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News in Laws – Legal Monthly Newsletter
December 2020

INSOLVENCY: Salaries payment from the guarantee fund. Controversies and news

by Alice Ene, Managing Associate Voicu & Filipescu

The opening of the insolvency proceedings generates negative consequences for the economic path of a company, especially when it is declared too late to benefit from the real advantages offered by the Insolvency Law. Some of them concern the employees of an insolvent company, who are affected, on the one hand, because they have not received their salaries, the insolvency being characterized by insufficient funds to pay the debts due, and on the other hand, because insolvency can cause the termination of their labor agreements where the chances of company's recovery are low.

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Legal Changes of November 2020

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in:

- Data Protection
- Employment
- Litigation & Arbitration
- Real Estate

VF News

Article "EU Data transfers after Schrems II - What would be a defensible position going further?" by Marta Popa, Senior Partner Voicu & Filipescu, published on Which Lawyer. Click here to read the article.

The dedicated VF task force addressing Coronavirus (COVID-19) concerns continues to be active in providing legal solutions and strategies for the benefit of companies impacted by the health crisis. Read more here.

Voicu & Filipescu is pleased to announce that two of the transactions in which the Firm was involved were included among the most important deals on the Romanian M&A market in the research made by the specialists of the Ziarul Financiar newspaper for the 2019 edition of their Top Deals Directory. Click here to read the details.

Legal500 EMEA 2020 edition recommends Voicu & Filipescu for our lawyers' activity in 6 practice areas: Corporate, Commercial and M & A, Employment, PPP and Procurement, Real Estate and Construction, Restructuring and Insolvency and TMT.

IFLR 1000, 2020 edition recommends Voicu & Filipescu for our lawyer's activity in three practice areas: M&A, Banking and Finance and Project Development. Also, Mr. Dumitru Rusu – Partner, head of the Banking and Finance practice, was selected as a *Highly Regarded Lawyer* for the practice areas of Capital Markets and Banking.

Chambers and Partners Europe, 2019 edition recommends Voicu & Filipescu for Corporate and M&A practice.

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The opening of the insolvency proceedings generates negative consequences for the economic path of a company, especially when it is declared too late to benefit from the real advantages offered by the Insolvency Law. Some of them concern the employees of an insolvent company, who are affected, on the one hand, because they have not received their salaries, the insolvency being characterized by insufficient funds to pay the debts due, and on the other hand, because insolvency can cause the termination of their labor agreements where the chances of company's recovery are low.

In this context, following the appearance of the Insolvency Law no. 85/2006, was also adopted the Law 200/2006 on the establishment and use of the Guarantee Fund for the payment of salary claims, through which the state grants a facility to insolvent companies, respectively to their employees, by paying outstanding salaries, any other compensations or monetary indemnities, calculated for a period of 3 calendar months prior to or subsequent to the date of opening the insolvency proceedings.

This Guarantee Fund is constituted by the insurance contribution for work, due by the employers, as it is provided by art. 211 of the Fiscal Code, currently being in the amount of 0.25%, calculated on the gross earnings of employees / other assimilated persons.

The conditions for granting this facility by the state through the Employment Agencies were: (i) the issuance of a final court decision to open the insolvency proceedings and (ii) the total or partial withdrawal of the administration right.

Although this facility was provided by law since 2006 (in force since January 1, 2007), it was not always accessed by insolvency / bankruptcy companies, especially when there were assets in their patrimony, most often due to formalities and bureaucracy specific to the public social insurance system. The administrator / judicial liquidator usually liquidates the assets in the procedure and only after makes distributions to the employees who, patiently, wait at the credit table, sometimes for years.

When this facility was accessed, then the Fund paid to the beneficiaries the outstanding salaries listed in the creditors' table and related to the three calendar months before or after the opening of the procedure, and afterwards, the Fund subrogates to the beneficiaries' rights. Thus, (1) in case of distributions in the insolvency procedure to this category of creditors - employees - as a result of assets' liquidation, debt recovery, etc., the Guarantee Fund benefit from distributions instead of the beneficiaries who received the indemnities, and (2) in case the insolvency procedure is closed, as a result of the recovery of the employing company, the latter it is obliged to return the amounts paid from the Guarantee Fund, within 6 months from the pronouncement of the court decision which closed the procedure.

The companies were also discouraged to use this facility by the different interpretation of Law 200/2006 and the methodological norms for applying the Law assigned at its discretion by the Territorial Employment Agencies, because the two conditions mentioned above were not always met by the same procedural act or at least by different decisions but pronounced within 3 calendar months.

