

# EL SALARIO IN RUMANÍA – THE FACTS BEHIND THE MYTHS\*

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## RESUMEN

*Rumanía es considerada con frecuencia como un país con un mercado de trabajo desregulado, con bajos costes laborales y unas relaciones laborales muy liberalizadas. Este artículo pretende reflejar una imagen de la realidad objetiva existente tras el mito, subrayando ciertos aspectos relacionados con la definición de salarios, así como con las normas imperativas de regulación salarial (incluyendo el salario mínimo) y con la regulación del pago del salario (en metálico o especie). Un lado de la realidad tras el mito muestra una sólida y detallada regulación referida a la fijación de salarios y al pago de los mismos. Otra realidad –más en consonancia con el mito– es el bajo nivel de salarios, agravado por todos los cambios introducidos en la negociación colectiva, fundamentalmente, a causa del fuerte giro experimentado hacia un sistema de negociación individual de salarios.*

## ABSTRACT

*Romania is often seen as a country with a liberal labour market, cheap labour force and highly liberal labour regulations. The present paper aims to offer an image of the 'objective' reality behind the myth, by highlighting certain aspects related to the definition of wages, as well as to wage setting imperative rules (including statutory minimum pay) and to the payment of wages (in money and in kind). One side of the reality behind the myth is the strong, detailed regulation concerning wage setting and payment. Another reality –supporting the myth– is the low level of wages, deepened by all the changes in the collective bargaining, mainly by the forced shift to single-employer bargaining.*

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**Palabras clave:** Normas de fijación de salarios, pago del salario, deduccions salariales.

**Key words:** wage setting rules, payment of wages, deductions from wages.

Seen as one of the poorest countries in the EU, Romania is perceived –at least in the labour field– as a sort of a Wild West, where everything seems to be possible. Besides the favourable geographical location, among the main advantages for foreign investors –such as cheap and highly qualified labour force and a 16% flat tax for corporations and individuals– a liberal Labour Code is also mentioned. What is the reality behind the myth? If we look at the official data, foreign investments are a reality: according to the Romanian National Bank, in 2014 foreign direct investors' net income amounted to 1704 million Euros<sup>1</sup>. Compared to 2013, the foreign direct investor enterprises' turnover went up by 1.7 percent and the average number of employees rose by 3.8 percent to 1124 thousands persons. How badly are these employees payed and how liberal the Romanian labour legislation really is? This paper aims to bring an answer mainly to the last question, from the perspective of wage setting in Romania.

I shall start by mentioning that Romania has a long tradition in the field of labour codification, with the first laws adopted at the end of the 19th century<sup>2</sup>. The Labour Code in force (Codul Muncii) was enacted in 2003<sup>3</sup> and revised several times. The Labour Code governs the relationship between employers and employees, covering both the Romanian employees working for Romanian employers in Romania or abroad<sup>4</sup>, as well as foreign and EU citizens working in Romania (lex loci laboris) for Romanian employers. In this context, it worth mentioning that the Romanian labour legislation acknowledges only the categories of employers and employees, without recognising labour law rights to other intermediate categories, such as economically dependent workers. On the contrary, there is a mandatory affiliation to social security systems (health system, unemployment and pensions schemes) to all the persons performing work, regardless of the nature of their contract.

## 1. PRELIMINARY REMARKS.

In terms of legal terminology, the Romanian word for remuneration arising out of the employment contract is *salariu*, similar to the Spanish *salario* or the French *salaire*, due to its Latin origins. The Romanian word *retribuție*, similar to the Italian *retribuzione* or the Portuguese *retribuição*, was also used during the communist period in order to express payment in return for employee's labour, but it is now quasi-abandoned for historical reasons.

<sup>1</sup> Romanian National Bank, 2014 Foreign Direct Investment Statistical Survey (completed on the 30th September 2015), available at: [http://www.bnr.ro/Regular-publications-2504.aspx#ctl00\\_ctl00\\_CPH1\\_CPH1\\_14364\\_InkTitle](http://www.bnr.ro/Regular-publications-2504.aspx#ctl00_ctl00_CPH1_CPH1_14364_InkTitle). The top 5 investing countries, at the end of 2014, were: the Netherlands (23.6 percent of the foreign direct investment stock), Austria (16.1 percent), Germany (12.4 percent), Cyprus (7.1 percent) and France (6.8 percent). Spain was the 11th foreign investor, at the end of 2014, with 2.4 percent of the foreign direct investment stock.

<sup>2</sup> The first laws regulating certain aspects of the employment relationship – mainly workplace health and safety and working time – were adopted in 1885 and 1894, followed by the Law on crafts, adopted in 1902 and regulating in detail the employment relationship between the employer and the employee, as well as apprenticeship. The first Labour Code – even though not entitled as such – was the Law on the employment contracts and collective agreements adopted in 1929, followed by several Labour Codes, adopted in 1950, 1972 and 2003.

<sup>3</sup> Law n° 53 of 24 January 2003, republished the Official Gazette n° 345 of 18 May 2011.

<sup>4</sup> In this case, there is an exception set by law, consisting in the more favourable rights provided by the legislation of the State where work is performed (e.g. the French legislation on working time will be applicable to a Romanian employee working in France, as it is more favourable than the Romanian legislation regulating the same aspects).

According to the constant case-law of the Romanian Constitutional Court, the right to wages for work performed is a fundamental right, as it represents the inherent consequence of the right to work, expressly protected under the terms of the Romanian Constitution<sup>5</sup>.

In order to ensure its effectiveness as a fundamental right, wage setting in employment contracts is regulated in Romania by minimum imperative rules. These rules are established mainly by the Labour Code and, for the public sector, by Law n° 284 of 28 December 2010 on the unitary pay system for public sector employees.

