



employment - legal changes published in December 2021

Decision of the Constitutional Court of Romania no. 730/2021 regarding the solutioning of the constitutional challenge of the provisions of art. 111, art. 121, art. 122 paragraph (1), art. 123 and art. 229 paragraph (4) of Law no. 53/2003, as well as art. 142 para. (2) of Law no. 62/2011 on Social Dialogue, by interpreting the Decision of the High Court of Cassation and Justice no. 17 of June 13, 2016 was published in the Official Gazette, Part I no. 1153 of December 3, 2021 and is applicable from the same date.

The Court analyzed the provisions of art. 142 paragraph (2) of Law no. 62/2011 on Social Dialogue, which stipulates that in the case of a collective labour agreement, the nullity of the contractual clauses is established by the competent courts of law, when requested by the interested party, by initiating a claim or by way of exception. The authors of the constitutional challenge consider that the public interest provisions of article 41 of the Romanian Constitution are violated when a nullity of a collective labour agreement cannot be invoked by the court ex officio, being considered a private cause of nullity.

Furthermore, with reference to the Decision no. 17 of June 13, 2016, ruled by the High Court of Cassation and Justice, that has established that, in the interpretation of article 138 paragraphs (1)-(3) and article 142 paragraph (2) of Law no. 62/2011 on Social Dialogue, the nullity of a negotiated clause of a collective labour agreement can be invoked by the court, ex officio, as long as the collective labour agreement is in force.

Thus, the Constitutional Court admitted the constitutional challenge formulated by Gheorghe Martuica, Constantin Miloiu, Marcel Dinulescu, Ilie Bacanu and Danila Popa in case files no. 563/101/2015, no. 5562/101/2015, no. 8968/101/2014, no. 7830/101/2015 and no. 1193/101/2016 of the Craiova Court of Appeal - Civil Section I and held that the provisions of article 142 paragraph (2) of Law no. 62/2011 on Social Dialogue, as interpreted by the Decision no. 17 of June 13, 2016 ruled by the High Court of Cassation and Justice – Panel for preliminary ruling on law issues, are not constitutional.

Law no. 296/2021 for the approval of the Government Emergency Ordinance no. 33/2021 for amending and supplementing of Law no. 156/2000 on the protection of Romanian citizens working abroad was published in the Official Gazette of Romania, Part I, no. 1183 of December 14, 2021, in force starting with December 17, 2021.

The amendments and supplementations brought to Law no. 156/2000 on the protection of Romanian citizens working abroad concern, on one hand, the replacement of the "*destination state*" expression with "*host state*" expression, throughout the normative act, as well as other amendments regarding the obligations of the labour placement agencies concerning the examination of the required documentation for workers in order to enter into the host state, along with other obligations about providing sufficient time for workers for studying the job offers, before signing the agreements, otherwise, the labour agencies shall bear the repatriation costs.

Moreover, the fines shall be increased (i) in case of an intervention of other types of mediators between the placement agent or service supplier for labour placement, the person who benefits from the mediation services and the foreign employer, excluding situations that are regulated by the host state and (ii) in the case of a mediation service which purpose is other than establishing a legal working relationship. In these circumstances, the amount of fines is Lei 15,000 – 20,000 for the first situation and Lei 25,000 – 40,000 for the second situation.

In other terms, alongside with entering into force of Law no. 296/2021, the labour placement agencies and the service suppliers for labour placement must assure that before placing the workers into the host state, the workers possess the required documentation for entering and exercising the right to work and have sufficient time in order to study the binding



offers, before signing the agreements, and the content of the offer shall be in depth explained to them. The minimum period of time for explaining and studying the binding job offers shall be 5 days for the workers who are at the first mediation services and 2 days for the ones who have received the mediation services in the past. If not, in addition to bearing the repatriation costs, the placement labour agencies shall be sanctioned with a fine between Lei 8,000 and Lei 10,000.

Law no. 295/2021 for amending and supplementing Law no. 55/2020 on measures to prevent and combat the effects of the COVID-19 pandemic was published in the Official Gazette, Part I, no. 1183 of December 14, 2021, entering into force on December 24, 2021.

Law no. 295/2021 is amended and supplemented by the introduction of **Article 66¹** of the Law no. 55/2020, which provides, in the event of repetition of the minor offence referred to in article 65 letter q) by the head of an economic operator at the same registered office or secondary office, within 15 days from the previous finding of the same offence, that in addition to the main civil sanction referred to in article 66 letter (b), the ascertaining agent shall also order the complementary sanction of temporary closure, for a period of 15 days, of the registered office or secondary office in which the economic operator performs the activity without observing the conditions set up according to article 5 para. (3) letter f).

As regards the minor offence provided in article 65 letter q) of Law No. 55/2020, this concerns the situations where the heads of institutions or economic operators do not comply with the conditions relating to the limitation or suspension for a determined period of time of the activity performed by these institutions or economic operators (from the list of measures to reduce the impact of the type of risk during the state of alert).

It is also expressly provided, by way of derogation from the provisions of article 32 para. (3) of Government Ordinance no. 2/2001, as amended and supplemented by Law no. 180/2002, with its subsequent amendments and additions, that the complaint against the minutes establishing the minor offence and imposing the civil sanction shall not suspend the execution of the complementary sanctions applied pursuant to article 66¹.

Government Emergency Ordinance no. 130/2021 on some fiscal-budgetary measures, extension of some terms, and for amending and supplementing some normative acts was published in the Official Gazette, Part I no. 1202 of December 18, 2021, in force from the same date.

With the entry into force of Emergency Ordinance no. 130/2021, some relevant changes have also been made in the area of labour law.

According to **Article XLVI** of the Emergency Ordinance no. 130/2021, after para. (2) of article 164 of Law no. 53/2003 – The Labour Code, two new paragraphs, para. (2¹) and para. (2²) are inserted, having the following content:

Para. (2¹): The minimum gross base wage guaranteed for payment established under para. (1) may be applied to an employee for a period not exceeding 24 months from the conclusion of the individual labour contract. After the expiry of that period, during which the employee will be qualified or not, he will be employed with a base wage higher than the national minimum gross base wage guaranteed in payment.

Para. (2²): The provisions of para. 2¹ shall also apply to an employee with the national minimum gross base wage guaranteed in payment, who has already concluded an individual labour contract of more than 24 months.