By the court decision to open the insolvency procedure, the right of administration is not automatically canceled, the latter being possible to happed over 3 months from the date of opening the procedure and, in most cases, only on the date of declaring bankruptcy. Also, on the other hand, the pronouncement of bankruptcy (by not declaring the intention to reorganize and not submitting a plan or by failing of the fulfillment of the reorganization plan) is also done by a court decision, which, this time, automatically raises the right of administration, but there were no outstanding salaries prior to bankruptcy, but long before, on the date of the first opening of the insolvency proceedings. The different interpretations of the authorities allowed neither one nor the other to benefit from the payment of the outstanding salaries from the Guarantee Fund, the ideal cases being only those in which, from the very beginning, the bankruptcy procedure was opened in a simplified form.

Only in 2018, the Supreme Court of Justice - Panel for resolving legal issues, being notified by the Court of Appeal Brasov - Administrative and Fiscal Litigation Section, issued Decision no. 16 / 05.03.2018 establishing that:

- the period of maximum 3 months, for which the Guarantee Fund can take over and pay the salary claims of the insolvent employer, is in the reference interval of 3 months immediately prior to the opening of the insolvency procedure and 3 months immediately following the opening of the insolvency procedure;
- the period of 3 months, for which the Guarantee Fund can pay the salary claims of the insolvent employer, is reported exclusively on the date of opening the insolvency procedure.

Unfortunately, this interpretation, even if it has clarified from a legal point of view the reference date for establishing the period for which this facility can be granted as the date of opening the insolvency proceedings, (eliminating the situations in which a [new] opening decision is subsequently issued - case of the bankruptcy procedure), from an operational point of view determined / perpetuated a limitation of the insolvent companies that could qualify for the coverage of the salaries from the Guarantee Fund, only to the ideal cases previously mentioned.

That is why, in July 2020, the Plenum of the Constitutional Court ruled on the exception of unconstitutionality of the provisions of art. 15 para. (2) of Law no. 200/2006 on the establishment and use of the Guarantee Fund for the payment of salary claims, in the interpretation given by Decision no. 16 of March 5, 2018 of the Supreme Court of Justice - Panel for resolving legal issues.

The Constitutional Court considered the legal provisions unconstitutional compared to art. 41 para. (2) referred to in art. 16 para. (1) of the Constitution, in the interpretation given by Decision 16/2018 of the Supreme Court, because the limitation of the period of granting salary rights paid from the Guarantee Fund for the payment of salary claims, established by Law 200/2006, at the first 3 months following the date of opening the insolvency procedure, ignores the fact that the administration right (the second sine qua non condition for the payment of these salary claims) can be canceled even after the expiration of the 3 months from the opening date procedure, if the insolvent debtor employer opts for the general insolvency procedure and declares its intention to reorganize.

Following the declaration of unconstitutionality, the Ministry of Labor launched on 19.11.2020 in public debate the draft law meant to adapt the aforementioned legal framework to the different cases encountered in practice, by amending Law 200/2006, in order to eliminate the condition regarding the cancelation of the company's administration right, the applicants proving only the opening of the insolvency procedure by the final court decision.

After the legislative process is completed and this amendment will enter into force (probably in 2021), finally Law 200/2006 will be able to be applied in a unitary and non-discriminatory way for all employees who become creditors in an insolvency procedure, regardless of who belongs the right of administration (to the company or to the judicial administrator).

It is also true that the Guarantee Fund will be burdened with demands for outstanding salaries in the next period, especially in the context of an upward trend of the number of companies that will declare the insolvency, determined by the unpredictability of measures to prevent and stop the spread of the virus Covid-19.

On the other hand, employers should not take advantage of this facility during the pre-insolvency period, it is well known that the chances of a company's recovery consist of efficient management, but also a qualified personnel, which will remain on the barricades of insolvency, ensuring the fulfillment of a reorganization plan, if they will receive their remunerations on time.

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data protection - legal changes published in November 2020

I. ROMANIA - regulations

1. Processing of personal data by owners' associations

Following the views requested of the Supervisory Authority by the owners' associations regarding the data processing they carry out or intend to carry out, the Authority has issued a statement on the **purposes for which these entities collect and process personal data**, respectively:

1) Regarding the ***installation of a video surveillance system by the owners' association***, it is done based on the ***legitimate interest*** of the association, e.g. to ensure the security and protection of persons, goods and values, of buildings and public utility installations, as well as of the enclosures affected by them. Arguments regarding the justification of the legitimate interest must be found in documentation at the level of the owners 'association and, subsequently, the decision to install such a system must be adopted at the general meeting of the owners' association, according to the law.