Minimum wages and the obligation of payment of wages in cash were regulated in Romania since the beginning of the 20th century, first for the agricultural workers<sup>6</sup>, then in the public sector<sup>7</sup> and in the private sector<sup>8</sup> (where initially the rules on wage setting were established by collective bargaining, in the applicable collective agreements).

Following the historical tradition, all employers in Romania, legal or natural persons, must comply with labour legislation, regardless of the size of business or of the number of employees; as a consequence, they must also respect the minimum imperative rules for setting wages in employment contracts. The Labour Code contains generally applicable rules, both for the private and the public sectors; in addition, for the public sector, specific rules are contained in the above mentioned Law n° 284 of 28 December 2010.

Wage represents an essential element of the employment contract as, according to the Romanian Labour Code, for the work performed under the authority of the employer, the employee is entitled to wages expressed in cash. There is no employment relationship without the payment of a salary for the work performed or the service rendered<sup>9</sup>. Both basic remuneration and permanent benefits must be inserted into the employment contract and, according to the Labour Code, all employment relationships must be governed by a written contract, enacted in Romanian. The rate of wages and method of calculation, the manner and periodicity of payment, the advances of wages, if any, must be set in detail in the employment contract.

As a general rule, the employment contract must include clauses on the all essential elements of the employment relationship<sup>10</sup>, such as: salary (basic wages, permanent benefits and other bonuses); job description, including the required job duties; risks to health and safety associated with the performance of work; working time; entitlement to annual leave (of minimum 20 working days); the conditions under which the contracting parties can give their notice and the duration of the latter; the rights and obligations of the parties to the employment contract; the applicable collective agreement.

Besides the obligation to set in written the essential elements of the employment contract, employees' rights are protected by the use of a general *in favorem* rule contained in the Labour Code. According to this rule, parties cannot agree on and the employment contract cannot set

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<sup>5</sup> Romanian Constitutional Court, decision no 872/2010, published in the Romanian Official Gazette no 433 of 28th July 2010; decision no 66/2012, published in the Romanian Official Gazette no 232 of 6th April 2012; decision no 756/2012, published in the Romanian Official Gazette no 722 of 24th October 2012; decision no 169/2015, published in the Romanian Official Gazette no 339 of 18th May 2015; decision no 210/2015, published in the Romanian Official Gazette no 345 of 20th May 2015.

<sup>6</sup> *Legea pentru învoielile agricole*, adopted in 1907.

<sup>7</sup> Law no 103 of 1923.

<sup>8</sup> Law no 36 of 1929 on the employment contracts: there was a series of rules established in the law in order to guarantee the effective payment of wages in cash and to insure the application of collectively bargained payment schemes. In addition, Law no 775 of 1939 provided for the establishment of minimum wages.

<sup>9</sup> Al. Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență*, Editura Universul Juridic, București, 2016, p. 522.

<sup>10</sup> Article 17 of the Romanian Labour Code.

employee's rights below the minimum level established by legislation. When negotiating or performing employment contracts, the Romanian Labour Code forbids employees to waive (to give up) their legally granted rights; any transaction designed to waive or to abridge such rights is void. As a consequence, the rules on setting wages contained in the Romanian Labour Code represent minimum imperative rights: any employee, falling within the scope of the Labour Code, has the right to a monthly pay of wages expressed in cash and the agreed wage has to respect a double minimum limit: that of the statutory minimum pay and, eventually, that of the conventional minimum pay, set by the applicable collective agreement.

## 2. THE DEFINITION OF WAGES.

The definition of wages provided by the Labour Code is general, as retribution is seen as the equivalent of the work performed by an employee. Romania has ratified the International Labour Organisation's Convention No 95 concerning the Protection of Wages and, in practice the definition of wages is even larger<sup>11</sup>, as it means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered. The wide definition is partly similar to the Spanish definition of wages, provided by Article 26 of *Estatuto de los Trabajadores*. However, the distinction used in Spanish law<sup>12</sup> between direct and indirect remuneration is not acknowledged in Romania: the money paid by the employer for public holidays, other days-off or annual leave simply form a part of the employee's remuneration.

There are different perspectives on wages in the Romanian legislation: first, there is the general, labour law definition, quoted above, integrating all the advantages, in money or in kind, received in exchange for work performed. Working tools, uniforms or other type of working clothes represent a company charge and, as a result, are not taken into account as wage components.

There is a second perspective on wages for social security purposes and, in this case, the legal nature of the advantages, in money or in kind, received in exchange for the work done is established by the courts according to the rules set by the Tax Code. However, controversies still exist mainly on the scope of wages for social security and tax purposes, as it is the case of the daily allowance paid to posted workers. A part of the Romanian labour scholars<sup>13</sup> consider that such an allowance is less related to the work performed, but it is rather meant to compensate the disadvantages and the cost incurred because of the fact that the employee temporarily performs work outside her usual work place. As a general rule, similarly to the Spanish law, the parties' will in establishing the legal nature of such advantages or the denomination that they have given to them are less relevant<sup>14</sup>, but courts take in consideration the connection between the work performed or the service rendered and the advantage received.

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<sup>11</sup> I. T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, Editura Universul Juridic, București, 2012, p. 571; Al. Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență*, Editura Universul Juridic, București, 2016, p. 522; R. Gidro, *Dreptul muncii*, Editura Universul Juridic, București, 2013, p. 251; M. Gheorghe, *Dreptul individual al muncii*, Editura Universul Juridic, București, 2015, p. 346.

