

INDIVIDUAL EMPLOYMENT CONTRACT SPECIAL STIPULATIONS OTHER THAN THOSE PROVIDED BY THE LABOUR CODE

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Abstract

The individual employment contract parties can negotiate and provide stipulations that govern their juridical labour relations, other than those stipulated by Labour Code, according with the paragraph 1 article 20 of the bill in discussion. In principle, this legal liberty is the expression of the will's autonomy of the parties to conclude any legal act. We have to say that these stipulations transform the employment contract of an act imposed, an adhesion act in one governed by the principle of contractual freedom, even if the juridical literature calls these nonessential and optional clauses.

In concreto, the employee and employer may agree to any provision not contrary to imperative stipulation of law, public order or morality. Thus, in this study we aimed to analyze those terms often encounter in labour relations: terms of intellectual propriety rights, conscience, stability, risk, delegation of responsibilities, objective, restriction of free time, index clause, without claiming exhaustive treatment of this topic, considering the development and adaptation of labor relations in Romania in the European context and beyond.

Keywords: labour relationship, labour contract, negotiation, contractual optional stipulations, contractual freedom.

Introduction

As stated in the specialized legal literature¹, the individual employment contract is a mixed contract, if we take under consideration its clauses, because it contains both a legal and a conventional part. If the legal part of this contract refers to clauses expressly provided by law, clauses also named essential and obligatory, the conventional part reports to those clauses which the parties may negotiate and insert in the concluded contract.

Although in this study we proposed ourselves to analyse only the optional clauses of the individual employment contract, we believe it is necessary to make some explanatory notes regarding the clauses imposed by the legislator to be included in this contract.

On the one hand, as we have already mentioned, the statutory individual employment contract contains elements of a general nature provided, in principle, in Article 17 of the Labour Code. These general elements are also stipulated in Article 18 (the situation when the employee should perform his/her activity abroad), Article 102 (the individual part-time employment contract), and Article 106 (the individual home working contract). Specifically, according to the framework model of the individual employment contract², it must necessarily include the following elements: the parties of the contract, its subject, period, workplace, occupation/position, job description, work conditions, length of the working time, annual leave, remuneration, specific rights regarding the health and safety at work, other clauses referring to the probationary period, the notice, etc., general rights and obligations of the parties and final provisions (that concern the amendment of the contract, number of copies, resolution of the labour disputes). Within the limits stipulated by law, the essential and mandatory clauses of the individual employment contract may also be negotiated, because, generally,

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¹ Al. Țiclea, *Tratat de dreptul muncii*, ediția a II a, Ed. Universul Juridic, București, 2007, p. 429 and next.

² Approved by Order of the Minister of Labour and Social Solidarity no. 64/2003, amended by Order no. 76/2003.

the normative act stipulates a minimum level of the employee's rights. Moreover, even the laws are supplemented by the provisions of the applicable collective labour agreement, a real "law" in the relations between the parties. For example, the individual employment contract must include the clause regarding the employee's wage, but its amount is negotiated between the parties and it may not be set under the national minimum gross basic pay at that time or/and under the minimum wage established in the collective agreement applicable in that unit. However, the legal part of the individual employment contract reveals its importance in the case of the personnel of public institutions and authorities and that of other budgetary units, because the wages of such personnel or the length of the leave and the sum allowed for this leave are provided by legislative acts. Therefore, the personnel may not negotiate the amount of the wage because the legal clauses do not allow it.

On the other hand, the conventional part of the individual employment contract refers to two aspects: the additional clauses provided in Articles 21-26 form the Labour Code and the clauses that are not legally regulated, but which may be negotiated and included in the individual employment contract under the general legal limits. Even the legally regulated clauses, previously, were employed for the first time in practice, then accepted by the special doctrine, and finally stipulated in the code³. Mainly, we talk about the non-compete clause, but also about the confidentiality and mobility clauses. The existence of these additional clauses in the individual employment contract is left at the parties' decision, which are free to determine, through negotiation, if the contract that shall to be concluded or that is already concluded will contain or not these clauses (of course depending on the type of work, the tasks service involved, etc.).

