

26 January 2016

# Legal Bulletin



## Labour law

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1. **Decision No. 814/2015 of the Constitutional Court, for approval of the plea regarding the unconstitutionality of the provisions of Article 60(1)g) of Law No. 53/2003 - the Labour Code**

## Unconstitutionality of the provisions of Article 60(1) g) of the Labour Code regarding the absolute interdiction to dismiss employees with eligible positions in a trade union

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Decision No. 814/2015 for approval of the plea regarding the unconstitutionality of the provisions of Article 60(1) g) of Law No. 53/2003 - the Labour Code (“**Decision No. 814/2015**”), was published in the Official Journal of Romania, Part I No. 950 of 22 December 2015.

The Constitutional Court found that the provisions of Article 60(1) g) of the Labour Code, which prohibit employers to dismiss persons holding eligible positions in a trade union organization, are contrary to the provisions of the Romanian Constitution regarding equality before the law (Article 16), right to private property (Article 44) and economic activity (Article 45).

Also, the Constitutional Court upheld that the protection of the trade union leaders should operate exclusively by reference to their actually performed trade union activity (as provided under Article 220(2), the Labour Code), and not by reference to the employee’s main professional activity.

Therefore, following the decision of the Constitutional Court, the employer is entitled to dismiss the trade union leader both for reasons related to the employee (Article 61, the Labour Code), and for reasons not related to the employee (Article 65, the Labour Code), as long as one cannot link the reasoning behind the dismissal with the trade union related activity.

To conclude, the protection provided under Article 220(2), the Labour Code, is sufficient and consistent with the observance of trade union freedom, while the courts of law - before which the dismissal of a trade union leader has been brought - have the mission to examine whether or not there is any connection between the envisaged reason for dismissal and the performance of the trade union mandate.

Further to the decision of the Constitutional Court, which is definitive and generally mandatory, the practice of the courts was aligned to it.

As an example, in the practice of our law firm, there was a dispute for the annulment of the dismissal decision concerning a trade union leader (grounded on the suppression of his position, and ordered prior to the publication of Decision No. 814/2015) in which the first instance court ordered annulment of the dismissal decision pursuant to the provisions of Article 60(1) g), the Labour Code. Thereafter, pursuant to Decision No. 814/2015, the appeal court overturned the judgment of the first instance court, which it changed completely, and maintained the dismissal decision.

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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), Multilaw, AmCham etc.



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