<sup>12</sup> R. Martín Jiménez, *El salario*, in Antonio V. Sempere Navarro, Pilar Charro Baena, *El contrato de trabajo*, Volumen I, *Régimen general del contrato de trabajo*, Arazandi, Navarra, 2010, p. 1014.

<sup>13</sup> L. Miller, S. Ghimpu, *Delegarea, detașarea și transferarea salariaților*, Editura Științifică, București, 1966, p. 107 – 108; C. Jornescu, T. Zega, *Delegarea, detașarea și transferul*, Editura Științifică și Enciclopedică, București, 1979, p. 50; F. Roșioru, *Aspecte controversate privind reglementarea delegării în raporturile de muncă*, Foaia avocatului, Cluj-Napoca, 2015.

<sup>14</sup> R. Martín Jiménez, *El salario*, in Antonio V. Sempere Navarro, Pilar Charro Baena, *El contrato de trabajo*, Volumen I, *Régimen general del contrato de trabajo*, Arazandi, Navarra, 2010, p. 1017.

### 3. WAGE SETTING MANDATORY RULES.

#### 3.1. General rules.

The basic principle, established by Article 162 of the Romanian Labour Code, is that wages are freely negotiated between the employer and the employee. However, the parties' will is not absolutely free, as there are two limits in setting wages by mutual agreements: the statutory minimum pay (the minimum gross salary) and the payment schemes contained in the applicable collective agreement. Normally, both limits express the minimum level of income in return for the employee's work.

Wage includes basic pay, benefits (such as extra pay for overtime working or night work) and other supplements and bonuses. The statutory minimum pay concerns basic pay; the minimum hourly and monthly wage, as a single, statutory minimum wage, is regulated by Government Decision, in order to ensure that persons performing work under an employment contract receive a minimum level of income in return for their labour.

The minimum gross salary is of mandatory application at national level: all the employers –legal or natural persons– must respect and pay at least the minimum (monthly or hourly) wage for the work performed by the employee. Any contrary agreement is void and the employers who disregard this obligation may incur administrative sanctions.

However, basic pay is not always limited to the statutory minimum wage, but it is negotiated taking in consideration the complexity of job duties, the level of qualification and of studies, as well as the experience or the previous length of service required in order to perform the job duties<sup>15</sup>.

*Benefits*, such as extra pay for overtime working, night work, for a certain length of service or for work in special circumstances, entailing health and safety risks or higher physical or mental effort<sup>16</sup>, are usually negotiated by the social partners and are regulated by the applicable collective agreement. According to the Labour Code, the employer is obliged to pay a benefit of at least 75% of the hourly basic pay for every hour of overtime working and at least 25% of the hourly basic pay for every hour of night work, but higher levels may be negotiated individually or collectively. Other *supplements* (as for productivity) and allowances (such as meal, childbirth or childcare allowances) may be individually or collectively negotiated.

Besides benefits, bonuses and allowances established by the relevant legislation, the parties may negotiate and agree on bonuses for non-competition, confidentiality and mobility clauses, as well as on additional payments for exceptional results on specific projects.

The components and method of calculation of wages for each category of jobs may be established by way of collective agreement.

All the benefits, bonuses, allowances and other components of wages, regardless if they are provided by law, set by collective agreements or individually negotiated, must be set in detail in the employment contract.

However, in the public sector, benefits, bonuses and other supplements are strictly established by law and, according to Law n° 284 of 28 December 2010 on the unitary pay system for

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<sup>15</sup> Al. Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență*, Editura Universul Juridic, București, 2016, p. 523.

<sup>16</sup> Benefits are granted in order to compensate work under certain circumstances – Înalta Curte de Casație și Justiție (High Court of Justice), Secțiunile Unite, Decizia în recurs în interesul legii nr. 46/2008, published in the Romanian Official Gazette no 495 of 16th July 2009; R. Gidro, *Dreptul muncii*, Editura Universul Juridic, București, 2013, p. 254.

public sector employees, they cannot exceed 30% of the basic pay. Since 2011, according to Law no 62/2011 on the social dialogue, the level of wages, as well as of benefits, bonuses or other supplements cannot be negotiated and established by way of collective agreement applicable in the public sector.

### 3.1.1. *The statutory minimum wage.*

As mentioned above, the minimum wage in Romania is the lowest monthly or hourly remuneration that employers are legally allowed to pay their workers. Starting with the 1th of May 2016, the gross monthly minimum wage is 1250 lei and the gross hourly minimum wage is 7,382 lei/hour. For full-time employees it is always the gross monthly wage that is specified in the employment contract; for part-time employees, it is the hourly wage that is used in order to express remuneration in exchange for work.

The level of minimum wage is determined by the government following a (nonbinding) recommendation or consultation of a third party –the National Tripartite Council for Social Dialogue– consisting of the representatives of the social partners. There aren't any special rates of statutory minimum wages, in the sense of adjusted rates applicable to specific groups<sup>17</sup>; the minimum wage is legally binding for all workers in all sectors of the economy.

However, the situation in Romania is similar to the one in Latvia, as in Romania young employees (under the age of 18) have a statutory working time of 30 hours per week<sup>18</sup> (which is less than normal working time of 40 hours). Their hourly minimum wage is in fact higher, as the standard monthly minimum wage is not adjusted for the shorter working time. So, even if there isn't any specific monthly minimum wage for specific groups, the hourly minimum wage may be different because of the statutory working time.