The possibility of including in the individual employment contract other additional clauses, besides those provided by the Labour Code is indisputable and it results without any equivoque from Article 20 paragraph 2 Labour Code, which states "Shall be considered specific clauses, while the enumeration is not meant to be limitative: a) clause on vocational training, b) non-compete clause c) mobility clause d) confidentiality clause." Therefore, the parties of the individual employment contract may jointly decide to include in this contract other clauses too, but they must also establish their content. In this respect, it is shown the importance of autonomy and freedom of the will of the parties' employment contract, whose principles must be in compliance with the limits of the mandatory legal rules, the collective labour contract, the public order and morals.

Special stipulations other than those provided by the Labour Code

Clauses regarding the intellectual property rights

Legally, the intellectual property rights include: copyrights (referring to musical, literary, and artistic work; computer programs; photographic works) and industrial property rights (in an invention, trademark, know-how, marks of origin, production models, and industrial designs).

In the situations governed by Law no. 8/1996 on copyright and neighbouring rights⁴, in principle, the economic rights to works created (by the employee) under an individual employment contract shall belong to the author. If there is a contractual provision that stipulates otherwise, its significance lies in the employer's assignment of the copyrights, part of the individual employment contract. Such an assignment is made for a certain period. Where no such period has been specified, it shall be three years from the date on which the work is handed over. When the period specified by the contract or the three years end, the copyrights revert to the author.

³ In this respect, see Raluca Dimitriu, *Obligația de fidelitate în raporturile de muncă*, Ed. Tribuna economică, București, 2001, p.24-175; Al. Țiclea, *Considerații privind admisibilitatea clauzei de neconcurență în contractul individual de muncă*, in *Revista de drept comercial* nr. 7-8/1999, p. 136 and next.

⁴ Published in *Monitorul Oficial al României*, partea I, nr. 60/26.03.1996, as amended and supplemented by Government Emergency Ordinance no.123/2005, published in *Monitorul oficial al României*, partea I, nr. 843/19.09.2005.

In the case of computer programs or photographic works, created in the course of their duties from an individual employment contract, the economic rights belong to the employer, unless it was otherwise agreed.

In the case of industrial property rights, according to Law no. 64/1991 on patent⁵, if the inventor is an employee, and there is no contractual provision more favourable to him, the right to the patent shall belong as it follows:

- to the employer, in the case of inventions made by the employee under an individual employment contract that provides expressly the performance of inventive activities, where the said activities correspond to his actual duties (representing a part of his duty); in this case, the inventor shall benefit of an additional remuneration specified by contract;
- to the employee, for inventions made by him either in the course of his duties (but without having an inventive mission expressly mentioned) or within the area of concern of the employer, through knowledge or use of technology or means specific to the employer or information available on the premises of the employer, or again with material assistance from the employer, except where otherwise provided by contract. If such a problem arises (stipulation of a contrary contractual clause), the employer shall have a preferential right to conclude a contract in respect of his employee's invention, right that shall be exercised within three months (limitation term) of the date of the employee's offer.

Subsequently to the conclusion of the individual employment contract, the law allows either an addendum contract to the individual employment contract or a contract by itself, a civil one. This represents a solution that shall meet the principle of will freedom of the parties, allowed by the generic legal formulation, too.

Litigations between the author/inventor (employee) and the employer concerning the intellectual property rights can be characterized as conflicts of rights, if the clauses related to those rights were established by the individual employment contract (if permitted by law) or by a civil contract, if the assignment of the author/inventor's rights was done through a civil contract (even when the contract would be an accessory to the individual employment contract).

