ceased to exist.

Art. 85. [length of probationary period for the individual employment contract of limited duration]

An employee with an individual employment contract of limited duration may be subject to a probationary period, which shall not exceed:

An employee with an individual employment contract of limited duration may be subject to a probationary period, which shall not exceed:

- a) five working days for a length of the individual employment contract of less than three months;
- b) 15 working days for a length of the individual employment contract between three and six months;
- c) 30 working days for a length of the individual employment contract exceeding six months;
- d) 45 working days for the employees in a management position, for a length of the individual employment contract exceeding six months.

Art. 86. [access to employment of unlimited duration]

(1) The employers shall notify the employees with individual employment contracts of limited duration of current or future vacancies, according to their professional

background, and ensure their access to such workplaces in conditions equal to those of the employees with an individual employment contract of unlimited duration. Such notification shall be provided through an announcement posted at employer's headquarters.

(2) A copy of the announcement provided for in paragraph **(1)** shall be forthwith forwarded the trade union or the representatives of the employees.

Art. 87. [common legal status of the individual employment contract of unlimited duration]

(1) As regards the employment and working conditions, the employees with an individual employment contract of limited duration shall not be treated less favourably than the similar permanent employees, just based on the duration of the individual employment contract, except for the cases where the differentiated treatment is justified on objective reasons.

(2) For the purposes of paragraph (1), the similar permanent employee is the employee whose individual employment contract has been concluded for an unlimited duration and who performs the same or a similar activity, in the same organization, with due regard to qualification/professional skills.

(3) When there is no similar permanent employee in the same establishment, the provisions in the applicable collective labour agreement shall be taken into account. When there is no applicable collective labour agreement, the provisions of the legislation in force or the collective labour agreement concluded at national level shall be taken into account.

CHAPTER 7 - Employment by temporary employment agency

Art. 88. [legal definition: work, employee, agency, user undertaking]

(1) The employment by temporary employment agency, hereinafter called "temporary employment", is an activity performed by a temporary employee who, at the direction of the temporary employment agency, carries out an activity for the benefit of a user undertaking.

(2) A temporary employee is a person working for an employer "temporary employment agency, and made available to a user undertaking for the duration necessary to perform certain precise and temporary tasks.

(3) A temporary employment agency is a company authorized by the Ministry of Labour and Social Solidarity that temporarily provides the user undertaking with skilled and/or unskilled personnel employed and paid for this purpose. The conditions for the establishment and operation and the authorization procedure of the temporary employment agencies shall be established by Government Decision.

(4) A user undertaking is an employer whom the temporary employment agency provides a temporary employee for the performance of precise and temporary tasks.

Art. 89. [legal definition of temporary employment mission]

A user undertaking may only resort to temporary employment agencies for the performance of precise and temporary tasks, called temporary employment missions, only in the following cases:

- a) for the replacement of an employee whose individual employment contract has been suspended, during the suspension;
- b) for the performance of a seasonal activity;
- c) for the performance of specialized or occasional activities.

Art. 90. [length of temporary employment mission]

(1) A temporary employment mission shall be established for a period that may not exceed 12 months.

(2) The duration of the temporary employment mission may be extended only once for a period that, added to the original duration of the mission, may not exceed 18 months.

(3) The conditions under which a temporary employment mission may be extended shall be provided for in the temporary employment contract or may be subject to an addendum to that contract.

Art. 91. [assignment contract]

(1) A temporary employment agency provides the user undertaking an employee under a temporary employment contract, on the basis of an assignment contract concluded in writing.

(2) An assignment contract shall include:

- a) the reason for the use of a temporary employee;
- b) the end date of the mission and, where appropriate, the possibility to change it;
- c) the characteristics of the position, in particular the necessary skills, the location of the mission and the work schedule;
- d) the actual working conditions;
- e) the work and personal protection equipment that the temporary employee is required to use;
- f) any other services and facilities benefiting the temporary employee;
- g) the value of the contract concluded with the temporary employment agency, and the remuneration the employee is entitled to.

(3) Any clause prohibiting the user undertaking to hire the temporary employee after the fulfilment of the mission shall be null and void.

Art. 92. [equal treatment]

(1) The temporary employees shall have access to all services and facilities granted by the user undertaking, under the same conditions as the latter's other employees.

(2) The user undertaking shall provide the temporary employee with work and personal protection equipment, except for the case when the assignment contract provides that this is the responsibility of the temporary employment agency.

Art. 93. [circumstance prohibiting the employment of a temporary employee]

A user undertaking may not enjoy the services of the temporary employee if it intends in this way to replace one of its employees whose employment contract has been suspended as a result of the participation to strike.

Art. 94. [temporary employment contract]

(1) A temporary employment contract is an employment contract concluded in writing between the temporary employment agency and the temporary employee, usually covering the length of a mission.

(2) A temporary employment contract shall contain, besides the elements provided for in Articles 17 and 18 (1), the conditions of the mission, the length of the mission, the identity and headquarters of the user undertaking and the way the temporary employee is to be remunerated.

Art. 95. [temporary employment contract concluded for several missions]

(1) A temporary employment contract may also be concluded for several missions,

subject to the duration provided for in Article 89 (2).

(2) Between two missions, the temporary employee shall be at the disposal of the temporary employment agency and shall enjoy a wage paid by the agency, which may not be lower than the national minimum gross wage.

(3) For each new mission, the parties shall conclude an addendum to the temporary employment contract, which shall detail all elements provided for in Article 93 (2).

(4) A temporary employment contract shall cease at the end of the last mission for which it was concluded.

Art. 96. [payment of temporary employee wage]

(1) During the entire mission, the temporary employee shall enjoy the wage paid by the temporary employment agency.

(2) The wage received by the temporary employee for each mission may not be lower than the wage received by the employee of the user undertaking performing the same activity or an activity similar to the activity of the temporary employee.

(3) Insofar as the user undertaking does not have such employees, the wage received by the temporary employee shall be set taking into account the wage of a person employed under an individual employment contract that performs the same or a similar activity, such as it is established in the collective labour agreement applicable to the user undertaking.

(4) The temporary employment agency shall retain and transfer all contributions and taxes owed by the temporary employee to the state budgets and pay for him/her all contributions owed under the terms of the law.

(5) Should the temporary employment agency fail to comply with the obligations regarding the payment of the wage and the contributions and taxes within 15 calendar days from the date when they became outstanding and due, they shall be paid by the user undertaking, at the request of the temporary employee.

(6) The user undertaking having paid the amounts owed according to paragraph (5) shall, for the amounts paid, subrogate into the rights of the temporary employee against the temporary employment agency.

Art. 97. [probationary period for the temporary employee]

A probationary period for the accomplishment of the mission may be established in the temporary employment contract, whose duration is set according to the demand of the user undertaking, but which may not exceed:

a) two working days, when the temporary employment contract has been concluded for a period shorter or equal to one month;

b) three working days, when the temporary employment contract has been concluded for a period between one and two months;

b) five working days, when the temporary employment contract has been concluded for a period exceeding two months.

Art. 98. [temporary employee protection]

(1) During the mission, the user undertaking shall be responsible to ensure the working conditions of the temporary employee, according to the legislation in force.

(2) The user undertaking shall forthwith notify the temporary employment agency of any accidents at work or occupational diseases it took knowledge of and whose victim was a temporary employee supplied by the temporary employment agency.

Art. 99. [extension of temporary employment]

(1) At the end of the mission, the temporary employee may conclude an individual

employment contract with the user undertaking.

(2) Should the employer hire a temporary employee after a mission, the length of the mission performed shall be taken into account when assessing the pecuniary rights and other rights provided for in the labour legislation.

(3) If the user undertaking continues to enjoy the work of the temporary employee without concluding with him/her an individual employment contract or without extending the assignment contract, it shall be deemed that an individual employment contract of unlimited duration has intervened between that temporary employee and the user undertaking.

Art. 100. [temporary employee dismissal]

A temporary employment agency dismissing the temporary employee before the term provided for in the temporary employment contract, for other reasons than disciplinary, shall observe the legal regulations regarding the cessation of the individual employment contracts for reasons not related to the person of the employee.

Art. 101. [temporary employee equal treatment]

Except for contrary special provisions, as provided for in this chapter, the legal provisions and the provisions included in the collective labour agreements applicable to the employees working for the user undertaking under an individual employment contract of unlimited duration shall equally apply to the temporary employees during the mission to the user undertaking.

Art. 102

CHAPTER 8 - The individual part-time employment contract

Art. 103. [concept of part-time employee]

A part-time employee is an employee whose number of normal working hours, calculated weekly or as a monthly average, is lower than the number of normal working hours of a similar full-time employee.

Art. 104. [definition of part-time individual employment contract]

(1) An employer may hire part-time employees with individual employment contracts of an unlimited duration or limited duration, called part-time individual employment contracts.

(2) An individual part-time employment contract shall be concluded only in writing.

(3) A similar employee is a full-time employee in the same organization, having the same type of individual employment contract, performing the same or a similar activity as the employee hired under a part-time individual employment contract, with due regard to other issues too, such as the length of service and the qualification/professional skills.

(4) When there is no similar employee in the same establishment, the provisions in the applicable collective labour agreement shall be taken into account. When there is no applicable collective labour agreement, the provisions of the legislation in force or the collective labour agreement concluded at national level shall be taken into account.