   Regarding the installation of video cameras on each level of the building, the Authority appreciates that for the processing of the respective images it is necessary to obtain the consent of each tenant on the respective level / level.

2) Regarding the ***disclosure of data such as the name and surname of the owners / tenants on the notice board of the block staircase***, we specify that in the absence of an express legal provision the data may be disclosed only on the basis of the ***consent*** of the data subject.

3) With regard to the ***registration of personal data in the real estate book***, insofar as there is a ***legal obligation*** in this respect, the data may be processed without the consent of the data subject.

Regarding the **security measures** that the owners' association is obliged to adopt, the Authority also recommends the **pseudonymization and encryption** of personal data.

With regard to the **transparency of the processing**, in terms of **informing** the data subjects, the owners' association must carry out the information regardless of the basis of the processing. For information, one can use a ***generic information method***, by ***displaying the information note on the block staircase notice board*** or ***appropriate icons, such as in the case of video surveillance***, the information notes of the person concerned (displayed), and to other modalities (by email) that are established by the association depending on the concrete situation of data processing.

Regarding the **appointment of a data protection officer, they are not obliged to appoint a data protection officer**.

2. ANSPDCP - The Court of Justice of the European Union has confirmed the position of ANSPDCP towards Orange Romania regarding the storage of identity cards

In the dispute pending before the Romanian courts, having as parties Orange Romania SA and the National Authority for Supervision of Personal Data Processing (ANSPDCP), the Court of Justice of the European Union confirmed the

position of ANSPDCP regarding the illegality of Orange Romania SA's storage of children identity documents of its customers, without their express consent, on the occasion of concluding contracts for the provision of telecommunications services.

Orange Romania SA, by ***collecting and storing copies of identity documents***, requested by electronic communications service contracts, has excessively processed personal data falling under art. 8 of Law no. 677/2001, without the express consent of the persons concerned, express legal provisions or the approval of ANSPDCP.

In view of the above, the CJEU issued a press release which can be accessed at the following link: https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-11/cp200137ro.pdf.

II. Romania - sanctions

1. ANSPDCP. DADA CREATION was fined EURO 5,000 for disclosing and unauthorized access to personal data

On November 24. 2020, the Authority issued a statement on the completion of an investigation at the operator DADA CREATION S.R.L. which was sanctioned with a ***fine in the amount of RON 24,272.50***, the equivalent of EURO 5,000 and ***warning***.

The investigation was initiated following a complaint alleging that ***a document on the detailed records of transactions received by this site from its customers (individuals) was available through the operator's website,*** document containing e-mail addresses, numbers telephone number, name and surname of customers (adults and minors), age of minors, delivery addresses, order number, total order amount, products ordered and date of order.

The operator was sanctioned with a ***warning*** because ***it did not notify the Supervisory Authority of the security incident*** (which was brought to its attention by the Authority).

2. ANSPDCP. Vodafone Romania was fined EURO 4,000 for failing to resolve the request of a data subject

On November 23, 2020, the Authority announced that it sanctioned the operator ***Vodafone Romania SA*** with a ***fine in the amount of RON 19468.8, the equivalent of the amount of EURO 4,000.***

The sanction was applied as a result of complaints claiming that the operator did not respond to requests to exercise the rights of access and deletion provided by art. 15 and art. 17 of the General Data Protection Regulation.

III. EUROPEAN UNION – regulations

1. The fortieth Plenary Session of the European Data Protection Board

On Tuesday, October 20, 2020, the 40th Plenary Session of the European Committee for Data Protection took place online, a body with legal personality of the European Union, established pursuant to art. 68 of the General Regulation on Data Protection, according to a statement.

Within this, it was adopted **Guide no. 4/2019 on Art. 25 of the General Regulation on Data Protection - ensuring data protection from the moment of conception and implicitly (privacy by design and by default).**

The adopted guide is intended to support operators and processors, in order to ensure a uniform and effective application of the requirements of this principle, taking into account the purpose, nature, context and risks of processing, in relation to the need for effective and other compliance, principles of personal data processing.

This tool contains numerous practical examples and a section of recommendations, including on the role of the data protection officer in the operators / processors.