Romania is known as one of the EU Member States with the lowest minimum wage. During the last years, the lowest minimum wages (less than 500 EUR per month) could be found in the new Member States: Bulgaria (420 BGN/around 214 EUR) and Romania (1050 RON/around 236 EUR since July 2015 and 1250 lei/around 277 EUR, since May 2016), contributing to Romania's image of a 'poor country'. However, the minimum wage in Romania has constantly increased during the recent years, especially since 2013. Alongside with Austria, Romanian has acknowledged an increase of approximately 7.5% in the level of statutory minimum wage since the 1th of January 2015 to the 1th of January 2016. Romania was the only country in the EU where the minimum wage has increased by 19% (to 1250 RON/around 277 EUR per month) in May 2016<sup>19</sup>.

The table below shows the evolution of the gross monthly minimum wage in Romania during the last twenty years.

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<sup>17</sup> In January 2016, thirteen EU Member States reported special rates of the minimum wage, applicable to specific groups: for young workers (Belgium, Greece, France, Ireland, Latvia, Luxembourg, Malta, the Netherlands and the UK) and for workers undergoing training or apprenticeships (France, Ireland, and the UK); for disabled persons (Czech Republic and France); for (parts of) sectors (Germany) or for specific occupations (Hungary). Different minimum wage levels can also apply according to the work experience or the period from the beginning of employment (Belgium, France, Ireland and Poland) - K. Fric, *Statutory minimum wages in the EU 2016*, Eurofound, 2016, p.16-18, available at: <http://www.eurofound.europa.eu/observatories/eurwork/articles/working-conditions-industrial-relations/statutory-minimum-wages-in-the-eu-2016>.

<sup>18</sup> In Latvia, statutory working time for young workers is of 35 hours per week - K. Fric, *op. cit.*, p. 18.

<sup>19</sup> The UK has also announced the introduction of an increased rate (7.2 GBP/around 9.5 EUR per hour) of minimum wage for workers aged 25 years or more – K. Fric, *Statutory minimum wages in the EU 2016, cit. supra*, p. 6.

<i>Starting date</i>	<i>Value in lei</i>	<i>Value in EUR</i>
1 May 2016	1250 RON	277€
1 July 2015	1050 RON	236€
1 January 2015	975 RON	216€
1 July 2014	900 RON	205€
1 January 2014	850 RON	189€
1 July 2013	800 RON	179€
1 February 2013	750 RON	171€
1 January 2012	700 RON	155€
1 January 2011	670 RON	159€
1 January 2009	600 RON	142€
1 October 2008	540 RON	142€
1 January 2008	500 RON	140€
1 January 2007	390 RON	114€
1 January 2006	330 RON	90€
1 January 2005	310 RON <sup>20</sup>	85€
<i>Starting date</i>	<i>Value in lei</i>	<i>Value in EUR</i>
1 January 2004	2,800,000 ROL	70€
1 January 2003	2,500,000 ROL	65€
1 March 2002	1,750,000 ROL	62€
1 March 2001	1,400,000 ROL	56€
1 December 2000	1,000,000 ROL	45€
1 February 2000	700,000 ROL	39€
1 May 1999	450,000 ROL	29€
1 April 1998	350,000 ROL	
1 October 1997	250,000 ROL	
1 August 1997	225,000 ROL	
1 February 1997	150,000 ROL	
1 August 1996	97,000 ROL	
1 April 1995	75,000 ROL	

This general trend to increase the minimum wage in Romania is partly the result of a national debate, according to which having low wages is actually bad for the national economy, as it favours migration of the work force. The debate is larger and it starts with the fact that, under the circumstances of a low rate of unemployment<sup>21</sup>, because of the low wages, young labour force

<sup>20</sup> Starting with the 1th of July 2005, a monetary reform was operated in Romanian and 10.000 lei (ROL) were replaced with 1 leu (RON) – basically, four zeros were cut from all the prices, salaries and any obligation having a monetary expression.

<sup>21</sup> In August 2016, the unemployment rate in Romania was of 4.80%.

and skilled workers choose to work abroad, generating lack of personnel in certain economic activities. On the one hand, the phenomenon undermines the public investment in the education system, mainly supported by public funds; on the other hand, it is generating problems in supporting the public retirement pension funds and it increases the effect of the ageing of the population. In this context, there is a new proposal to increase the statutory minimum wage in 2017 to 1400 lei<sup>22</sup>.

The statutory minimum pay is not just the lowest limit for wage-bargaining, but also the lowest remuneration that employers are allowed to pay their employees when the activity is suspended because the employer is unable to ensure proper working conditions; it is also the minimum remuneration in the case of performance pay, of extra-pay in the sales sector or of bonuses based on productivity. Such bonuses may only represent additional payments, added to a basic pay of at least the statutory minimum wage. After the crisis, there was a fall in the payments on top of basic pay, as the proportion of fixed income (basic salary and fix bonuses) represented 92% of the total remuneration package in 2014 (in comparison with 69% in 2008)<sup>23</sup> and performance bonuses fell from 5% of the total remuneration and extra salary benefits to 3%<sup>24</sup>. However, in 2014 average performance pay, when applicable, represented approximately 30% of the basic pay.

### *3.1.2. Collective wage bargaining.*

In addition to the statutory minimum wage, the minimum wage level is 'de facto' set in sectoral, group of undertakings or company level collective agreements. Sometimes social partners negotiate and include in detailed clauses of the collective agreement both limits of wages – the lower and the upper limit – and the salary is actually established by way of individual negotiations within these limits.

Romania acknowledges the favourability principle, under which the rights specified in collective agreements concluded at lower levels must generally improve on those contained in higher level collective agreements.