Art. 105. [special clauses]

(1) An individual part-time employment contract shall include, besides the elements provided for in Article 17 (2), the following:

- a) the length of the activity and the distribution of the work schedule;
- b) the cases when the work schedule may be amended;

c) overtime work prohibition, except for acts of God or other urgent works intended to prevent the accidents or to remove their consequences.

(2) Should an individual part-time employment contract fail to include the items mentioned in paragraph (1), the contract shall be deemed a full-time contract.

Art. 106. [equal treatment]

(1) An employee hired under a part-time employment contract shall enjoy the rights of the full-time employees, under the terms of the law and the applicable collective labour agreements.

(2) The wages shall be paid in proportion to the time actually worked, in connection with the rights established for the normal work schedule.

(3) Repealed.

Art. 107. [accessibility of part time employment]

(1) An employer shall, as far as possible, take into account the demands of the employees to be transferred either from a full-time workplace to a part-time workplace, or from a part-time workplace to a full-time workplace, or to extend their work schedule, should such opportunity arise.

(2) An employer shall notify in time the availability of part-time or full-time workplaces, with a view to facilitating the transfers from full-time positions to part-time positions and vice versa. Such notification shall be done through an announcement posted at employer's headquarters.

(2¹) A copy of the announcement provided for in paragraph (2) shall be forthwith forwarded to the trade union or the representatives of the employees.

(3) An employer shall ensure, as far as possible, the access to part-time workplaces at every level.

CHAPTER 9 - Home working

Art. 108. [legal definition and special features]

(1) The employees performing, at their domicile, the specific tasks of their position shall be considered home workers.

(2) For the accomplishment of the assigned tasks, the home workers shall establish their own work schedule.

(3) An employer shall have the right to check the activity of the home worker, under the terms laid down in the individual employment contract.

Art. 109. [home working contract]

An individual home working contract shall only be concluded in writing and shall include, besides the elements provided for in Article 17 (2), the following:

a) an explicit notice stating that the employee works from home;

b) the schedule according to which the employer has the right to control the activity of the employee and the actual method of control;

c) the obligation of the employer to ensure the transport to and from the domicile of the employee, as appropriate, of the raw materials and consumables used in the activity, and of the finished goods he/she produces.

Art. 110. [equal treatment]

(1) A home worker shall enjoy all rights recognized by law and collective labour agreements applicable to the employees whose workplace is at employer's headquarters.

(2) A collective labour agreement may also include other specific conditions regarding home working.

TITLE III - Working time and rest period

CHAPTER 1 - Working time

SECTION 1 - Length of the working time

Art. 111. [legal definition of the working time]

The working time is any period during which the employer performs the work, is available to the employer and fulfils his/her tasks, according to the provisions of the individual employment contract, the applicable collective labour agreement and/or the legislation in force.

Art. 112. [normal length of the working time]

(1) The normal length of the working time for the full-time employees is of eight hours per day and 40 hours per week.

(2) In the case of young people under the age of eighteen years, the length of the working time is six hours per day and 30 hours per week.

Art. 113. [distribution of the working time within the week]

(1) The distribution of the working time within the week shall, usually, be uniform, of eight hours per day for five days, with 2 days of rest.

(2) According to the specific features of the organization or activity performed, an unequal distribution of the working time may be chosen, while observing the normal length of the working time of 40 hours per week.

Art. 114. [maximum length of the working time]

(1) The maximum legal length of the working time may not exceed 48 hours per week, including the overtime.

(2) By way of exception, the length of the working time, including the overtime, may be extended beyond 48 hours per week, provided that the average working hours, calculated over a reference period of three calendar months, do not exceed 48 hours per week.

(2¹) For certain economic sectors, organizations or professions listed in the national collective labour agreement, reference periods above three months, but not exceeding twelve months, may be negotiated in the applicable branch collective labour agreement.

(2²) When setting the reference periods provided for in paragraphs **(2)** and **(2¹)**, the length of the annual leave and the individual employment contract suspensions shall not be taken into account.

(3) The provisions of paragraphs **(1)**, **(2)** and **(2¹)** shall not apply to young people under the age of eighteen years.

Art. 115. [special length of the working time]

(1) For certain economic sectors, organizations or professions, the collective or individual negotiations or the specific legal provisions may specify a daily length of the working time below or above eight hours.

(2) A 12 hour daily length of the working time shall be followed by a rest period of 24 hours.

Art. 116. [unequal work schedule]

(1) The actual organization of the unequal work schedule within the working week of 40 hours, and within the compressed work week, shall be negotiated in the collective labour agreement at the level of the employer or, in its absence, shall be provided in the rules of procedure.

(2) The unequal work schedule may only operate if it is expressly specified in the individual employment contract.

Art. 117. [employee notification of work schedule]

The work schedule and its distribution among days shall be notified to the employees and shall be posted in employer's headquarters.

Art. 118. [individualized work schedule]

(1) An employer may establish individualized work schedules, with the agreement or at the request of the concerned employee, should such possibility be provided for in the collective labour agreements applicable at employer's level or, in their absence, in the rules of procedure.

(2) The individualized work schedules shall involve a flexible organization of the working time.

(3) The daily length of the working time shall be divided into two periods: a fixed period where the entire personnel is simultaneously present at the workplace and a variable, mobile period where the employee chooses the time of arrival and departure, in compliance with the daily working time

(4) The individualized work schedule may only operate in compliance with the provisions of Articles 109 and 111.

Art. 119. [working hours records]

The employer shall record the working hours of each employee and subject the records to the control of the labour inspectorate, whenever this is requested.

SECTION 2 - Overtime

Art. 120. [legal definition and conditions of overtime]

(1) The work performed besides the normal length of the weekly working time, as provided for in Article 109, shall be considered overtime.

(2) The overtime work may not be performed without the agreement of the employee, except for acts of God or urgent works intended to prevent or to eliminate the consequences of an accident.

Art. 121. [limits of overtime]

(1) At the request of the employer, the employees may perform overtime work, in compliance with the provisions of Articles 111 or 112, as the case may be.

(2) The performance of overtime work beyond the limit laid down according to the provisions of Articles 111 or 112, as the case may be, shall be prohibited, except for cases of acts of God or other urgent works intended to prevent or to eliminate the consequences of an accident.

Art. 122. [compensation of overtime through paid hours off]

(1) The overtime shall be compensated by hours off paid in the next 30 days after its performance.

(2) Under the circumstances, the employee shall enjoy the wage corresponding to the hours performed above the normal work schedule.

Art. 123. [compensation of overtime through extra pay]

(1) If the compensation by paid hours off is not possible within the deadline provided for in Article 119 (1) in the next month, the overtime shall be paid the employee by adding an extra pay according to its duration.

(2) The extra pay for overtime, as provided under the conditions provided for in paragraph (1), shall be established by negotiation, within the collective labour

agreement or, as the case may be, within the individual employment contract, and shall not be lower than 75% of the basic pay.

Art. 124. [prohibition of overtime for underage persons]

The young people under the age of eighteen years may not perform overtime work.

SECTION 3 - Night work

Art. 125. [legal definition and length of night work]

(1) The work performed between 22:00 and 06:00 hours shall be considered night work.

(1¹) A night employee is, as the case may be:

a) an employee performing night work at least three hours of his/her daily working time;

b) an employee performing night work amounting to at least 30% of his/her monthly working time.

(2) The normal length of the working time, for the night employee, shall not exceed an average of 8 hours a day, calculated over a reference period of maximum three calendar months, in compliance with the legal provisions on the weekly rest period.

(2¹) The normal length of the working time, for the night employees whose activity takes place in special or distinct working conditions, as established according to the legal provisions, shall not exceed eight hours within any 24 hour period during which they perform night work.

(3) An employer frequently using night work shall notify the territorial labour inspectorate thereof.

Art. 126. [compensation of night work]

The night employees shall benefit:

a) either from a work schedule shorter with an hour than the normal length of the working day, for the days when they perform at least three hours of night work, without any decrease of the basic pay;

b) or from an extra pay of at least 15% of the basic pay for each hour of night work performed.

Art. 127. [medical examination for night work]

(1) The employees performing night work under the conditions of Article 122 (1¹) shall be subject to a free medical examination before starting the activity and regularly thereafter.

(2) The conditions to perform the medical examinations and their frequency shall be established by a regulation approved by Joint Order of the Minister of Labour and Social Solidarity and the Minister of Health and Family.

(3) The employees performing night work and having problems acknowledged to be connected to it shall be transferred to a day work they are suitable for.

Art. 128. [prohibition of night work for underage persons, pregnant women and breastfeeding mothers]

(1) The young people under the age of eighteen years may not perform night work.

(2) Pregnant and post-natal women and breastfeeding mothers may not be required to perform night work.

SECTION 4 - Work quota

Art. 129. [legal definition and contents]

A work quota is the amount of work necessary for a person with the appropriate skills, working with normal intensity, under the conditions of determined

technological and work processes, to perform certain operations or works. The work quota includes the productive time, the time for breaks imposed by the technological process, and the time for legal breaks within the work schedule.