2. The forty-first Plenary of the European Data Protection Board

The following documents were adopted at the Plenary Session of the European Data Protection Board, held online on 9 and 10 November 2020:

- Recommendations no. 1/2020 on measures supplementing transfer instruments to ensure compliance with the level of EU protection, following the Decision of the Court of Justice of the European Union in the Schrems;
- Recommendations no. 2/2020 on European Essential Guarantees regarding surveillance measures, related to the transfer activity, document with complementary role;
- The first decision pursuant to art. 65 of the GDPR, regarding the draft decision of the DPA Ireland on International Twitter.

More information is available at: https://edpb.europa.eu/news/news_en.

3. The forty-second Plenary of the European Data Protection Board

At the Plenary Session of the European Data Protection Board on 19 November 2020, ***two new sets of draft standard contractual clauses (SCC)*** were presented, and the EDPB adopted a ***statement on the future ePriavacy Regulation.***

The European Commission has presented two SCC projects: one set of ***SCC for contracts between operators and processors and another for data transfers outside the EU***. In addition, the Commission presented another set of SCCs for the transfer of personal data to third countries in accordance with art. 46 (2) (c) GDPR. These SCCs will replace the existing SCCs for international transfers that were adopted on the basis of Directive 95/46 and needed to be updated to align them with the requirements of the GDPR as well as the CJEU's Schrems II judgment and to better reflect the use of large-scale new and more complex processing operations often involving multiple data importers and exporters. The Commission requested a joint opinion from the EDPB and the AEPD on the implementing acts for both sets of SCC.

The EDPB has adopted ***a statement on the future ePrivacy Regulation*** and the future role of supervisors and the EDPB in this context. The EDPB expressed concern about some new directions in the Council's discussions on the application of the future ePrivacy Regulation, which could lead to fragmented supervision, the complexity of procedures and a lack of coherence and legal certainty for individuals and companies.

IV. EUROPEAN UNION - sanctions

1. The Norwegian authorities have fined Østfold HF Hospital with a fine of EUR 70,000

The sanction was applied because in the period 2013-2019, the hospital stored extracts from patients' reports outside the safety zone. The case began with a notification of personal data breach from the hospital.

The Norwegian Data Protection Authority considers that Østfold HF Hospital has not established an access control system that is sufficient to prevent data breaches and that special reference is made to routines for access control and personal data storage.

2. The Spanish authority fined Telefónica Móviles España with a fine of EUR 75,000

The Spanish data protection Authority fined Telefónica Móviles España, S.A.U. with a fine of EUR 75,000 for the illegal processing of the applicant's personal data by issuing several invoices to him for services provided to a third party.

The Authority considered that the processing of the petitioner's personal data had been carried out without any legal basis and consequently fined the controller.

3. The Belgian authority fined a natural person Euro 1,500 for video surveillance

Two plaintiffs have filed a complaint with the Belgian on the video surveillance system of the two neighbors and the continued use of images made by the system. The two defendants had installed a video surveillance system with five surveillance cameras (24/7 filming) on their private property. Two cameras mentioned in the complaint were positioned in such a way that those cameras filmed the applicants' public road or private property and filmed at least one of the applicants as they drove on the public road or entered their private property.

The images were used by the defendants in a dispute procedure between the defendants and the applicants regarding environmental planning.

The Belgian authorities considered that there were legitimate interests for the defendants to protect their own private property, but the filming of large parts of the public road, as well as the filming of the applicants' private property, were not necessary to protect those legitimate interests.

4. Italian authority fined Vodafone € 12 million for aggressive telemarketing practices

The Italian authority ***fined Vodafone more than 12,250,000 euros*** for illegally processing the personal data of millions of users for telemarketing purposes. In addition to having to pay the fine, the company must implement several measures established by the Authority to comply with national and EU data protection legislation.

The Authority established that false telephone numbers or numbers not registered with the ROC (ie the Consolidated National Register of Communications Operators) were used to make the marketing calls. This practice is at the center of Vodafone's attention and is apparently linked to a shady set of unauthorized call centers that conduct telemarketing activities, regardless of personal data protection legislation.

Vodafone uses contact lists purchased from external suppliers. These lists were obtained by Vodafone business partners from other companies and were transferred to Vodafone without user consent.

Security measures for managing customer resources have also proved inadequate. In this regard, several complaints and alerts were sent to the Authority by customers who had been contacted by operators claiming to act on behalf of Vodafone and requested that they be sent IDs via WhatsApp - quite likely for spam, phishing purposes or other fraudulent activities.

In the light of the infringements found during the procedure, the Italian Authority imposed a fine of EUR 12,251,601.00.