In what sectoral level collective agreements are concerned, they can be declared generally applicable by the ministry of labour, in case that the signatory parties on the side of the employer (the signatory employers' federation) represent at least 50 % of the workforce in that sector. If the collective agreement has not been extended for all the undertakings in the sector by ministerial decision, as a general rule, sectoral level collective agreements only apply to enterprises that are members of the bargaining social partners (represented in the collective bargaining by employers' federations), who are obliged to respect and to grant their employees all the rights contained in that specific collective agreement.

Social dialogue was reformed and decentralised in 2011 and no sectoral level collective agreements were in place between 2011 and 2013. As a result, collective wage bargaining arrangements are on a single-employer basis, and minimum wages are set by company level collective arrangements. However, opt-out clauses in sectoral level agreements or inversion of the favourability principle to allow company-level agreements to set lower wage standards than those negotiated at sectoral level are not legally accepted.

<sup>22</sup> Which is approximately 315 Euros.

<sup>23</sup> Eurofound, *Developments in working life in Europe 2014: EurWORK annual review*, November 2015, available at: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/developments-in-working-life-in-europe-2014-eurwork-annual-review>

<sup>24</sup> *PayWell Romania: Salariile din sectorul privat au crescut in medie cu 4,1% in 2014. Studiul confirmă tendința de scădere a tuturor tipurilor de beneficii extra salariale*, available at: [http://economie.hotnews.ro/stiri-finante\\_banci-18035723-paywell-romania-salariile-din-sectorul-privat-crescut-medie-4-1-2014-studiul-confirma-tendinta-scadere-tuturor-tipurilor-beneficii-extra-salariale.htm](http://economie.hotnews.ro/stiri-finante_banci-18035723-paywell-romania-salariile-din-sectorul-privat-crescut-medie-4-1-2014-studiul-confirma-tendinta-scadere-tuturor-tipurilor-beneficii-extra-salariale.htm)

The decentralisation of social dialogue had a significant impact on wage-setting mechanisms in the private sector in Romania. Before the reform operated in May 2011, collective agreements were concluded at national (inter-sector) level, at sectoral level and at company level. Only one collective agreement could have been concluded at each level and it had erga omnes effects, covering all the employees at that specific level. At national level collective agreements were always concluded and the rights they provided for had to be respected by all the employers. As a result, all the Romanian employees were covered by collective agreements and had a collectively negotiated level of rights, higher than the statutory minimum level, because of the favourability principle.

The situation has dramatically changed after the Law on social dialogue was adopted in 2011. In the National Reform Programme (2011 – 2013)<sup>25</sup>, the Romanian Government had admitted that the Social Dialogue Law was promoted “according to the commitments undertaken by Romania under the Stand-by arrangement concluded with International Monetary Fund, in order to render more flexible the system of collective labour agreement and to strengthen the social dialogue”. According to the Government, the purposes of the reform were not directly linked to the economic and financial crisis, as the law was adopted in order to render more flexible the system of wage setting and the settlement of labour disputes: “this way it is indented to extend the dialogue structures at the regional level to a better management of the problems, to increase the autonomy of the social partners in the negotiation process and to remove the rigidities existing in the labour relations and in the wage setting in the private sector”<sup>26</sup>. In reality, trade unions were considerably affected, as the representativeness criteria at company level increased from more than 30% to more than 50% of the total number of employees in the company. The national level collective agreement has disappeared, there wasn't any collective agreement extended at sectoral level by ministerial decision since 2011 and at company level trade unions were forced to convince more employees to become their members. Romania was one of the two countries (alongside with Ireland) where the prevalent regime has shifted from multi- to single-employer bargaining. The fact that the national, cross-sector agreement was abolished in 2011 has also weakened coordination across sectors and wage bargaining has largely moved to the company rather than to the sector level<sup>27</sup>. The decentralisation of collective bargaining was associated with the need for company level trade unions to re-organise in order to convince more company employees to join them and to get their company level representativeness recognised by courts.

A small step towards recentralisation was made<sup>28</sup> by the signing of two sectoral agreements in the public sector in 2014: for the healthcare and veterinary activities sector<sup>29</sup> and for the pre-university education sector<sup>30</sup>. However, the step towards recentralisation is very small, as their provisions apply only to the bodies that have signed the agreements.

The decentralisation of collective bargaining had a significant effect on the number of employees covered by collective agreements. As the national level (inter-professional) collective

<sup>25</sup> [http://ec.europa.eu/europe2020/pdf/nrp/nrp\\_romania\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nrp/nrp_romania_en.pdf)

<sup>26</sup> According to the Memorandum of Understanding between the European Union and Romania, signed on 29 June 2011: „the Romanian Government will seek with the relevant stakeholders how to rationalize wage bargaining in the private sector”.

<sup>27</sup> P. Marginson, C. Welz, *Changes to wage-setting mechanisms in the context of the crisis and the EU's new economic governance regime*, Eurofound (2014), Dublin, p. 3, available at: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/changes-to-wage-setting-mechanisms-in-the-context-of-the-crisis-and-the-eus-new-economic-governance>. The 2011 Social Dialogue Act, enacted by the government without consulting the social partners, abolished the national cross-sector agreement. In fact, this agreement had hitherto provided the point of reference for wage negotiations at lower levels.

<sup>28</sup> Developments in working life in Europe 2014: *EurWORK annual review*, cit. supra.

<sup>29</sup> The collective agreement from 21 November 2013, signed between the Ministry of Health and Sanitas Federation, CNS.SAN.Asist, CNS Cartel Alfa, BNS, CNSLR Frăția and CNS Meridian.