Art. 130. [types of work quotas]

The work quotas are classified, depending upon the characteristics of the production process or other standardized activities, as time quotas, output quotas, personnel quotas, scope of competence or other forms corresponding to the specific features of every activity.

Art. 131. [scope of work quotas]

The work quotas shall apply to all categories of employees.

Art. 132. [preparation and review of work quotas]

(1) The work quotas shall be developed by the employers, according to the regulations in force or, in case there are no regulations, the work quotas shall be developed with the agreement of the trade union or, as the case may be, the representatives of the employees.

(1¹) In case of disagreement over the work quotas, the parties shall rely on the arbitration of a third party agreed upon by them.

(2) When the work quotas do not correspond anymore to the technical conditions prevalent when adopted or do not ensure an adequate degree of use of the normal working time, they shall be subject to a review.

(3) The review procedure and the actual cases when such review may be needed shall be laid down in the applicable collective labour agreement or in the rules of procedure.

CHAPTER 2 - Regular rest periods

SECTION 1 - Meal break and daily rest

Art. 133. [rest period]

The rest period means any time that is not working time.

Art. 134. [lunch break and other breaks]

(1) Should the daily length of the working time exceed six hours, the employees shall have the right to a meal break and other breaks, under the terms provided for in the applicable collective labour agreement or in the rules of procedure.

(2) The young people under the age of eighteen years shall enjoy a meal break of at least 30 minutes, should the daily length of the working time exceed four and a half hours.

(3) Except for the contrary provisions in the applicable collective labour agreement and in the rules of procedure, the breaks shall not be included in the normal daily length of the working time.

Art. 135. [daily rest]

(1) The employees shall have the right, between two working days, to a rest period that may not be shorter than 12 consecutive hours.

(2) By way of exception, in the case of shift work, that rest period between the shifts may not be shorter than eight hours.

Art. 136. [shift work]

(1) Shift work is any method to organize the work schedule, according to which the employees follow each other at the same workplace, according to a schedule, including a rotating schedule, of continuous or discontinuous type, requiring the employee to perform an activity within different time ranges in relation to a daily or

weekly period, as established in the individual employment contract.

(2) A shift employee is any employee whose work schedule is of the shift work schedule type.

SECTION 2 - Weekly rest period

Art. 137. [weekly rest]

(1) The weekly rest period shall be taken in two consecutive days, usually Saturday and Sunday.

(2) Should the rest during Saturday and Sunday be detrimental to the public interest or the normal course of the activity, the weekly rest period may also be taken in other days laid down in the applicable collective labour agreement or in the rules of procedure.

(3) In the case provided for in paragraph (2), the employees shall enjoy an extra pay, as laid down in the collective labour agreement or, as the case may be, in the individual employment contract.

(4) In exceptional cases, the weekly rest period days may be taken on a cumulative basis, after a continuous activity that may not exceed 14 calendar days, with the authorization of the territorial labour inspectorate and with the agreement of the trade union or, as the case may be, the representatives of the employees.

(5) The employees taking their weekly rest period under the conditions of paragraph (4) shall have the right to twice the compensations provided for under Article 120 (2).

Art. 138. [suspension of weekly rest]

(1) In case of urgent works, whose immediate performance is necessary for the organization of rescue measures for persons or goods of the employer, with a view to avoiding imminent accidents or to eliminating the effects of these accidents on the materials, installations or buildings of the organization, the weekly rest period may be suspended for the personnel necessary to perform these works.

(2) The employees whose weekly rest period has been suspended under the conditions of paragraph (1) shall have the right to twice the compensations provided for under Article 120 (2).

SECTION 3 - Public holidays

Art. 139. [list of public holidays]

(1) The public holidays shall be as follows:

- a) 1st and 2nd of January;
- b) the first two Easter days;
- c) 1st of May;
- d) 1st of December;
- e) the first two Christmas days;
- f) two days for each of the two annual religious holidays, declared as such by legal religious denominations, other than Christian, for the persons belonging to those religious denominations.

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

Art. 140. [special work schedules during public holidays]

With a view to ensuring the medical assistance and the supply with essential foodstuffs, appropriate work schedules for the health and food and beverage establishments shall be laid down by Government Decision, whose application shall be mandatory.

Art. 141. [uninterrupted activity in special cases]

The provisions of Article 134 shall not apply to workplaces where the activity cannot be interrupted due to the character of the production process or the specific features of the activity.

Art. 142. [compensation of work during public holidays]

(1) The employees working in the organizations provided for in Article 135 and in the workplaces provided for in Article 136 shall be provided adequate compensatory time off in the next 30 days.

(2) If, on duly justified grounds, no days off are granted, the employees shall benefit, for the activity performed during the public holidays, from an extra pay added to the basic pay, which may not be lower than 100% of the basic pay corresponding to the activity performed within the normal work schedule.

Art. 143. [establishment of other days off]

The applicable collective labour agreement may lay down other days off too.

CHAPTER 3 - Leaves

SECTION 1 - Annual leave and other employee leaves

Art. 144. [guarantee of paid annual leave]

(1) The right to paid annual leave shall be guaranteed to every employee.

(2) The right to annual leave may not be subject to any assignment, waiving or abridgement.

Art. 145. [length of annual leave]

(1) The annual leave shall have a minimum length of 20 working days.

(2) The actual length of the annual leave shall be laid down in the applicable collective labour agreement, shall be provided for in the individual employment contract and shall be granted in proportion to the activity performed in a calendar year.

(3) The public holidays and the paid days off laid down in the applicable collective labour agreement shall not be included in the length of the annual leave.

(4) Repealed.

Art. 146. [taking and compensating the annual leave]

(1) The leave shall be taken each year.

(2) By way of exception from the provisions of paragraph (1), the leave may only be taken in the next year in the cases expressly provided for in the law or in the applicable collective labour agreement.

(3) An employer shall grant a leave, until the end of the next year, to all employees who, within a calendar year, did not take the entire leave they were entitled to.

(4) The compensation in money of the leave not taken shall only be allowed at the cessation of the individual employment contract.

Art. 147. [supplementary leave]

The employees working in difficult, dangerous or unhealthy conditions, the visually impaired persons, other disabled persons and the young people under the age of eighteen years shall enjoy a supplementary leave of at least three working days.

Art. 148. [leave scheduling]

(1) A leave shall be taken on the basis of a collective or individual schedule laid down by the employer after consulting the trade union or, as the case may be, the representatives of the employees, as far as the collective schedule is concerned, or after consulting the employee, as far as the individual schedule is concerned. The

schedule for the next year shall be prepared until the end of the current calendar year.

(2) The collective schedule may establish leave periods not shorter than three months, by categories of personnel or workplaces.

(3) The individual schedule may set the date the leave is taken or, as the case may be, the period within which the employee has the right to take the leave, period which may not exceed three months.

(4) Within the periods of leave laid down according to paragraphs **(2)** and **(3)**, the employee may request the leave at least 60 days before actually taking it.

(5) Should the leave be divided, the employer shall set the schedule in such way that every employee takes at least 15 working days of uninterrupted leave in one calendar year.

Art. 149. [taking the scheduled leave in kind]

An employee shall take the leave in kind within the period it was scheduled, except for the cases expressly provided for in the law or when, for objective reasons, the leave may not be taken.

Art. 150. [amount and payment of leave benefit]

(1) During the leave, the employee shall receive a leave benefit which may not be lower than the basic pay, the benefits and permanent extra pay due for that period, as provided for in the individual employment contract.

(2) The leave benefit shall be the daily average of the pecuniary rights provided for in paragraph **(1)** in the last three months before the month when the leave is taken, multiplied by the number of days of leave.

(3) The leave benefit shall be paid by the employer at least five working days before taking the leave.

Art. 151. [interruption and call back from leave]

(1) The leave may be interrupted, at the request of the employee, for objective reasons.

(2) An employer may call back the employee from leave in case of an act of God or urgent matters that require the presence of the employee at the workplace. In such case, the employer shall bear all expenses of the employee and his/her family necessary to return to the workplace and the potential damages suffered by him/her following the interruption of the leave.

Art. 152. [paid days off]

(1) In case of extraordinary family events, the employees shall have the right to paid days off, not included in the length of the leave.

(2) The extraordinary family events and the number of paid days off shall be laid down by law, applicable collective labour agreement or rules of procedure.

Art. 153. [unpaid leave]

(1) With a view to solving personal issues, the employees shall have the right to unpaid leave.

(2) The length of the unpaid leave shall be laid down in the collective labour agreement or in the rules of procedure.

SECTION 2 - Vocational training leaves

Art. 154. [types of vocational training leaves]

(1) The employees shall have the right to benefit, on request, from vocational

training leaves.

(2) The vocational training leaves may be paid or unpaid.

Art. 155. [unpaid vocational training leaves]

(1) The unpaid vocational training leave shall be taken at the request of the employee, for the length of the vocational training that the employee attends on his/her own initiative.

(2) An employer may reject the request of the employee only with the agreement of the trade union or, as the case may be, the agreement of the representatives of the employees and only when the absence of the employee would be highly detrimental to the course of the activity.

Art. 156. [application for and taking the vocational training leave]

(1) The application for an unpaid vocational training leave shall be submitted to the employer at least one month before taking it and it shall state the starting date of vocational training period, its scope and duration, and the name of the vocational training institution.

