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Legal Bulletin



Employment

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1. Decision of the Constitutional Court approving the plea of unconstitutionality of the provisions of Article 52(1)(a) of Law No. 53/2003 - the Labour Code

Unconstitutionality of Article 52(1)(a) of the Labour Code

On 5 May 2016, the Constitutional Court decided on the plea of unconstitutionality of the provisions of Article 52(1)(a) of the Labour Code regarding the possibility to suspend the individual employment agreement, at the employer's initiative, for the duration of the preliminary disciplinary investigation. The decision has not been published yet in the Official Gazette of Romania.

By its decision, the Constitutional Court found the measure of suspension of the individual employment agreement, at the employer's initiative, for the duration of the preliminary disciplinary investigation, unconstitutional, because such measure restricts the employees' right to work, which is protected under Article 41(1) of the Constitution of Romania.

Further to this decision and following the publication of the decision in the Official Gazette of Romania, the employers may no longer order suspension of the individual employment agreement during the preliminary disciplinary investigation. Any decision to the contrary passed by the employers may be annulled by the courts of law. In this case the employers will be obliged to pay to the employees in question compensations equal to their salary rights due to them for the duration of their preliminary disciplinary investigation including where, further to the investigation, the investigated employees were found guilty. The employees may also claim moral damages.

As to the effects of the decision of the Constitutional Court, it shall be applicable and mandatory as of the date of its publication in the Official Gazette, and shall produce effects only for the future.

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Editors

Employment is one of the practice areas in which our lawyers have acquired extensive experience, ranging from management schemes tailored for both entities undergoing privatisation or private entities set up by international corporations in Romania, to preparing and negotiating collective and individual labour agreements and related specific clauses (employee benefits, restrictive covenants, stock option plans and trade option plans).

Our attorneys also deal with employment related matters in relation to mergers & acquisitions and privatisations, involving redundancy programs, negotiations with trade unions, pension issues raised in transactions, investment management agreements etc. Our specialists are frequent lecturers on employment law issues and regular contributors to local and foreign publications, whilst being actively involved in the activities of reputed domestic and international associations and organisations such as the European Employment Lawyers' Association (EELA), HR Club, AmCham.



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