5. The Swedish authority has sanctioned the Stockholm Education Council

The Swedish data protection authority has investigated the so-called school platform, the IT system used for the administration of students in schools in Stockholm. The analysis shows an insufficient level of security of such a serious nature that the Authority issues an ***administrative fine of SEK four million*** against the Stockholm City Council of Education.

The Swedish Data Protection Authority has received a number of notifications of personal data breaches. All incidents relate to the school platform, which is the IT system used, among other things, for the administration of students in Stockholm. The school platform contains information for up to ***500,000 students, tutors and teachers***.

Following the investigation, it was found that a large number of staff were able to access information about students with protected identities. In another situation, tutors were able to access information about other children related to, for example, grades and assessment. Through the Google search engine, it was possible to find links to connect to an administration interface where information about teachers with protected identities was accessible.

Swedish data protection authority imposed an administrative fine of SEK four million for the infringements found.

6. The Swedish authorities fined the town of Gnosjö for illegal video surveillance in a house

The Swedish Data Protection Authority imposed an administrative fine of SEK 200,000 on the municipality of Gnosjö for illegal video surveillance in an LSS home. The Swedish Data Protection Authority has received a complaint from a relative of a resident of a residential care home for people with certain functional disabilities (so-called LSS housing) in the municipality of Gnosjö, claiming that the resident is being monitored illegally.

The Gnosjö Social Assistance Committee, which is responsible for the LSS housing, said that the resident's disease profile created major difficulties for both the resident and the staff, and that there were situations where there was a risk to the resident's life and health. There were also situations in which the staff suffered injuries.

The Swedish Data Protection Authority concludes in its decision that there is no legal basis for video surveillance, that an impact assessment has not been carried out before the initiation of video surveillance and that the operator has not clearly informed about video surveillance. For these reasons, the Swedish Data Protection Authority issues an administrative fine of SEK 200,000 against the Social Assistance Committee.

employment - legal changes published in November 2020

Decision of the High Court of Cassation and Justice no. 15/2020 regarding the solutioning of the appeal in the interest of the law that forms the object of the file no. 1048/1/2020 was published in the Official Gazette of Romania, Part I, no. 1021 of November 3, 2020, being applicable starting with the same date.

The High Court of Cassation and Justice was invested by the request submitted by the Management Board of the Suceava Court of Appeals with the solutioning of the appeal in the interest of the law concerning the following legal issue: "*The action filed by the employer in contradiction with the employee for the refund of the amounts paid by the first to the latter, voluntarily, on the basis of an executory court decision, of first instance, which is subsequently annulled in the appeal, covers the legal nature of a labour dispute, the settlement of which is limited to the provisions of art. 256 para. (1) of Law no. 53/2003 on the Labour Code, attracting, from a functional and procedural point of view, the material competence to settle the file in the first instance in favor of the Tribunal – Specialized Section in Labour Disputes and Social Insurances, or has the legal nature of a request for return of execution, whose solutioning is limited to the provisions of art. 724 para. (3) of the Code of Civil Procedure, attracting the material competence of solutioning in the first instance in favor of the enforcement court, respectively of the court of first instance* ".

The High Court ascertained that the corroborated interpretation of the texts of the law on forced execution shows that the rules of civil procedure do not regulate the possibility of requesting, in the main way, the return of execution, when the title on the basis of which the payment made voluntarily by the debtor was abolished, if the forced execution has not been started, being incident the institution of undue payment, which involves the promotion of a separate lawsuit for the restoration of the previous situation. Therefore, the provisions of art. 256 of the Labour Code is the applicable legal basis for the restitution of benefits by the employees who received from the employer, prior to the commencement of the enforcement proceedings, salary rights based on first instance court decisions, annulled in the appeals phase.

For these reasons, the appeal in the interest of the law was admitted, the High Court establishing that the action filed by the employer in contradiction with the employee for the refund of the amounts paid by the first to the latter, voluntarily, before the start of the enforcement procedure, based on a court decision of first instance, which is subsequently annulled in the appeal phase, has the legal nature of a labour dispute, the settlement of which is limited to the provisions of art. 256 para. (1) of the Labour Code, attracting the material competence of settlement in the first instance in favor of the Tribunal - Specialized Section in Labour Disputes and Social insurances, according to art. 208 and art. 210 of the Law on social dialogue no. 62/2011.

Government Emergency Ordinance no. 192/2020 for the amendment and supplementation of the Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, as well as to amend letter a) in art. 7 of Law no. 81/2018 on the teleworking activity was published in the Official Gazette of Romania, Part I, no. 1042 of November 6, 2020, entering into force on the same date.