<sup>30</sup> The collective agreement from 13 November 2014, signed between the National Federation of Free Unions from Education, FSLI, FSI Spiru Haret and the Ministry of Education.

agreement was ended and the Law on social dialogue eliminated the possibility to conclude an agreement at this level, the bargaining coverage has decreased with more than 60% since 2008 to 2013<sup>31</sup>. As a result, only a small proportion of employees are actually covered by a conventional minimum pay, set by the applicable collective agreement<sup>32</sup>.

Because of the forced shift to single-employer bargaining, mainly employees in large or medium-size companies tend to be covered, but the great majority of Romanian companies are small and medium companies. Even though in Romania collective bargaining is mandatory for all the undertakings having more than 20 employees, there is a significant number of companies that don't meet this criteria (in December 2015 there were 41.976 such undertakings).

In addition, the Law on social dialogue has undermined trade union prerogatives, by increasing the required number of trade union members for company level representativeness (from more than 30% to more than 50% of the total number of employees in the company), on the one hand, and by replacing in the collective bargaining process non-representative company level trade unions with elected employees' representatives. If there wasn't any trade union meeting the representativeness criteria at company level, employees' representatives –elected with the votes of more than 50% of the total number of employees in the company– were entitled to negotiate and to conclude company levels collective agreements. In this context, 37% of the employees were represented in 2013 in the collective bargaining process by trade unions (8% of the companies) and 63% of the employees were represented by elected employees' representatives (52% of the companies). The situation has led often to very diverse and 'weak' collective agreements, providing only for a small number of rights. For the moment being, there is no coordination of wage setting across different sectors.

Besides the significant decrease in the number of Romanian employees covered by collective agreements, in many cases collective wage bargaining was absent or irrelevant, providing for a slightly higher level of wages than the statutory minimum pay.

According to the provisions of the Romanian labour legislation, the employees are entitled to benefits and extra-pay for overtime working, work in dangerous work-places or involving significant levels of physical or mental effort, night work, as well as to allowances (for domestic or foreign business trips) and other bonuses. The minimum level of such benefits is established by legislation, but higher levels of benefits are often negotiated by the social partners and inserted into the collective agreements. For example, the Romanian Labour Code establishes a minimum premium of 75% of the employee's basic hourly pay for each overtime working hour performed, but higher compensation for overtime working (up to 100% of the employee's hourly wage for each overtime working hour performed) is often negotiated and included in collective agreements. Increasing benefits for a certain length of service are often negotiated, because in the communist regimes bonuses were paid in an increasing amount to those having a certain length of service (for example, there was a bonus of 25% of the basic pay for those having more than 20 years of length of service).

Bonuses based on productivity may also be set by the collective agreements; they also often provide for transport, childcare facilities, childbirth or even holiday allowances.

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<sup>31</sup> J. Visser, S. Hayter, R. Gammarano, *Trends in collective bargaining coverage: stability, erosion or decline?*, Issue Brief no. 1 - Labour Relations and Collective Bargaining, 29 September 2015, available at: [http://www.ilo.org/global/topics/collective-bargaining-labour-relations/publications/WCMS\\_409422/lang-en/index.htm](http://www.ilo.org/global/topics/collective-bargaining-labour-relations/publications/WCMS_409422/lang-en/index.htm).

<sup>32</sup> The collective bargaining coverage rate was estimated to 35% for Romania – J. Visser, S. Hayter, R. Gammarano, *Trends in collective bargaining coverage: stability, erosion or decline?*, Issue Brief no. 1 - Labour Relations and Collective Bargaining, 29 September 2015, p. 5.

However, indexation mechanisms providing for automatic adjustments to wages if the cost of living is increasing are not common in the collective agreements concluded in Romania. Such indexation mechanisms are sometimes individually negotiated and inserted into the employment contract.

The former national (inter-sectoral) level collective agreement provided for different minimum wages, according to the level of qualifications required in order to perform the job duties (the statutory minimum wage was paid to unskilled workers, whereas highly skilled employees were entitled to a conventional minimum wage of twice the statutory minimum wage). This differentiated collective minimum wage is not of general applicability anymore, but often collective agreements set different minimum wages, according to job complexity or employee skills and qualifications.

Collective wage bargaining was considerably affected by the 2011 reform on social dialogue. Besides the forced decentralisation of collective bargaining and the stricter criteria for extension procedure introduced in legislation, automatic continuation of collective agreements beyond expiry was replaced with the requirement of an express agreement between the parties<sup>33</sup>. Even if social partners stipulate clauses providing for collective agreement to continue to have effect beyond the date of expiry, such effect is legally limited to 12 months<sup>34</sup>. All the changes in the collective bargaining were aiming to undermine wage setting in collective agreements, basically leaving the employer the power to negotiate on wages at company level and thus contributing to a low level of wages in Romania.

A relatively recent study<sup>35</sup> shows a decreasing trend in certain extra salary benefits, such as social benefits and allowances (meal tickets, transport), insurance benefits (life insurance, medical, private pensions schemes), statute benefits (car, phone) or benefits related to life style (sports and recreation, childcare).

### 3.1.3. Wage setting mandatory rules in the public sector.

For the public sector, specific rules on wage setting are provided by Law n° 284 of 2010 on the unitary pay system for public sector employees. The public sector is not limited to civil servants and magistrates, but it includes employees in all the activities integrally or partially financed by public funds, such as education and health sector. In Romania there is a wide range of public sector employees, having an employment contract governed by the Labour Code and specific laws, performing work in sectors or activities integrally or partially financed by public funds.