Goal clause

One of the most important differences between the individual employment contract and the civil service contract is that, in the case of the first contract, the employer is interested in providing work, by the "alive" labour, while, in the case of the second contract, the beneficiary is interested in realization of work, its result. This distinction usually appears as real. But nothing impedes the parties to establish, at the conclusion of the individual employment contract or during its execution, a goal clause, too. As consequence of the existence of this clause, the employee, who occupies a certain function or job, has the (contractual) service duty to achieve a concrete goal, a determined work of major interest to the employer. In this case, the type of work that is generally established as occupation/position is also identified through a specific goal (such as, achieving a certain work, entering a certain market). In other words, the "alive" work, seen as a kind of work, must, simultaneously, be materialized into a clear result.

In order to be valid, the clause should be, on the one hand, precise and, on the other hand, attainable (*ad impossibilum nulla obligatio*).

A goal clause, for example, is that to achieve a determined item and it may be accompanied by a clause of success or performance, so as the respective item to meet certain technical parameters or certain higher quality elements.

In conclusion, in an individual employment contract of unlimited or limited duration, full-time or part-time work, having a goal clause (including the success or performance clause), the employee's obligation does not remain exclusively a means' obligation (that of working), but it turns into one of result.

⁵ Republished in *Monitorul Oficial al României*, partea I, nr. 752/15.10.2002.

In exchange for achieving a particular goal, it is possible to provide certain additional benefits to the employee. Therefore, if the target was fully achieved, the employer is obliged to provide the additional benefits. If the target is not fully achieved, then the additional benefits are granted *pro rata*⁶, too.

*Conscience clause*⁷

The conscience clause is that clause, which, once introduced in the individual employment contract, entitles the employee to not accomplish a legal work order, in so far as, if it were implemented, it would conflict with the various options determined by the employee's conscience.

The possibility to include the conscience clause in the individual employment contract is not confined exclusively to the rules of the labour law. There is a constitutional support, too, stipulated by Article 29 of the Basic Law, which guarantees the freedom of conscience, and the fact that it shall not be restricted in any form whatsoever.

The typical situation of including and application of this clause applies in the case of media employees producers. Yet, other employees, such as those in the cultural creation, scientific, medical and legal area (legal advisers), can not be excluded.

From the employee's point of view, the object of the conscience clause can be based, in our opinion, on the following reasons: religious (for example, the refusal to write critically about the legal cult, which includes the concerned employee, or to make atheistic propaganda); morals (for instance, the refusal to write materials which produce an apologia for some life habits contrary to the traditions of the Romanian people or to a certain local community); political (i.e., the refusal to write critically about the ideology or political platform of a particular political party); scientific (such as the refusal to participate in development of works in the applied or fundamental research, judged as non-productive, even harmful or dangerous to humans or human society⁸); courtesy (such as the refusal to use harsh expressions or descriptions at one/some people.)

In turn, the employer recognizes the employee's right to refuse to execute a legal work order, to the extent that, in one case or another, the conscience clause shall interfere.

In principle, the non-performance of a legal work order can (at the employer's discretion) lead to disciplinary sanction of the concerned employee. But the existence of the conscience clause in the individual employment contract can provide protection to the employee against a disciplinary liability, in a given situation. In each case, the employee must however prove with pertinence that he can not execute the legal work order because of his conscientious objection. If the employee fails to prove, conclusively, that there is such an obstacle, he shall either proceed to the execution of the legal order given by the employer, or (if he still refuses) he shall be liable to be disciplinary sanctioned.

Of course, the illegal work order shall not be executed by the employee, in any case. So, *the conscience clause regards exclusively the employee's possibility to refuse the execution of a legal work order, without incurring disciplinary consequences*. In a sense, the conscience clause can be treated as a (contractual) clause of free disciplinary liability of the concerned employee.

The Romanian labour legislation does not regulate the possibility of including the conscience clause in the individual employment contract, nor does it explicitly prohibit it. In these circumstances what is not prohibited by law shall be recognized as possible, provided that the public order or morals shall not be violated. However, such problem can not practically arise, because affecting the public order through the non fulfilment of a legal job order, in the areas where the conscience clause may appear, it is difficult to assume. Infringing the morals represent a similar situation, too. Just on the contrary, moral reasons often found the conscience clause. On the other hand, any conscience clause

⁶ See O. Ținca, *Unele clauze specifice contractului individual de muncă*, R.D.C. nr. 6/2003, p. 54.