Regarding the Law no. 155/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, the new Ordinance brought the following amendments:

- the obligation to wear a protective mask in public spaces was established (therefore, regardless of whether they are closed or open; the old regulation provided for this obligation only in closed public spaces), maintaining this obligation to wear the protective mask in commercial spaces, means of public transport and at the workplace;

- the possibility that the employers had during the state of alert to establish, with the employee's consent, the activity of teleworking or working from home, the change of the workplace or the employee's attributions, was transformed into a unilateral prerogative of the employer; according to the new changes, during the state of alert, the employers order the teleworking regime or working from home, where the specifics of the activity allow, in compliance with the provisions of Law no. 53/2003 - Labour Code and Law no. 81/2018 on the telework activity (therefore, without the need for the employee's consent in this respect);

- the possibility for employers to establish individualized work schedules during the state of alert has been transformed into an obligation; thus, it is provided that, during the state of alert, by derogation from the provisions of art. 118 para. (1) of the Labour Code, the employers in the private system, central and local public authorities and institutions, regardless of the method of financing and subordination, as well as autonomous utilities, national companies, companies in which the share capital is entirely or majority owned by the state or an administrative-territorial unit, with a number of more than 50 employees, organizes the work schedule so that the staff is divided into groups to start, respectively to finish the activity at a difference of at least one hour;

- it has been established that, between November 2020 and December 31, 2020, it may be ordered the suspension of the activities that require the physical presence of preschoolers and students in the educational units and to continue the teaching activities online.

As regards the Law no. 81/2018 on the teleworking activity, the new amendment aims to introduce the possibility for the parties to agree through a written agreement that the means related to the information and communication technology and / or work equipment necessary to provide the teleworking to be owned by the teleworker, specifying the conditions of their use. The old regulation provided that the employer has the obligation to provide these means and / or work equipment, unless the parties agreed otherwise.

Order of the Minister of Labour and Social Protection no. 1600/2020 regarding the amendment of Annex no. 1 to the Order of the Minister of Laboor and Social Protection no. 741/2020 for the approval of the template of the documents provided in art. XII para. (1) of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of SARS-CoV-2 coronavirus, with amendments and completions brought by the Government Emergency Ordinance no. 32/2020 for the amendment and completion of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus and for establishing additional social protection measures was published in the Official Gazette of Romania, Part I, no. 1073 of October 13, 2020, entering into force on the same date.

Through the Order, Annex no. 1 to the Order of the Minister of Labour and Social Protection no. 741/2020 which contains the templates of the documents necessary for obtaining the allowances that employees benefit from for the period of temporary suspension of the individual employment contract, at the initiative of the employer, according to art. 52 para. (1) letter c) of the Labor Code (the employer's activity being temporarily reduced/ interrupted as a result of the effects produced by the SARS-CoV-2 coronavirus). The amendments take into account the alignment with the recent legislative provisions.

Government Decision no. 967/2020 on the extension of the state of alert on the Romanian territory starting with November 14, 2020, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-1 pandemic was published in the Official Gazette of Romania, Part I , no. 1078 of November 14, 2020, entering into force on the same date.

The Decision extended the state of alert on the Romanian territory starting with November 14, 2020 with another 30 days.

The Decision maintains the obligation to wear a protective mask in public spaces (closed or open, as Law no. 55/2020 was amended by G.E.O. no. 192/2020), commercial spaces, means of public transport and at the workplace.

Also, for all the public or private institutions and economic operators, the obligation to order the teleworking regime or working from home, where the specificity of the activity allows, under the conditions of art. 108-110 of the Labour Code, as well as those established by Law no. 81/2018 on the regulation of telework activity.

In the situation where the employee cannot carry out the activity by telework or work at home and in order to avoid the congestion of public transport, employers in the private system, central and local public authorities and institutions, regardless of the method of financing and subordination, such as and autonomous utilities, national companies, national companies and companies in which the share capital is entirely or mainly owned by the state or by an administrative-territorial unit, with a number of more than 50 employees, have the obligation to organize the work program so that staff be divided into groups to start or finish the activity at a difference of at least one hour.

Government Emergency Ordinance no. 198/2020 for supplementation of the Government Emergency Ordinance no. 147/2020 on granting days off for parents to supervise the children, in case of limitation or suspension of teaching activities that involve the actual presence of children in schools and early childhood education units, following the spread of SARS-CoV-2 coronavirus was published in the Official Gazette of Romania, Part I, no. 1108 of November 19, 2020, entering into force on the same date.