The main difference between the public and the private sector is that Law n° 284 of 2010 on the unitary pay system for public sector employees sets both the minimum and the maximum level of wages. As a general rule, wages in the public sector are not set by mutual agreements, but they are differentiated, between the minimum and the maximum level of wages, according to the criteria set by law. These criteria concern aspects related to the job (such as the complexity and diversity of the activities to be performed, the degree of coordination and of communication involved by the job, the working conditions) and to the employee (such as the level of qualifications, his/her experience and length of service).

<sup>33</sup> A similar condition can be found in Estonia.

<sup>34</sup> Such clauses providing for agreements to continue to have effect beyond the date of expiry until a new agreement is concluded can be found in several EU Member States, such as: Austria, Croatia, Denmark, Estonia, Greece, Portugal, Slovakia, Spain and Sweden (P. Marginson, C. Welz, *Changes to wage-setting mechanisms in the context of the crisis and the EU's new economic governance regime*, Eurofound (2014), Dublin, p. 12).

<sup>35</sup> *PayWell Romania: Salariile din sectorul privat au crescut in medie cu 4,1% in 2014. Studiul confirmă tendința de scădere a tuturor tipurilor de beneficii extra salariale*, cit. supra, 2014.

In the public sector, benefits, bonuses and other supplements are strictly established by law and, according to Law non the unitary pay system for public sector employees, they cannot exceed 30% of the basic pay.

Even if collective bargaining is recognised as a fundamental right both for public sector employees as for civil servants, since 2011, according to Law no 62/2011 on the social dialogue, the level of wages, as well as of benefits, bonuses or other supplements, cannot be negotiated and established by way of collective agreement. As a result, collective wage setting is not possible in the public sector.

### 3.2. Equal pay for equal work or work of equal value.

When setting wages, the parties have to respect the principle of equal pay for equal work or work of equal value<sup>36</sup>. The principle is established by Article 41 paragraph 4 of the Romanian Constitution, but only concerning equal pay for equal work between men and women. The Romanian Labour Code contains a more general provision, Article 6 paragraph 3 prohibiting any discrimination on grounds of sex, as regards all the elements and conditions of remuneration for equal work or work of equal value.

Article 159 paragraph 3 of the Labour Code extends the scope of equal treatment, prohibiting wage discrimination on a series of grounds: when setting and paying wages, any discrimination based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnical origin, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity is prohibited.

However, as there is a general principle of non-discrimination contained in Article 5 of the Labour Code, concerning all the elements of the employment relationship, the grounds for discrimination concerning all the elements of remuneration are not limited to those listed by Article 159 paragraph 3. Both direct and indirect discrimination are forbidden in the employment relationship, including wage setting. Remuneration is broadly defined and it is not limited to basic pay.

The principle is interpreted in the sense that equal pay is applicable in the same sector, for the same activity or at the same level of a certain economic activity and it is not limited to the same establishment. Only objectively justified pay differences are admitted between different sectors or activities performed<sup>37</sup>, if such pay differences are appropriate with a view to achieve a real need of the undertaking and necessary to that end.

However, in practice it is difficult to assess whether the principle is so strictly respected. Related to pay differences in the same establishment, employers often invoke personal factors<sup>38</sup> in order to justify paying one employee more than another, such as training or availability to variable hours and places of work<sup>39</sup>, seniority or labour market factors.

Seniority is deeply entrenched in the pay structures in Romania, rewarding a certain lengths of service<sup>40</sup>, considered to go hand in hand with experience, enabling employees to perform du-

<sup>36</sup> Al. Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență*, Editura Universul Juridic, București, 2016, p. 531; I. T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, Editura Universul Juridic, București, 2012, p. 578; R. Gidro, *Dreptul muncii*, Editura Universul Juridic, București, 2013, p. 252; M. Gheorghe, *Dreptul individual al muncii*, Editura Universul Juridic, București, 2015, p. 348.

<sup>37</sup> O. Ținca, *Comentarii referitoare la discriminarea între bărbați și femei în domeniul remunerației*, Dreptul nr. 12/2010, p. 64.

<sup>38</sup> In the sense of factors related to the employee.

<sup>39</sup> In reality, both justifications could work to the disadvantage of female employees, because of household and family duties – C. Barnard, *EU Employment Law*, Oxford University Press, 2012, p. 319.

<sup>40</sup> Usually 5% of the basic pay for a length of service between 3 and 5 years, 10% of the basic pay for a length of

ties faster and better. As it would be difficult for employers to prove the extent to which productivity and efficiency increases with seniority, the European Court of Justice held that there is an ordinary presumption that the service criterion is lawful<sup>41</sup>. The employer does not have to establish specifically that recourse to that criterion is appropriate to attain that objective as regards a particular job, unless the worker provides evidence capable of raising serious doubts as to the appropriateness of using length of service as a criteria for awarding experience.

While the European case-law doesn't normally accept employers' economic justifications for a difference in payment, paying certain jobs more in order to attract candidates when the market indicates that such workers are in short supply<sup>42</sup> (which is a rather common practice in Romania in certain sectors) may represent an objective justification: "it is for the national court to determine, if necessary by applying the principle of proportionality, whether and to what extent the shortage of candidates for a job and the need to attract them by higher pay constitutes an objectively justified economic ground for the difference in pay between the jobs in question"<sup>43</sup>.

The decentralisation of collective bargaining has seriously undermined the respect of the principle of equal pay at sectoral level. Since the reform of social dialogue was operated, no collective agreement was concluded or extended at sectoral level. There is no coordination of wage setting across different sectors, not even in the same sector and, as a result, for the moment being the principle of equal pay that should be respected in the same sector is more theoretical.

One of the indicators of an effectiveness of the principle of equal pay for work of equal value is the gender pay gap.