(2) An unpaid vocational training leave may be taken fractionally during a calendar year, in order to take the graduation examinations of certain educational institutions or to take the end-of-year examinations within higher education institutions, in compliance with the conditions laid down in paragraph (1).

Art. 157. [paid vocational training leave]

(1) Should the employer fail to fulfil its obligation to ensure on its account the participation of an employee to vocational training under the terms of the law, the employee shall be entitled to a vocational training leave, paid by the employer, of up to 10 working days or up to 80 hours.

(2) In the case provided for in paragraph (1), the leave benefit shall be laid down according to Article 145.

(3) The period of paid leave provided for in paragraph **(1)** shall be established by mutual agreement with the employer. The request for a paid vocational training leave shall be submitted to the employer under the conditions provided for in Article 151 (1).

Art. 158. [effects as regards rights, other than wages]

The length of the vocational training leave may not be deducted from the length of the annual leave and shall be assimilated to an actual work period as regards the rights due to the employee, other than the wage.

TITLE IV - Remuneration

CHAPTER 1 - General provisions

Art. 159. [legal definition of wage and equal treatment]

(1) A wage is the consideration of the activity performed by the employee under the individual employment contract.

(2) An employee shall have the right to a wage expressed in money for the activity performed under the individual employment contract.

(3) When setting and providing the wage, any discrimination based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited.

Art. 160. [wage components]

A wage includes the basic pay, the benefits, the extra pay and other supplements.

Art. 161. [employee privilege]

The wages shall be paid before any other pecuniary obligations of the employers.

Art. 162. [settting the wages]

(1) The wages shall be established by individual negotiations and/or collective bargaining between the employer and the employees or their representatives.

(2) The personnel pay system of the public authorities and institutions, financed fully or mostly from the state budget, the state social security budget, the local budgets and special funds budgets shall be established by law, after consulting the representative trade unions.

Art. 163. [wage confidentiality]

(1) The wage shall be confidential, and the employer shall take the necessary actions with a view to ensuring its confidentiality.

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

CHAPTER 2 - National minim gross basic pay with guaranteed payment

Art. 164. [establishment and calculation of the national minimum gross basic pay with guaranteed payment]

(1) The national minimum gross basic pay with guaranteed payment, corresponding to the normal work schedule, shall be established by Government Decision, after consulting the trade unions and employers' organizations. If the normal work schedule is, according to the law, lower than eight hours a day, the minimum gross hourly basic pay shall be computed by dividing the national minimum gross basic pay to the average number of monthly hours under the approved legal work schedule.

(2) An employer may not negotiate and establish basic pays under the individual employment contract lower than the national minimum gross hourly basic pay.

(3) An employer shall guarantee the payment of a monthly gross wage at least equal to the national minimum gross basic pay. These provisions shall also apply when the employee is at work, within the schedule, but cannot perform his/her activity for reasons not related to him/her, except for strikes.

(4) The national minimum gross basic pay with guaranteed payment shall be notified to the employees through the good offices of the employer.

Art. 165. [scope of national minimum gross wage with guaranteed payment]

For the employees to whom the employer, according to the collective labour agreement or individual employment contract, provides food, accommodation or other facilities, the amount in money due for the activity performed may not be lower than the national minimum gross wage provided for in the law.

CHAPTER 3 - Payment of the wage

Art. 166. [date, methods and forms of wage payment]

(1) The wage shall be paid in money at least once a month, at the date laid down in the individual employment contract, in the applicable collective labour agreement or in the rules of procedure, as the case may be.

(2) The wage may be paid by transfer into a bank account, when such method is provided for in the applicable collective labour agreement.

(3) The payment in kind of a part of the wage, under the conditions laid down in Article 160, may only be possible if it has been expressly provided for in the

applicable collective labour agreement or in the individual employment contract.

(4) The undue delay in paying the wage or its non-payment by the employer may entail the payment of damages for the compensation of the employee.

Art. 167. [the person receiving the payment]

(1) The wage shall be paid directly to the employee or to the person appointed by him/her.

(2) In case of employee death, the wage due until the date of death shall be paid, in order, to the surviving spouse, the adult children of the deceased or his/her parents. If there are no such categories of persons, the wage shall be paid to other heirs, under the terms of the ordinary law.

Art. 168. [proof]

(1) The payment of the wage shall be proven by signing the pay roll and by any other supporting documents proving the payment to the entitled employee.

(2) The pay roll and the other supporting documents shall be kept and archived by the employer under the same conditions and terms as the accounting documents, according to the law.

Art. 169. [wage withholdings]

(1) No withholding from wage shall be operated outside the cases and conditions provided by law.

(2) The withholdings due for damages caused to the employer may not be operated unless the debt of the employee is outstanding, ready and due and has been established as such by a final judgment.

(3) In case of multiple employee creditors, the following order shall be observed:

- a) child support, according to the Family Code;
- b) contributions and taxes owed to the state;
- c) damages caused to the public property by illegal acts;
- d) coverage of other debts.

(4) The total monthly withholdings from the wage may not exceed half of the net wage.

Art. 170. [meaning of partial payment]

The acceptance without reservation of a part of the wage or the signature of the payment documents in such cases may not be understood as the employee waiving the full wage due, according to the legal or contractual provisions.

Art. 171. [wage payment period of limitations]

(1) The right of action as regards the wage and the damages caused by the full or partial non-performance of the obligations regarding the payment of the wages shall be lost by statute of limitations within three years from the date when those rights were due.

(2) The period of limitation provided for in paragraph **(1)** shall be interrupted when the debtor has recognized the wage due or the rights deriving from the payment of the wage.

CHAPTER 4 - The guarantee fund for the payment of the wage claims

Art. 172. [reference to special law]

The establishment and use of the guarantee fund for the payment of the wage claims shall be regulated by a special law.

CHAPTER 5 -

Art. 173. [employee protection]

(1) The employees shall enjoy the protection of their rights in case of transfer of the undertaking, establishment or parts thereof to other employer, according to the law.

(2) The rights and obligations of the assignor, arising from an employment contract or relation existing at the date of the transfer, shall be entirely transferred to the assignee.

(3) The transfer of the undertaking, establishment or parts of it may not be a reason of individual dismissal or collective redundancy for the assignor or the assignee.

Art. 174. [employee notification and consultation]

The assignor and the assignee shall notify and consult, before the transfer, the trade union or, as the case may be, the representatives of the employees regarding the legal, economic and social consequences upon the employees of the transfer of ownership.

TITLE V - Health and safety at work

CHAPTER 1 - General rules

Art. 175. [employer's duties]

(1) repealed.

(2) An employer shall ensure the safety and health of the employees in all regards related to work.

(3) Should an employer resort to outside persons or services, it shall not be exonerated from liability in that field.

(4) The obligations of the employees in the field of health and safety at work shall be without prejudice to the liability of the employer.

(5) The measures regarding the health and safety at work may never generate financial obligations for the employees.

Art. 176. [special regulations]

(1) The provisions of this title shall be supplemented with the provisions of special laws, applicable collective labour agreements and health and safety norms and standards.

(2) The health and safety rules and standards may lay down:

- a) general health and safety measures for the prevention of the accidents at work and occupational diseases, applicable to all employers;
- b) work safety precautions, specific for certain professions or activities;
- c) specific safety precautions, applicable to certain categories of personnel;
- d) provisions regarding the organization and operation of special health and safety at work insurance bodies.

Art. 177. [measures and principles]

(1) Within the context of its responsibilities, the employer shall take the necessary actions to protect the safety and health of the employees, including the prevention of occupational risks, information and training measures, and measures for the organization of the health and safety at work and its necessary means.

(2) The following general prevention principles shall be taken into account for the adoption and implementation of the measures provided for in paragraph (1):

- a) avoiding risks;
- b) evaluating the risks which cannot be avoided;
- c) combating the risks at the source;

- d) adapting the work to the individual, in particular as regards the design of the workplace and the choice of work and production equipment and methods, with a view, in particular, to alleviating monotonous and repetitive work, and its effects on health;
- e) adapting to technical progress;
- f) replacing the dangerous by the non-dangerous or the less dangerous;
- g) prevention planning;
- h) giving collective protective measures priority over individual protective measures;
- i) giving appropriate instructions to the employees.

Art. 178. [organization of health and safety at work by the employer]

(1) An employer shall be responsible for the organization of the health and safety at work activity.

(2) The rules of procedure shall include rules regarding the health and safety at work.

(3) When developing health and safety measures, the employer shall consult the trade union or, as the case may be, the representatives of the employees, and the health and safety committee.

Art. 179. [employee accident and health insurance]

An employer shall insure all employees against occupational accident and disease risks, under the terms of the law.

Art. 180. [mandatory employee training]

(1) An employer shall organize the employee training in the field of health and safety at work.

(2) The training shall be performed regularly, in specific ways laid down by the employer together with the health and safety committee and the trade union or, as the case may be, the representatives of the employees.

(3) The training provided for in paragraph **(2)** must be provided to new employees, those changing the workplace or type of work and those resuming their activity after a break longer than 6 months. In all such cases, the training shall take place before the actual beginning of the activity.

(4) The training shall also be mandatory when the underlying legislation has been amended.