According to the Ordinance, between November 2020 and December 31, 2020, the provisions of the G.E.O. no. 147/2020 also apply in the situation where, by order of the Minister of Education and Research, it is ordered to suspend the activities that require the physical presence of preschoolers and students in schools and the continuation of the teaching activities online.

In this situation, the days off will be granted for the period established in the order of the Minister of Education and Research.

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litigation and arbitration - legal changes published in November 2020

Law no. 274/2020 for amending Law no. 286/2009 regarding the Criminal Code was published in the Official Gazette, Part I no. 1144 of November 26, 2020 and it is applicable from November 29, 2020. The Law amends article 154 (Statute of limitation for criminal liability), paragraph (4) and article 231 (Prior complaint and reconciliation). Therefore, article 154 paragraph (4) of the Criminal Code has, as a result of the legislative amendment, the following text: "*Except for the offenses laid down in articles 218 and 220, in case of offenses against sexual freedom and integrity, those of trafficking and exploitation of vulnerable persons, as well as those of child pornography crime, committed towards a minor, the limitation period runs from the date on which it became major. If the minor died before reaching adulthood, the limitation period runs from the date of death*" – before the amendment, article 154 paragraph (4) mentioned only the offenses against sexual freedom and integrity of the minor, and article 231: *"(1) The deeds set out in this chapter, committed between family members by a minor in the damage of its guardian or by the person who lives with the injured party or hosted by it, shall be punished only complaint of the injured party. (2) In case of the deeds stipulated in article 228 and article 230, reconciliation of the parties removes criminal liability."* – there were removed from paragraph (2) the deeds mentioned in article 229 paragraph (1), paragraph (2), letters (b) and (c) – various theft offenses.

The Decision of the European Court for Human Rights dated June 24, 2015 ruled in the Veres Case against Romania was published in the Official Gazette, Part I, no. 1121 of 23 November 2020 and it is applicable from the same date. At the origin of the case it is the application no. 47.615/11 directed against Romania, by which a national of this state, Mr. Cornel Veres, brought an action before the Court on 22 July 2011, under the article no. 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR considered that authorities had not conducted an in-depth and effective investigation into Mr. Veres' credible accusation that a police agent had subjected him to ill-treatment and declared the application admissible, deciding that article no. 3 of the Convention has been infringed under material and procedural terms. Therefore, the Court ruled that: a) the defendant State must pay to the applicant, within three months of the date of the final decision, in accordance with Article 44 § 2 of the Convention, an amount of EUR 12,000, plus any amount that may be due as tax, as a matter of non-pecuniary damage, which will be converted into the currency of the defendant State at the exchange rate applicable on the date of payment, and b) that, from the expiry of the period until payment, this amount must be increased by a simple interest rate, at a rate equal to the European Central Bank's marginal lending facility rate, applicable during that period and increased by three percentage points.

Decision of the Constitutional Court of Romania no. 355/2020 regarding the admission of the exception of unconstitutionality of the expression "after the persons concerned have obtained Romanian citizenship", contained in article II paragraph (4) of Title II of Government Emergency Ordinance no. 184/2002 amending and supplementing Law no. 10/2001 regarding the legal regime of certain buildings abusively confiscated within the period March 6, 1945 –December 22, 1989, as well as establishing measures in order to speed up its implementation and to speed up the Emergency Ordinance of the Government no. 94/2000 regarding the restitution of certain real estate belongings to religious denominations in Romania, approved with modifications and additions by Law no. 501/2002, was published in the Official Gazette, Part I no. 1084 of November 16, 2020 and it is

applicable from the same date. The Constitutional Court admitted the exception of unconstitutionality raised by Dieter Junker and Helga Junker in file no. 17.478/325/2016 of the Timis Court – Civil Division I and ascertained that the phrase "*after obtaining Romanian citizenship by the persons concerned*" contained in article II paragraph (4) of Title II of Government Emergency Ordinance no. 184/2002 is unconstitutional, in so far as it applies to foreign nationals and stateless persons who fulfill the conditions laid down in article 44 paragraph (2), second sentence, from the Romanian Constitution.