⁷ See, extensively, I.T. Ștefănescu, *Inserarea clauzei de conștiință în unele contracte individuale de muncă*, in *Dreptul* nr. 2/1999, pp. 56-57.

⁸ In this respect, see R.Gidro, *Opinii asupra unor dispoziții din proiectul Codului muncii cu privire la încheierea și conținutul contractului individual de muncă*, R.R.D.M. nr. 1/2002, p. 25.

shall be carefully negotiated, shall be entirely clear, and shall have analytical and practical character. Otherwise it might leave place of subjective interpretations and even abuse of rights (of either party of the individual employment contract).

The conscience clause itself, because it creates an advantage for the employee, does not involve, therefore, a specific pecuniary obligation for the employer.

No employee can invoke the conscience clause (the objection) in order not to carry out a legal obligation imposed by a peremptory norm (for example, the employee may not be absent from work in a given day, when legally it is a working day, just by claiming the conscience clause); no employee can invoke a mere difference of opinions between him and the employer (in which case he must carry out the employer's order if it is legal), but only the conscience clause⁹.

Stability clause. Extension clause

In the individual employment contracts of limited duration, but also in those of unlimited duration, it can be included a stability clause (or a clause of minimum duration of the individual employment contract). In Western practice of labour relationships, as the individual employment contracts of limited duration are increasing, the stability clause is used more and more often.

In essence, this is a clause which seeks to ensure preservation of the employee's job/position for a certain period of time.

During the existence of the individual employment contract, concluded for a limited duration, in principle, the employer may proceed to the dismissal of the concerned employee (as in the case of the employee who is a party in an individual employment contract of unlimited duration), as provided by law. The purpose of the stability clause is that the employer should oblige not to dismiss the employee (for reasons not attributable to him), ensuring to the latter a relative stability. Therefore, because the employee has the possibility to resign, such a clause limits the rights of the employer over a certain period, usually equal to that of the existence of the contract. The employer can not dismiss the employee, except in cases grounded on the culpability of the work's provider or for an objective reason (unrelated to the employee in question). If, despite this clause, the employer fires the employee, without the latter's culpability or without having an objective reason, the employee shall be entitled to claim compensations. Those are calculated, according to the stipulated wage, for the period measured from the moment the contract ended until the moment the employer had guaranteed the work stability.

In the developed market economies, the *extension clause* is practiced, too. This clause establishes that at the end of period for which an individual employment contract was concluded for a limited duration shall be concluded a new contract, of the same kind, for limited or unlimited duration.

The objective is similar to that of the stability clause, namely, the assurance of increased work stability for the employee. Yet, according to the Romanian Labour Code, including such a clause in the contract must be reported to Article 80 paragraph 3, corroborated with Article 82 paragraph 1, which stipulates that the individual employment contract of limited duration may not exceed 24 months (even its extension must be within the legal term).

The extension clause represents a promise of contract that must fulfil all the conditions of validity of any contract, including the fundamental elements of the future individual employment contract¹⁰.

Risk clause

In those individual employment contracts in which the specific of work, but in certain cases the workplace too, involves special risks for the employee (particularly in terms of his safety or physical and/or intellectual health or even of his life) it can be inserted a risk clause.

⁹ See G. Couturier, *Droit du travail, Les relations individuelles du travail*, Presses Universitaires de France, Paris, 1990, p. 354.

¹⁰ See O. Tinca, *op. cit.*, p. 58.

Such workplaces are classified according to the Labour Code and Law no. 31/1991 on the establishment of the working time for less than 8 hours per day for jobs requiring heavy, harmful or dangerous conditions, which draw certain rights for the employees, such as: a reduced daily work schedule; a higher wage (risk increment); an additional leave; health and safety measures at work, etc.

In addition to these measures established by law, the collective labour agreements may as well additionally include special provisions for employees.