CHAPTER 2 - Health and safety committee

Art. 181. [guarantee of employee health and safety]

(1) The workplaces shall be organized so as to guarantee the safety and health of the employees.

(2) The employer shall organize the permanent control of the state of materials, machines and substances used in the work process, with a view to ensuring the employee health and safety.

(3) The employer shall be responsible for the facilities related to the provision of first aid in case of occupational accidents, for fire prevention and the evacuation of the employees in special situations and imminent danger.

Art. 182. [health and safety inspection]

(1) To ensure the health and safety at work, the body established by law may restraint or prohibit the manufacture, marketing, import or use of any kind of the substances and preparations dangerous for the employees.

(2) A labour inspector may, after receiving the opinion of the occupational medicine

physician, require the employer to demand from the competent bodies, against payment, analyses and expertise on products, substances and preparations deemed to be dangerous, with a view to establishing their composition and effects they might have on the human body.

Art. 183. [establishment]

(1) A health and safety committee shall be established with each employer, with a view to ensuring the involvement of the employees in the preparation and implementation of the decisions in the field of health and safety.

(2) The health and safety committee shall be established with the public, private and co-operative legal persons, including foreign-owned legal persons, performing activities on Romanian territory.

Art. 184. [mandatory establishment]

(1) The health and safety committee shall be organized by legal persons with at least 50 employees.

(2) Should the working conditions be difficult, unhealthy or dangerous, the labour inspector may request the establishment of such committees also for the employers with less than 50 employees.

(3) If the activity is carried out in territorially dispersed units, several health and safety committees may be established. Their number shall be laid down in the applicable collective labour agreement.

(4) The health and safety committee shall coordinate the health and safety measures also in the case of the temporary activities exceeding 3 months.

(5) If the establishment of the health and safety committee is not required, its specific assignments shall be taken over by the health and safety manager, to be appointed by the employer.

Art. 185. [health and safety committee regulation]

The membership, specific tasks and operation of the health and safety committee shall be regulated by Government Decision.

CHAPTER 3 - Employee protection through medical services

Art. 186. [mandatory occupational medicine department]

The employers shall ensure the access of the employees to the occupational medicine department.

Art. 187. [organization of the occupational medicine department]

(1) The occupational medicine department may be an autonomous department organized by an employer or a service provided by an employers'™ organization.

(2) The duration of the activity performed by the occupational health physician shall be calculated according to the number of employees of the employer, according to the law.

Art. 188. [occupational medicine physician]

(1) An occupational medicine physician shall be an employee which is a professional certified according to the law, holding an employment contract concluded with an employer or an employers'™ organization.

(2) An occupational medicine physician shall be independent in exercising his/her profession.

Art. 189. [tasks of the occupational medicine physician]

(1) The main tasks of the occupational medicine physician shall be:

a) prevention of accidents at work and occupational diseases;

- b) effective supervision of the occupational health conditions;
- c) provision of employee medical examination both upon employment and during the individual employment contract.

(2) With a view to fulfilling his/her duties, the occupational medicine physician may propose the employer to change the workplace or type of work of certain employees, according to their health status.

(3) An occupational health physician shall be an ex-officio member of the health and safety committee.

Art. 190. [better working environment]

(1) Each year the occupational medicine physician shall develop for each employer a programme for a better working environment as regards the occupational health.

(2) The elements of the program shall be specific for each employer and shall be subject to the opinion of the health and safety committee.

Art. 191. [reference to occupational health department regulations]

A special law shall regulate the specific tasks, the organization of the activity, the inspection bodies and the specific professional status of the occupational health physicians.

TITLE VI - Vocational training

CHAPTER 1 - General provisions

Art. 192. [vocational training objectives]

(1) The vocational training of the employees shall have the following main objectives:

- a) accommodating the employee to the requirements of the job or workplace;
- b) obtaining a professional qualification;
- c) updating the knowledge and skills specific to the job and workplace and improvement of the vocational training for the basic occupation;
- d) vocational retraining determined by social and economic restructuring;
- e) acquiring advanced knowledge, modern methods and procedures, necessary for the professional activities;
- f) prevention of unemployment risk;
- g) promotion and career development.

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

Art. 193. [types of vocational training]

The vocational training of the employees may take place in the following forms:

- a) attendance to courses organized by the employer or vocational training service providers in Romania or abroad;
- b) internships for vocational adjustment to the requirements of the job and workplace;
- c) internships for practical training and specialization in Romania and abroad;
- d) on-the-job apprenticeship;
- e) individualized training;
- f) other forms of training agreed upon between the employer and the employee.

Art. 194. [mandatory vocational training programs]

(1) An employer shall ensure the participation of every employee to vocational training, as follows:

- a) at least once every two years, when it has at least 21 employees;

b) at least once every three years, when it has less than 21 employees.

(2) The expenses related to the vocational training, provided under the terms in paragraph (1), shall be borne by the employers.

Art. 195. [vocational training plan]

(1) An employer that is a legal person with more than 20 employees shall develop and apply annual vocational training plans, after consulting the trade union or, as the case may be, the representatives of the employees.

(2) The vocational training plan prepared according to the provisions in paragraph (1) shall be annexed to the collective labour agreement concluded at organization level.

(3) The employees shall have the right to be notified of the content of the vocational training plan.

Art. 196. [regulation of vocational training]

(1) The participation to the vocational training may take place on either employer's or employee's initiative.

(2) The actual vocational training method, the rights and obligations of the parties, the length of the vocational training, and any other issues related to the vocational training, including the contractual obligations of the employee in relation to the employer bearing the vocational training expenses shall be agreed upon by the parties and shall be included in addenda to the individual employment contracts.

Art. 197. [vocational training expenses and employee rights]

(1) When the participation to the vocational training courses or internships has been initiated by the employer, all expenses generated by such participation shall be borne by it.

(2) When, under the conditions provided for in paragraph (1), the participation to the vocational training courses or internships requires the partial removal from the field, the participating employee shall enjoy pecuniary rights, as follows:

a) should the participation involve the removal from the field of the employee for a period not exceeding 25% of the daily length of the normal working time, he/she shall enjoy, during the entire vocational training, the full wage corresponding to the job and position held, with all related benefits, extra pay and supplements;

b) should the participation involve the removal from the field of the employee for more than 25% of the daily length of the normal working time, he/she shall enjoy the basic pay and, as the case may be, the seniority pay.

(3) Should the participation to the vocational training courses or internships involve the complete removal from the field, the individual employment contract of that employee shall be suspended, and he/she shall receive a benefit paid by the employer, as provided for in the applicable collective labour agreement or in the individual employment contract, as appropriate.

(4) During the suspension of the individual employment contract under the conditions provided for in paragraph (3), the employee shall enjoy length of service at that workplace, and that period shall be considered period of contribution to the public social security system.

Art. 198. [obligations of vocational training beneficiaries]

(1) The employees having enjoyed a vocational training course or an internship exceeding 60 days under the conditions of Article 194 **(2)** (b) and **(3)** may not initiate the cessation of the individual employment contract for at least three years from the

graduation of the vocational training course or internship.

(2) The duration of the obligation of the employee to perform activities for the employer having borne the expenses generated by the vocational training, as well as any other issues related to the obligations of the employee, following the vocational training, shall be laid down in an addendum to the individual employment contract.

(3) An employee not complying with the provisions of paragraph **(1)** shall bear all expenses related to his/her vocational training, in proportion to the time not worked during the period laid down according to the addendum to the individual employment contract.

(4) The obligation provided for in paragraph **(3)** shall also apply to employees dismissed within the period laid down in the addendum, on disciplinary reasons, or whose individual employment contract ceased as they were taken into preventive custody for more than 60 days, after the final judicial conviction for a criminal offence related to their work, or when a criminal court temporarily or permanently prohibited the exercise of the profession.

Art. 199. [vocational training on employee's initiative]

(1) If the employee initiates the participation to a vocational training form involving the removal from the field, the employer shall analyze the request of the employee, together with the trade union or, as the case may be, the representatives of the employees.

(2) The employer shall decide as regards the request of the employee under paragraph **(1)** within 15 days from its submission. Meanwhile, the employer shall decide on the employee participation to the vocational training form, choosing whether to fully or partially bear the costs.

Art. 200. [benefits in kind for vocational training]

The employees having concluded an addendum to the individual employment contract regarding the vocational training may receive, besides the wage corresponding to the workplace, other benefits in kind for vocational training.

CHAPTER 2 - Special contracts of vocational training organized by the employer

Art. 201. [types of vocational training contracts]

The vocational qualification contract and the vocational adjustment contract shall be considered special vocational training contracts.

Art. 202. [legal definition and length of the vocational qualification contract]

(1) A vocational qualification contract is the contract under which the employee undertakes to attend the training courses organized by the employer to obtain a professional qualification.

(2) A vocational qualification contract may be concluded by employees at least sixteen years old, without qualification or with a qualification not allowing them to keep their job with that employer.

(3) A vocational qualification contract shall be concluded for a length between six months and two years.

Art. 203. [vocational training authorization]

(1) Only the employers authorized for this purpose by the Ministry of Labour and Social Solidarity and the Ministry of Education and Research may conclude vocational qualification contracts.

(2) The authorization procedure and the method to certify the vocational qualification shall be laid down in a special law.