Decision of the High Court of Cassation and Justice no. 16/2020 regarding the admission of examination of the case brought by General Prosecutor of the Prosecutor's Office of High Court of Cassation and Justice on a matter of law that has been published in the Official Gazette, part I, no. 1047 as of November 9, 2020 and it is applicable from the same date. The HCCJ has established that, in the interpretation and application of the provisions of article 13 paragraph (2) of Government Ordinance no. 2/2001 regarding the legal regime of offenses, approved with amendments and additions by Law no. 180/2002, with its subsequent amendments and additions, with reference to the provisions of article no. 31, corroborated with those of article 37 paragraph (5) of Law no. 50/1991 concerning the authorization to execute construction works, republished, with subsequent amendments and supplements, the statute of limitation term of the contravention liability for the contraventions regulated by article no. 26 paragraph (1) letter a) of Law no. 50/1991, republished, consisting in the execution, without a construction permit, of a construction that captures all the structural elements necessary to be considered to have been completed at the time of the finding of the contravention, runs from the date the construction it is actually completed.

Decision of the High Court of Cassation and Justice no. 15/2020 for the solutioning of the appeal in the interest of the law which represents the object of the Case no. 1048/1/2020 was published in the Official Gazette, Part I no. 1021, as of November 3, 2020 and it is applicable from the same date. The HCCJ admitted the appeal in the interest of the law submitted by the Management Board of the Suceava Court of Appeal and, consequently, ruled that: The legal action promoted by the employer in contradiction with the employee regarding the refund of the paid amounts by the first to the second, voluntarily, before enforcement begins, by means of an enforceable court decision, at first court, which is subsequently cancelled in appeal, shall have the legal nature of a conflict of employment, whose resolution is in accordance with the provisions of article 256 paragraph (1) of the Law no. 53/2003 regarding the Labour Code, republished, with subsequent amendments and additions, drawing the substantive jurisdiction in first court in favor of the Tribunal – Specialized Court Section on Labour Conflicts and Social Insurances, according to the provisions of article no. 208 and 210 of the Social Dialogue Law no. 62/2011, republished, as amended and supplemented.

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Emergency Ordinance no. 203/2020 regarding specific regulations for the sale of agricultural land located outside the built-up area ("GO no. 203/2020") was published in the Official Gazette, Part I no. 1132 of November 25, 2020, shall be enforceable after 3 days of its publication and shall apply until January 31, 2021. The regulation in question was adopted in order to clarify the procedural conditions applicable to the sale procedures initiated and unsolved until October 13,2020, respectively until the date of entry into force of *Law no. 175/2020 for the amendment and completion of Law no. 17/2014 regarding the measures for regulating the sale-purchase of agricultural lands located outside the built-up area and the amendments to Law no. 268/2001 on the privatization of companies that manage public and private land owned by the state for agricultural purposes and the establishment of the State Domains Agency ("**Law no. 175/2020**")*. Considering that Law no. 175/2020 provides a series of changes which may delay the sale process, in order to avoid potential negative implications, it was established that the sale procedures initiated and unsolved until October 13,2020, shall be completed under the conditions provided by GEO no. 203/2020, until January 31, 2021. Regarding the sale procedures initiated after October 13,2020, they shall remain subject to the provisions of Law no. 17/2014, as amended by Law no. 175/2020.

On this line, GEO no. 203/2020 regulates that the documents requesting the display of the sale offer, registered until October 13, 2020, including to the local public authorities within the administrative unit where the land is located, as well as the requests regarding the communication of the acceptance of the submitted offer within 30 days from the date of displaying the offer by the preemptor, shall be solved with the observance of the preemption right of the co-owners, tenants, neighboring owners, as well as Romanian Statem through the State Domains Agency, in this order, at a price and under equal conditions, attested by the final approval issued by the Ministry of Agriculture and Rural Development, or, for lands with an area of less than 30 hectares, by the territorial structures. If the preemptors have not shown, within 30 days from the date of the offer displaying, the intention to purchase, the competent authority shall issue the certificate of free sale. There are not provided other special conditions for concluding sales contracts in authentic form. The provisions of GEO no. 203/2020 are also applicable to citizens of a Member State of the European Union, of the States party to the Agreement on the European Economic Area (AEEA) or of the Swiss Confederation and of stateless persons domiciled in Romania, in a Member State of the European Union, a state that is party to the AEEA or to the Swiss Confederation, as well as to legal persons having Romanian nationality, respectively the nationality of a member state of the European Union, or of the states that are party to the AEEA or to the Swiss Confederation. Also, the property right over the agricultural lands located outside the built-up area can be acquired by the citizen of a third state and the stateless person residing in a third state, as well as by legal persons having the nationality of a third state, under conditions regulated by international treaties of reciprocity.

For additional details on this material, please do not hesitate to contact us.
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