However, individually, if the services of the future employee, due to his qualities, are strictly necessary to the employer, it can be reached by initial or later negotiation to the insertion of a special clause - called risk clause – in the individual employment contract. So, assuming, by the specific of work and/or by the workplace, a particular risk, the employee may receive certain benefits. The employer is contractually bound to pay these benefits.

The risk clause may concern either the increase of the benefits that the employer already has, according to the law or/and to the collective labour agreement in force, or the establishment of some additional benefits besides those already resulting from the law and the applicable collective labour agreement. Obviously, it is possible that the two ways of realizing the risk clause to be combined with each other.

The risk clause is usually inserted in the case of the employees who act as: personnel in certain areas of scientific research, medical personnel from the medical units of infectious and contagious diseases, journalists – war reporters, reporters of special investigations in the crime area, people working as bodyguard, etc.

Restriction clause in the spare time

By this clause, the parties establish a determined period from the employee's spare time, when the concerned employee is required to remain at home or to announce exactly where he is, so as, if the employer demands it, he shall be able to respond immediately and to accomplish operatively a particular job. Therefore, the restriction clause in the spare time means that the employee is required during the period that, otherwise, represents his rest period (daily, weekly).

Normally, this clause is the employee's obligation, either for a long period, or within a certain period, in which case he should be notified in advance (by the employer).

The time worked by the employee under these conditions is part of the normal working hours, and it does not represent overtime. Therefore, in all cases, the employer must ensure, overall, the compliance with legal regulations pertaining to maximum legal length of the working time (daily and weekly). Because the insertion into the individual employment contract involves the assumption of additional obligations for the employee, the employer can commit himself to remuneration accordingly, or to other ways to stimulate the employee.

In practice, such a clause is mostly included in individual employment contracts of certain employees whose qualified training allows their effective involvement in special situations (accidents, fires, disasters, etc.).

Delegation of powers clause¹¹

This is a clause whereby the employer or an employee having a management position (where the law allows) delegates to an employee under his subordination a part of his attributions. Typically, such a clause occurs during the execution of the individual employment contract, when the employer has had time to acquire the necessary confidence in the concerned employee, but it may also be agreed since the conclusion of the contract.

Delegation of powers can be accepted only under certain conditions, namely when:

- it is the will's expression of the employer and concerns only attributions that, legally, are not recognized to him exclusively;

¹¹ See, extensively, I.T. Ștefănescu, *Delegarea de atribuții disciplinare în dreptul muncii*, in *Dreptul* nr.12/2004, p. 106.

- it respects the condition to delegate the same tasks, at the same workplace, to a single employee;

- it is specific, meaning that it does not result from the precise job of the delegated employee (such as, for example, the inherent attributions of a management position, consisting of surveillance the activity in a given field, in a particular area of production, etc.).

- it is accurate, meaning that the general powers of organization and control, established by the individual employment contract, does not represent - in the absence of specific directions - an express delegation of powers;

- it is effective; respectively, the employer (the delegating person) takes all the measures that enable the delegate to actually perform the tasks entrusted to him; naturally, the delegate must be able, through his professional training and ability, to perform the tasks he was empowered with; he must dispose of the material and financial resources necessary to fulfil his mission; he must have the power to control and to resort to disciplinary orders in order to be able to give mandatory disposals to other employees and to impose their compliance;

- it is accepted, because, on the one side, it refers to additional tasks besides the current ones, specific to the job (position) of the concerned employee, and, on the other side, it can lead to the liability, even criminal, of the delegated employee in place of the delegating person¹²;

- the rule according to which the delegate can not delegate in his turn the attributions he received as delegate duties is respected. In other words, the rule *delegata potestas non delegatur* applies to the labour law, too. It concerns the common situations when the delegate would like to submit on his own wish to another employee, by sub-delegation, a part or all the tasks he was given by the employer. It does not concern the situations when the person entitled to delegate (the employer) agrees, on purpose, with a sub-delegation of duties. It should also be noted that this has as effect, among other things, the free of the delegating person and that of the sub-delegating person of legal responsibility that comes from the failure to exercise or the improper exercise of the powers in question (as the delegation of tasks, which frees the delegating person of responsibility).