Art. 204. [legal definition of the vocational adjustment contract]

(1) A vocational adjustment contract shall be concluded to adapt the new employees to a new position, a new workplace or a new team.

(2) A vocational adjustment contract shall be concluded together with the individual employment contract or, as the case may be, when the employee enters a new position, a new workplace or a new team, under the terms of the law.

Art. 205. [length of the vocational adjustment contract]

(1) A vocational adjustment contract is a contract of limited duration, which may not exceed one year.

(2) At the end of the vocational adjustment contract, the employee may be subject to an assessment regarding his/her ability to handle the new position, the new workplace or the new team where he/she would work.

Art. 206. [definition of the trainer]

(1) The vocational training at employer level under special contracts shall be performed by a trainer.

(2) The trainer shall be chosen by the employer among the skilled employees, and shall have with a professional experience of at least two years in the field chosen for the vocational training.

(3) A trainer may provide simultaneous training for maximum three employees.

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

Art. 207. [tasks of the trainer]

(1) The trainer shall accept for training, assist, inform and guide the employee during the special vocational training contract and supervise the accomplishment of the tasks corresponding to the position of the employee under training.

(2) The trainer shall provide the cooperation with other training bodies and shall participate to the assessment of the employee enjoying the vocational training.

CHAPTER 3 - The on-the-job apprenticeship contract

Art. 208. [legal definition and length]

(1) The on-the-job apprenticeship shall be organized on the basis of an apprenticeship contract.

(2) An on-the-job apprenticeship contract is a particular individual employment contract, under which:

a) the employer " a legal person or a natural person - shall, besides paying a wage, provide the apprentice the vocational training in a certain trade connected to its field;

b) the apprentice undertakes to participate to vocational training activities and work under the supervision of the employer concerned.

(3) An on-the-job apprenticeship contract shall be of limited duration.

Art. 209. [equal treatment]

(1) A person employed under an apprenticeship contract shall have the status of apprentice.

(2) An apprentice shall enjoy the provisions applicable to all other employees, as far as they are not contrary to those specific to his/her status.

Art. 210. [reference to special law regulating apprenticeship]

The organization, performance and supervision of the apprenticeship activity shall be regulated by a special law.

TITLE VII - Social dialogue

CHAPTER 1 - General provisions

Art. 211. [purpose of social dialogue]

With a view to ensuring a climate of stability and social peace, the law shall regulate the methods of consultation and permanent dialogue between the social partners.

Art. 212. [economic and social council]

The Economic and Social Council shall be a national interest, tripartite, autonomous public institution established for the accomplishment of the social dialogue at national level.

Art. 213. [social dialogue committees]

Committees of social dialogue, with a consultative character, shall be established within ministries and prefectures, under the terms of the law, involving the public administration, the trade unions and employers' organizations.

CHAPTER 2 - Trade unions

Art. 214. [legal definition and reference to special law]

(1) Trade unions shall be independent non-profit legal persons, established to defend and promote the collective and individual rights, and the professional, economic, social, cultural and sporting interests of their members.

(2) The conditions and the procedure by which the trade unions acquire legal personality shall be regulated by a special law.

(3) The trade unions shall have the right to regulate their organization, association and management through their own statutes, provided that the statutes are adopted through a democratic procedure, under the terms of the law.

Art. 215. [competence]

The trade unions shall participate with their own representatives, under the terms of the law, to the negotiation and conclusion of collective labour agreements, to negotiations or agreements with the public authorities and employers' organizations, and to the structures specific to the social dialogue.

Art. 216. [freedom of association]

The trade unions may freely associate, under the terms of the law, in federations, confederations or territorial alliances.

Art. 217. [right to unionization]

The exercise of the employee right to unionisation shall be recognized at the level of all employers, in compliance with the rights and liberties guaranteed in the Constitution and according to the provisions of this Code and special laws.

Art. 218. [prohibition of restrictions on the right to unionization]

(1) Any intervention of the public authorities, likely to abridge the right to unionisation or hinder its legal exercise, shall be prohibited.

(2) Any encroachment of the employers or employers' organizations, directly or through their representatives or members, on the establishment of the trade unions or exercise of their rights, shall also be prohibited.

Art. 219. [representation of employees in conflicts of rights]

At the request of their members, the trade unions may represent them in conflicts of rights.

Art. 220. [protection of trade union leaders]

(1) The representatives elected in the management bodies of the trade unions shall be provided legal protection against any form of pressure, constraint or restraint in

the exercise of their functions.

(2) During their term of office and two years after its end, the representatives elected in the management bodies of the trade unions may not be dismissed for reasons not related to the person of the employee, for professional unfitness or reasons related to the fulfilment of the mandate received from the employees in the organization.

(3) Other measures to protect those elected in the management bodies of the trade unions shall be provided in special laws and in the applicable collective labour agreement.

CHAPTER 3 - Representatives of the employees

Art. 221. [appointment]

(1) In the case of employers with more than 20 employees, none of them belonging to a trade union, the employees' interests may be promoted and defended by their representatives, elected and mandated for this particular purpose.

(2) The representatives of the employees shall be chosen in the general assembly of the employees, with the vote of at least half of the total number of employees.

(3) The representatives of the employees may not carry on activities recognized by law as belonging exclusively to trade unions.

Art. 222. [eligibility, number and length of mandate]

(1) The employees who are at least 21 years old and have worked for the employer at least one year without breaks may be chosen as representatives of the employees.

(2) The condition of length of service provided for in paragraph **(1)** is not mandatory when choosing the representatives of the employees with newly established employers.

(3) The number of elected representatives of the employees shall be established by mutual agreement with the employer, in proportion to the number of employees.

(4) The mandate of the representatives of the employees shall not exceed two years.

Art. 223. [duties]

The representatives of the employees shall have the following main duties:

a) to guard the rights of the employees, in compliance with the legislation in force, the applicable collective labour agreement, the individual employment contracts and the rules of procedure;

b) to participate to the development of the rules of procedure;

c) to promote the interests of the employees as regards the wage, working conditions, working time and rest period, job stability and any other professional, economic and social interests connected to the employment relationships;

d) to notify the labour inspectorate as regards the breach of the legal provisions and the provisions of the applicable collective labour agreement.

Art. 224. [establishment of tasks]

The tasks of the representatives of the employees, their accomplishment, and the length and limits of their mandate shall be laid down in the general assembly of the employees, under the terms of the law.

Art. 225. [time assigned for the fulfilment of the mandate]

The time assigned to the representatives of the employees for the fulfilment of their mandate is 20 hours per month and shall be regarded as time actually worked and shall be paid accordingly.

Art. 226. [protection of employee representatives]

During their term of office, the representatives of the employees may not be dismissed for reasons not related to the person of the employee, for professional unfitness or for reasons related to the mandate received from the employees.

CHAPTER 4 - Employers

Art. 227. [legal definition of the employer]

An employer is a registered legal person or natural person, as authorized according to the law, administering and using the capital, of any nature, with a view to making a profit in conditions of competition, while hiring employees.

Art. 228. [protection of employers' organizations]

(1) The establishment and operation of the employers' organizations and the exercise of their rights and obligations shall be regulated by law.

(2) Any intervention of the public authorities, likely to abridge the exercise of employers' organization rights or hinder their legal exercise shall be prohibited.

(3) Any encroachment of the employees or trade unions, directly or through their representatives or members, as the case may be, on the establishment of the employers' organizations or exercise of their rights shall be also prohibited.

TITLE VIII - Collective labour agreements

Art. 229. [legal definition and mandatory character of the collective labour agreement]

(1) The collective labour agreement is the convention concluded in writing between the employer or the employers' organization, of the one part, and the employees, represented by trade unions or otherwise under the law, of the other part, establishing clauses on the working conditions, remuneration, and other rights and obligations arising from the employment relationships.

(2) The collective bargaining shall be mandatory, unless the employer has less than 21 employees.

(3) The parties shall be equal and free when they negotiate the clauses and conclude the collective labour agreements.

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

Art. 230. [special regulations regarding the collective labour agreements]

The parties, their representation and the procedure of negotiation and conclusion of the collective labour agreements shall be established according to the law.

TITLE IX - Labour disputes

CHAPTER 1 - General provisions

Art. 231. [legal definition]

(1) A labour dispute is any disagreement between the social partners regarding the employment relationships.

(2) The labour disputes concerning the establishment of the working conditions during the negotiation of the collective labour agreements are disputes regarding the professional, social or economic interests of the employees, called conflict of interests.

(3) The labour disputes regarding the exercise of certain rights or the fulfilment of obligations arising from laws or other legal provisions and from collective labour agreements or individual employment contracts are disputes regarding the rights of the employees, called conflicts of rights.

Art. 232. [reference to special law]

The labour dispute resolution procedure shall be laid down by a special law.

CHAPTER 2 - Strike

Art. 233. [purpose]

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

Art. 234. [legal definition and right to strike]

(1) A strike is the voluntary and collective cessation of the work by the employees.

(2) The employee participation to the strike shall be free. No employee may be forced to participate or not to a strike.

(3) The abridgement or prohibition of the right to strike may only arise in the cases and for the categories of employees expressly provided for in the law.

Art. 235. [protection of employees on strike]

The participation to a strike and its organization in compliance with the law shall not be a breach of the obligations of the employees and may not lead to disciplinary sanctions against the employees on strike or the organizers of the strike.

Art. 236. [reference to special law]

The exercise of the right to strike, the organization, start and course of the strike, the procedure prior to the start of the strike, the suspension and cessation, and all other issues related to the strike shall be regulated by a special law.

TITLE X - Labour Inspectorate

Art. 237. [labor inspectorate]

The application of the general and special regulations in the field of the employment relationships and health and safety at work shall be subject to the control of the Labour Inspectorate, a specialized body of the public central administration, having with legal personality and subordinated to the Ministry of Labour and Social Solidarity.

Art. 238. [territorial labor inspectorates]

The territorial labour inspectorates, organized in each county and in the municipality of Bucharest, shall be subordinated to the Labour Inspectorate.

Art. 239. [reference to special law]

The establishment and organization of the Labour Inspectorate shall be regulated by a special law.

Art. 240

TITLE XI - Legal liability

CHAPTER 1 - Rules of procedure

Art. 241. [drawing up]

The rules of procedure shall be drawn up by the employer, after consulting the trade union or the representatives of the employees, as the case may be.

Art. 242. [contents]

The rules of procedure shall contain at least the following categories of provisions:

- a) the rules regarding the worker's protection, hygiene and safety within the organization;
- b) the rules regarding the observance of the non-discrimination principle and the elimination of any breach of dignity;
- c) the rights and obligations of the employer and employees;
- d) the procedure to settle the individual requests or claims of the employees;

- e) the actual rules regarding the labour discipline in the organization;
- f) the disciplinary offences and applicable sanctions;
- g) the rules regarding the disciplinary proceedings;
- h) the methods to apply other specific legal or contractual provisions.

Art. 243. [employee notification]

(1) The rules of procedure shall be notified to the employees through the good offices of the employer and shall take effect towards the employees since their notification.

(2) The obligation to notify the employees of the content of the rules of procedure shall be fulfilled by the employer.

(3) The actual method of notifying every employee as regards the content of the rules of procedure shall be laid down in the applicable collective labour agreement or, as the case may be, in the rules of procedure.

(4) The rules of procedure shall be posted in employer's headquarters.

Art. 244. [amendment]

Any amendment to the contents of the rules of procedure shall be subject to the notification procedures provided for in Article 259.

Art. 245. [review of legality]

(1) A concerned employee may refer the employer to the provisions in the rules of procedure, as far as he/she proves the infringement of one of his/her rights.

(2) The courts are competent to review the legality of the provisions contained in the rules of procedure, and an action may be filed within 30 days from the date the employer communicates how the issue notified according to paragraph (1) is to be settled.

Art. 246. [mandatory character]

(1) An employer shall develop the rules of procedure within 60 days from the entry into force of this Code.

(2) In the case of employers established after the entry into force of this Code, the term of 60 days provided for in paragraph (1) shall run after acquiring the legal personality.

CHAPTER 2 - Liability to disciplinary action

Art. 247. [legal definition of liability to disciplinary action]

(1) The employer shall have disciplinary powers, i.e. the right to take, according to the law, disciplinary measures against its employees whenever it finds them liable of disciplinary offences.

(2) A disciplinary offence is related to the work, consisting of a wilful action or lack of action of the employee, breaking the legal provisions, the rules of procedure, the individual employment contract or the applicable collective labour agreement, legal instructions and directions of the management.

Art. 248. [disciplinary measures]

(1) The disciplinary measures the employer may apply if the employee is responsible for disciplinary offences are as follows:

- a) written warning;
- b) suspension of the individual employment contract for a period not exceeding 10 working days;
- c) demotion, while paying the wage corresponding to the position where the demotion was directed, for a length that may not exceed 60 days;

- d) 5-10% decrease of the basic pay for one to three months;
- e) 5-10% decrease of the basic pay and/or, as the case may be, of the management benefit, for one to three months;
- f) disciplinary cancellation of the individual employment contract.

(2) Should the professional statutes approved by special laws provide other sanctions, the latter shall apply.

Art. 249. [prohibition of disciplinary fines; one sanction per disciplinary offence]

(1) Disciplinary fines shall be prohibited.

(2) Only one sanction may be applied for the same disciplinary offence.

Art. 250. [disciplinary sanction criteria]

The employer shall take the disciplinary measure applicable in proportion to the seriousness of the disciplinary offence of the employee, taking into account the following:

- a) the circumstances of the disciplinary offence;
- b) the degree of responsibility of the employee;
- c) the consequences of the disciplinary offence;
- d) the general conduct of the employee;
- e) the disciplinary measures previously taken against him/her.

Art. 251. [disciplinary hearing]

(1) On pain of absolute nullity, no action, except that provided for in Article 264 **(1)** (a), may be taken before performing a preliminary disciplinary hearing.

(2) In order to perform the preliminary disciplinary hearing, the employee shall be summoned in writing by the person appointed by the employer to accomplish the hearing, stating the subject matter, date, time, and place of the meeting.

(3) The failure of the employee to respond to the summons under the conditions provided for in paragraph **(2)** without an objective reason shall give the employer the right to take the disciplinary measure without performing the preliminary disciplinary hearing.

(4) During the preliminary disciplinary hearing, the employee shall have the right to develop and submit any argument in his/her favour and provide the person appointed to perform the hearing all pieces of evidence and motivations he/she considers to be necessary, and also the right to be assisted, at his/her request, by a representative of the trade union he/she belongs to.

Art. 252. [decision of disciplinary measure: delay, contents, notification]

(1) The employer shall order the application of the disciplinary measure through a written decision, within 30 calendar days from the acknowledgement of the disciplinary offence, but no later than six months after the date of the disciplinary offence.

(2) On pain of absolute nullity, such decision shall include:

- a) the description of the disciplinary offence;
- b) description of the provisions in the staff regulations, rules of procedure or applicable collective labour agreement, which were infringed by the employee;
- c) the reasons to dismiss the defence developed by the employee during the preliminary disciplinary hearing or the reasons why, under the conditions provided for in Article 267 (3), no hearing took place;
- d) the legal basis to take the disciplinary measure;
- e) the appeal deadline;

e) the competent court where the measure may be appealed.

(3) The decision shall be notified to the employee no later than five calendar days after the date of issue and shall take effect from the date of notification

(4) The notification shall be handed over personally to the employee, against an acknowledgment of receipt, or, if the reception has been refused, by registered letter, at the domicile or residence communicated by him/her.

(5) The measure may be appealed by the employee before the competent courts within 30 calendar days from the notification.

CHAPTER 3 - Liability for material damage

Art. 253. [employer liability; right of recourse]

(1) An employer shall, on the basis of the rules and principles of contractual civil liability, compensate the employee in case he/she suffered a material damage as a result of employer's fault, during the course of the job or other tasks related to the job.

(2) Should the employer refuse to compensate the employee, the latter may file an action with the competent courts.

(3) An employer having paid the compensation shall recover the corresponding amount from the employee liable for the damage, under the conditions of Article 270 and subsequent Articles.

Art. 254. [employee liability]

(1) The employees shall be liable, on the basis of the rules and principles of contractual civil liability, for the material damages caused to the employer as a result of their fault and related to their work.

(2) The employees shall not be liable for damages due to acts of God or other causes that could not be prevented and eliminated, or damages within the normal risk of the job.

Art. 255. [shared employee liability]

(1) Should the damages be due to several employees, the liability of each of them shall be established in proportion to their contribution to their occurrence.

(2) If the contribution to the damages cannot be assessed, the liability of each employee shall be established in proportion to their net wage at the date when the damage was reported and, when appropriate, according to the time actually worked from their last inventory.

Art. 256. [returning undue amounts and goods]

(1) An employee having received undue amounts from the employer shall return them.

(2) Should an employee receive undue goods that cannot be returned in kind or be provided with services not entitled to, he/she shall bear their equivalent value. The equivalent value of the goods or services concerned shall be established according to their value at the date of payment.

Art. 257. [wage withholdings]

(1) The amount set to cover the damages shall be retained in monthly instalments from the wage due to the person concerned, by the employer where he/she is employed.

(2) The instalments may not be larger than one third of the net monthly wage, without exceeding, together with other amounts retained from the person concerned, half of the net wage.

Art. 258. [withholdings after work contract cessation]

(1) Should the individual employment contract cease before the employee compensate the employer, and the concerned person joins another employer or becomes a civil servant, the withholdings from the wage shall be made by the new employer or institution or public authority, as appropriate, on the basis of the enforcement order submitted for this purpose by the injured employer.

(2) Should the person concerned fail to join another employer, on the basis of an individual employment contract or as a civil servant, the damage shall be covered by legal proceedings against his/her goods, under the terms of the Code of Civil Procedure.

Art. 259. [enforcement under ordinary law]

If the damage cannot be covered by monthly withholdings from the wage within maximum 3 years from the date of the first instalment of withholdings, the employer may appeal to the bailiff under the terms of the Code of Civil Procedure.