Because “the employment relationships are based on the principle of consent” (Article 8 paragraph 1 of the Labour Code) and because it does not exist a legal requirement to the contrary, the delegation of powers does not involve *ad validitatem* the written form (although, practically, it is of course preferable)¹³.

We believe some more clarifications are necessary to be done in this matter: first, the delegation of powers can not produce its effects just by specifying it, in a general way, as a possibility in the constitutive act or the standing orders (respectively in the collective labour agreement); such a clarification is useful, but certainly not enough. In light of such comments (from the constitutive act, internal rules or collective labour agreement), it must be made an explicit act of delegation of powers to a certain employee who, in his turn, accepts the delegation concerned¹⁴. If there is no such provision stipulated by the constitutive act, the internal rules or the collective labour agreement, it is possible (in the absence of express statutory prohibitions, general or specific), the delegation of powers by act of the employer, accepted by the employee¹⁵.

The act of will of the employer and of the employee, who accepts the modification of his work duties, on the purpose of receiving additional attributions, act initiated by the employer, represent, in most cases, an addendum to the individual employment contract or a clause to the

¹² See F. Signoretto, *Les contrats de travail*, Editions d'Organisation, Paris, pp. 226-227.

¹³ In this context, we mention that the delegation of powers, even if it usually involves, additional work tasks for the delegate, in such a hypothesis, it does not involve *sine qua non* an additional payment, too.

¹⁴ It is possible that in the constitutive act, the internal rules, instead of a general normative, to be stipulated in details the delegated attributions from the employer's level to the level of a/some subordinate position(s).

¹⁵ In such a case, in fact, is incident the Article 295 paragraph 1 of the Labour Code, regarding the application in the field of employment, too, of the civil law provisions, as common law.

individual employment contract, if it is established since the conclusion of the legal employment relationship.

Delegation of powers – inclusively those regarding the individual employment contract – can be done from the level of the management/chief of the organization with legal personality to the level of the chief of the sub-unit without legal personality.

In the case of public institutions and authorities, too, the delegation of tasks (of powers) appears as admissible. Moreover, according to Article 44 paragraph 1 of Law no. 188/1999 regarding the Regulations of civil servants, republished, with subsequent amendments and completions: “Civil servants are responsible, according to the law, to fulfil the prerogatives of the civil service they exercise, as well as any other authorized prerogatives delegated to them”.

Delegation of powers cease by:

- withdrawal by the employer (by the chief of the authority or public institution) of the delegation of powers¹⁶.

- agreement of the parties. Due to its subordination, the delegated person - the employee or public servant - can not deny the exercise of the powers conferred upon him¹⁷. Of course, he may propose at any time to his employer to cease the delegation, in which case – if the delegating person accepts – the delegation of powers shall cease by agreement of the parties.

- when the delegation of powers reaches its term. By hypothesis, this delegation was given for a determined period or for the execution of a precise task.

- cessation of the individual employment contract (as provided by Articles 55, 56, 58, 61, 65 and 79 of the Labour Code) or of the administrative contract, in case of public servants (Article 84 of Law no. 188/1999 regarding the Regulations of civil servants).

- Intervention of a case of force majeure with definitive effects.

Wage's rise clause

The rise of the wage can be usually achieved at the request of the employee or at the employer's initiative.

Given the possible decrease of the net wage by reducing the purchasing power, the wage should be raised regularly. The increase can be done under the pressure of the employees, too - as result of a trade union's action, including a strike.

Nevertheless, it is possible, taking into account the social and economical realities, to include an indexation clause in the individual employment contract. In essence, it consists in the commitment of a regular rise of the wage (quarterly, half yearly, annually or at such other time) with at least the inflation index. Thus, automatic, the rise of the wage is closely correlated with the cost of living. Such a clause is certainly an element of interest, mainly, for the employees, but also for the employers interested to keep within them the highly skilled employees, who give maximum efficiency.