CHAPTER 4 - Contraventional liability

Art. 260. [contraventions: list, establishment, punishment]

(1) The following shall constitute contravention and shall be subject to the following penalties:

- a) breach of the provisions regarding the guaranteed payment of the national minimum gross product, with a fine from Lei 300 to Lei 2,000;
- b) infringement by the employer of the provisions of Article 34 (5), with a fine from Lei 300 Lei to Lei 1,000;
- c) hindering or forcing, by threat or violence, an employee or a group of employees to participate to a strike or work during a strike, with a fine from Lei 1,500 to Lei 3,000;
- d) inclusion of clauses contrary to the legal provisions in the individual employment contract, with a fine from Lei 2,000 to Lei 5,000;
- e) employment of persons without an individual employment contract, according to Article 16 (1), with a fine from Lei 1,500 to Lei 2,000 for each identified person, without exceeding a total amount of Lei 100,000;
- f) infringement by the employer of the provisions of Articles 134 and 137, with a fine from Lei 5,000 to Lei 10,000;
- g) infringement of the obligation provided for in Article 135, with a fine from Lei 5,000 to Lei 20,000;
- h) infringement of the provisions regarding overtime, with a fine from Lei 1,500 to Lei 3,000;
- i) infringement of the legal provisions regarding the weekly rest period, with a fine from Lei 1,500 to Lei 3,000;
- j) failure to provide the benefit provided for in Article 53 (1), when the employer temporarily suspends its activities, while maintaining the employment relationships, with a fine from Lei 1,500 to Lei 5,000;
- k) infringement of legal provisions concerning night work, with a fine from Lei 1,500 to Lei 3,000.

(2) The contraventions shall be assessed by labour inspectors, who shall apply the penalties.

(3) The provisions of the legislation in force shall apply to the contraventions provided for in paragraph (1).

CHAPTER 5 - Criminal liability

Art. 261. [non-enforcement of wage payment]

The failure to enforce a final judgment regarding the payment of the wages within 15 days from the date of the enforcement demand submitted to the employer by the interested party shall be a criminal offence and shall be punished with a prison term from three to six months or a fine.

Art. 262. [non-enforcement of reinstatement]

The non-enforcement of a final judgment regarding the reinstatement of an employee shall be a criminal offence punishable with a prison term from six months to one year or a fine.

Art. 263. [beginning of criminal investigation and reconciliation]

(1) As regards the criminal offences provided for in Articles 277 and 278, the criminal investigation shall be launched at the complaint of the harmed person.

(2) The reconciliation of the parties shall remove the criminal liability.

Art. 264

Art. 265. [infringement of underage persons labor status]

The employment of underage persons by infringing the legal age conditions or their use to carry on activities infringing the legal provisions concerning the working arrangement of underage persons shall be a criminal offence punishable with a prison term from one to three years.

TITLE XII - Labour jurisdiction

CHAPTER 1 - General provisions

Art. 266. [scope of labour jurisdiction]

The purpose of the labour jurisdiction is the resolution of the labour disputes regarding the conclusion, performance, amendment, suspension and cessation of the individual employment contracts or, as the case may be, collective labour agreements provided for by this Code, and of the demands regarding the legal relationships between the social partners, as established according to this Code.

Art. 267. [parties to labor disputes]

The following may be parties to labour disputes:

- a) the employees and any other person holding a right or obligation on the basis of this Code, other laws or collective labour agreements;
- b) the employers, including natural persons and/or legal persons, temporary employment agencies, user undertakings, and any other person benefiting from an activity performed under the terms of this Code;
- c) trade unions and employers' organizations;
- d) other legal or natural persons having this ability under special laws or the Code of Civil Procedure.

Art. 268. [statute of limitations]

(1) The demands to settle a labour dispute may be submitted:

- a) within 30 calendar days from the notification of the unilateral decision of the employer regarding the conclusion, performance, amendment, suspension or cessation of the individual employment contract;
- b) within 30 calendar days from the notification of the disciplinary measure;
- c) within three years from the birth of the right to action, if the subject matter of the individual labour dispute is the payment of outstanding wages or compensations to the employee, and in the case of the employee liability for material damage towards

the employer;

d) on the entire duration of the contract, when the establishment of the nullity of an individual employment contract, a collective labour agreement or provisions therein has been requested;

e) within six months from the birth of the right of action, in the case of failure to apply the collective labour agreement or clauses thereof.

(2) In all other cases not mentioned in paragraph (1), the term shall be of three years from the birth of the right.

CHAPTER 2 - Subject-matter and territorial jurisdiction

Art. 269. [competent court]

(1) The courts established according to the Code of Civil Procedure shall be competent for the trial of the labour disputes.

(2) The applications regarding the cases provided for in paragraph **(1)** shall be submitted to the competent court within whose circumscription the plaintiff has its domicile or residence or, as the case may be, headquarters.

CHAPTER 3 - Special rules of court

Art. 270. [exemption from judiciary stamp]

The cases provided for in Article 281 shall be exempted from the judiciary stamp and the judiciary stamp duty.

Art. 271. [speedy trial]

(1) The applications regarding the resolution of the labour disputes shall be tried in emergency procedure.

(2) The interval between the days of appearance shall not exceed 15 days.

(3) The summoning of the parties shall be legally fulfilled when done at least 24 hours before the day of appearance.

Art. 272. [burden of proof]

The burden of proof in the labour disputes is on the employer, which shall submit the evidence for its defence by the first day of appearance.

Art. 273. [administration of evidence]

The evidence shall be administered under the emergency procedure, and the court shall have the right to reject the right to submit evidence to the party groundlessly delaying its administration.

Art. 274. [enforceability of judgments]

The judgments pronounced on the merits shall be final and enforceable de jure.

Art. 275. [ordinary law]

The provisions of this Code shall be supplemented by the provisions of the Code of Civil Procedure.

TITLE XIII - Final and transitional provisions

Art. 276. [harmonisation of labour law]

According to the international obligations undertaken by Romania, the labour legislation will be constantly harmonized with the standards of the European Union, the conventions and recommendations of the International Labour Organization, and the standards of the international labour law.

Art. 277. [legal definition of management personnel]

For the purposes of this Code, "management personnel" means the employees-administrators, including the chairman of the board of directors when he/she is an employee, the general managers and managers, the deputy general

managers and deputy managers, the chiefs of branches “ divisions, departments, sections, workshops, services, offices, - and their equivalents established according to the law or the collective labour agreements or, as the case may be, the rules of procedure.

Art. 278. [ordinary law character of the Labour Code]

(1) The provisions of this Code shall be supplemented by the other provisions contained in the labour legislation and, as far as they are not incompatible with the specific features of the employment relationships provided for in this Code, the provisions of the civil law.

(2) The provisions of this Code shall also apply as ordinary law to those employment relationships not based on an individual employment contract, as far as the special regulations are not complete and their application is not incompatible with the specific features of such employment relationships.

Art. 279. [transitional provisions on the length of service]

(1) The length of service cumulated until 31 December 2008 shall be proven with the employment record book.

(2) After the repeal of Decree No 92/1976 on the employment record book, as subsequently amended, the length of service cumulated until 31 December 2008 shall be assessed, at the request of the person without an employment record book, by a court competent in labour disputes, based on the records or other evidence able to prove the existence of the employment relationships. The applications submitted before the repeal of Decree No 92/1976, as subsequently amended, shall be settled according to the provisions of that act.

(3) The employers keeping and filling in the employment record books shall release them gradually to their holders, until 30 June 2009, against an individual receipt.

(4) The territorial labour inspectorate keeping the employment record books shall release them until the date provided for in paragraph (3), under the terms provided for in an Order of the Minister of Labour, Social Solidarity and Family.

Art. 280. [transitional provisions on current labour disputes]

On the date of entry into force of this Code, the labour disputes underway in the courts shall continue according to the provisions applicable at the date the action has been filed.

Art. 281. [entry into force; provisions repealing other acts]

(1) This Code shall enter into force on 1 March 2003.

(2) The following acts shall be repealed after the entry into force of this Code:

- 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, as subsequently amended and supplemented;
- Law No 1/1970 “ Law of labour organization and discipline in the state socialist establishments, published in the Official Bulletin, Part I, No 27 of 27 March 1970, as subsequently amended and supplemented;
- Decree no. 63/1981 on the recovery of damages to the public property, published in the Official Bulletin, Part I, No 17 of 25 March 1981;
- Law No 30/1990 on the employment of employees according to their competence, published in the Official Gazette of Romania, Part I, No 125 of 16 November 1990;
- Law No 2/1991 on the multiple jobs, published in the Official Gazette of Romania, Part I, No 1 of 8 January 1991;

- Law of remuneration No 14/1991, published in the Official Gazette of Romania, Part I, No 32 of 9 February 1991, as subsequently amended and supplemented;
- Law No 6/1992 on the annual leave and other employee leaves, 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 wage, published in the Official Gazette of Romania, Part I, No 246 of 15 October 1993;
- Law No 75/1996 on the establishment of the public holidays, published in the Official Gazette of Romania, Part I, No 150 of 17 July 1996, as subsequently amended and supplemented;
- Articles 34 and 35 of Law No 130/1996 on the collective labour agreement, as republished in the Official Gazette of Romania, Part I, No 184 of 19 May 1998;
- any other contrary provisions.

(3) The provisions of the Decree No 92/1976 on the employment record book, published in the Official Bulletin, Part I, No 37 of April 26, 1976, as subsequently amended, shall be repealed on January 1, 2009.