Limits of the contractual freedom in the employment law and prohibited clauses of the individual employment contract

As we have already mentioned, the presentation of the additional clauses, optional to the individual employment contract, is not exhaustive¹⁸, the parties being free to negotiate any provision,

¹⁶ Therefore, we think it is a case in which, although the initial legal document represents an agreement of will, it always includes, implicitly, a forfeiture clause in favour of the delegating person. Indeed, it would be inconceivable that the withdrawal of the delegation of powers to engage, under the symmetry of legal acts, the consent of the employee or public servant.

¹⁷ Just as it is possible in the case of the mandatory to renounce to the given mandate. See F. Deak, *Tratat de drept civil. Contracte speciale*, Ediția a III-a, updated and amended, Editura Universul Juridic, București, 2001, p. 333; B. Ștefănescu, R. Dimitriu and others, *Drept civil*, vol. II, Editura Lumina Lex, București, 2002, p. 348; I.R. Urs, S. Angheni, *Drept civil. Contracte civile*, vol. III, Ediția a III-a, Editura Oscar Print, București, 2000, p. 118.

¹⁸ For example, the legal doctrine also mentions the reserve clause by which the employee obliges to have/show a circumspect and reserved behaviour, favourable to the positive image/reputation of his employer. But in

under the principle of the contractual freedom. However, this principle is not an absolute one. In our case it is circumscribed to some general limits, but also to a special limit. The general limits of the contractual freedom are those referring to the imperative legal provisions related to the public order and morality¹⁹. The special limit refers to the applicable collective labour agreement.

Concerning the special limit, the employee's rights included in the individual employment contract must be reported to those stipulated by the applicable collective labour agreement, meaning that they can not be below the minimum level laid down by the latter. Thus, if the rights provided by laws represent the general minimum limit regarding the employees' rights, those contained in the collective labour agreement represent the special minimum limit, applicable only to the unit or to its branch, where the collective agreement is in force. By consequence, all clauses that derogate, meaning that they are less favourable to the employee, from the legislative provisions or from those stipulated by the collective labour agreement in force are *prohibited clauses*²⁰. Also, clauses such as the exclusivity one, which would limit the exercise of freedom of association, which would restrict the right to strike or to resign, can not be included in the employment individual contract, as they are under the sanction of nullity. The celibacy clause, the dismissal clause (by which the parties agree that the employer shall decide to cease the individual employment contract at the request of the employee), the place or residence clause, if it affects the employee's freedom to choose his home, the arbitration clause (whereby the parties agree to submit to arbitration the disputes between them), the variation clause (which allows the employer, on his own unilaterally intention, to amend any of the essential elements of the individual employment contract) are breaking the mandatory rules. Therefore they are considered prohibited²¹.

Conclusions

In conclusion, nothing prevent the employment contract parts to negotiate and include in the labour contract any optional clauses to satisfy their interests which are not stipulated in the law with the respect of general and special limits. Also, that shows that we find ourselves in the presence of a contract with all the specifications of this bilateral legal act, ruled by the principle of free will, not in the presents of an impose contract. Even more and without denial of the legal part of the employment contract, according to the applicable legal texts there is no legal regime difference between the established rights, edicts, recognized or guaranteed by legal or conventional means (by individual or collective negotiation).

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practice, such a clause is not found under this denomination. Such obligations of the employees are stipulated by the Internal Rules.

¹⁹ For the explanation regarding these limits see, A. Hurbean, *Legal nature of individual employment contract*, article published in *Lex ET Scientia International Journal. Juridical Series*, no. XVII, vol. 2/2010, pp.41-49, B.D.I. în EBSCO-CEEAS Database, INDEX COPERNICUS, CEEOL Database;

²⁰ O. Ținca, *Observații referitoare la unele clauze specifice din contractul individual de muncă*, in *Revista Română de Dreptul Muncii* nr. 4/2008, p. 16.

²¹ O. Ținca, *op. cit.*, p. 22-23.

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