In 2014, women's gross hourly earnings were on average 16.1 % below those of men in the European Union<sup>44</sup> (with a gender based difference of 10% between the gross hourly earnings in Romania). Similarly to other EU countries, in Romania, the gender pay gap is much lower for young employees (1.7% for employees under the age of 25 and 2.6% for employees between 25 and 34 years old). By economic activity, the lowest gender pay gap can be seen in the professional, scientific and technical activities sector (3.3%) and the highest gap can be seen in the financial and insurance activities (27.7%). As other European countries, Romania recorded negative gender gaps in the water supply, sewerage, waste management and remediation activities (-1.5%) and in the construction industry (-25.4%)<sup>45</sup>. Contrary to the general trend in 2014, when

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service between 5 and 10 years, 15% of the basic pay for a length of service between 10 and 15 years, 20% of the basic pay for a length of service between 15 and 20 years and 25 % of the basic pay for a length of service superior to 20 years.

<sup>41</sup> ECJ, 3 October 2016, Case 17/05 *Cadman v. Health & Safety Executive*, EU:C:2006:633, paras 33 – 40; ECJ, 8 September 2011, Joined Cases C 297/10 and C 298/10, *Hennigs and Mai*, EU:C:2011:560, paras 74 and 77; ECJ, 19 June 2014, Joined Cases C 501/12 to C 506/12, C 540/12 and C 541/12, *Thomas Specht v. Land Berlin and Rena Schmeel, Ralf Schuster v. Bundesrepublik Deutschland*, EU:C:2014:2005, para. 50; C. Barnard, *EU Employment Law*, Oxford University Press, 2012, p. 320.

<sup>42</sup> ECJ, 6 April 2000, Case C-226/98, *Birgitte Jørgensen v. Foreningen af Speciallæger, Sygesikringens Forhandlingsudvalg*, EU:C:2000:191, para. 39; ECJ, 17 June 1998, Case C-243/95, *Kathleen Hill and Ann Stapleton v. the Revenue Commissioners and the Department of Finance*, EU:C:1998:298, para 40.

<sup>43</sup> ECJ, 27 October 1993, Case C-127/92, *Pamela Mary Enderby v. Frenchay Health Authority and Secretary of State for Health*, EU:C:1993:859, paras 27 – 29: „if (...) the national court has been able to determine precisely what proportion of the increase in pay is attributable to market forces, it must necessarily accept that the pay differential is objectively justified to the extent of that proportion. When national authorities have to apply Community law, they must apply the principle of proportionality. If that is not the case, it is for the national court to assess whether the role of market forces in determining the rate of pay was sufficiently significant to provide objective justification for part or all of the difference”.

<sup>44</sup> *Gender pay gap statistics*, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender\\_pay\\_gap\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics).

<sup>45</sup> Eurostat, File:The unadjusted GPG by economic activity (%), 2014 (!).png, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:The\\_unadjusted\\_GPG\\_by\\_economic\\_activity\\_\(%25\),\\_2014\\_\(%C2%B9\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:The_unadjusted_GPG_by_economic_activity_(%25),_2014_(%C2%B9).png)

the majority of the EU countries recorded a higher gender pay gap in the private sector than in the public sector, in Romania the gender pay gap in the private sector was of 4.2 %, compared to 18.5% in the public sector. In the public sector, the gender pay gap could be explained by the kind of jobs held by women and by the fact that employees in the health and education sectors –where salaries are low– are mainly women.

#### 4. THE PAYMENT OF WAGES.

##### 4.1. Payment in money.

According to the Romanian Labour Code, wages must be *specified and paid in money*. The labour legislation doesn't stipulate<sup>46</sup> that money wages have to be paid in the official currency of the country<sup>47</sup>, but financial regulations provide that payments between Romanian nationals have to be made only in the official currency of the country. If wages are specified in a foreign currency (for example for the managerial staff), they are to be converted in the official currency (*lei*) at the rate of exchange on the day of payment and must be paid in Romanian *lei*.

As a general rule, the clause providing for the payment of wages in foreign currency is considered to be legal as it aims at protecting workers' interests against the deterioration of their income as a result of the devaluation of the national currency. However, such clause is not very common in employment contracts, as during the last years the Romanian *lei* has proven to be a relatively stable currency.

Romanian workers performing work abroad for a Romanian employer may receive their wages, fully or in part, in the currency of the country where they perform their duties, but they must be informed in written on the currency, the date and the place where their wages are to be paid. Normally, such workers performing work in the EU receive their basic remuneration in *lei* and a daily allowance in euros (between 35 euros and 87.5 euros per day, depending on the country where work is performed and on the parties' agreements)<sup>48</sup>.

The payment of wages by bank cheque or postal cheque, by money order and other non-cash methods of payment is not expressly regulated by the Romanian Labour Code<sup>49</sup>. Payment

<sup>46</sup> On the contrary, in France the law provides that, notwithstanding any contrary stipulation, payment of wages must be made, under pain of being declared void, in cash or in banknotes representing legal tender

<sup>47</sup> Article 3, paragraph 1 of ILO's Convention No 95 concerning the Protection of Wages lays down the principle that wages payable in money must be paid only in legal tender. However, in the opinion of the Committee of Experts on the Application of Conventions and Recommendations (herein after: the Committee) „the term “legal tender” in this case should not be understood as necessarily limited to the currency that is legal tender within the national definition of each ratifying State, but it may be deemed to cover other currencies which are generally accepted as legal tender internationally and which, subject to the exchange control laws in each member State, are immediately and freely convertible into the national currency of the country concerned” –International Labour Organisation, *General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949, Report III (Part 1B)*, 2003, (herein after: Report III(1B)-2003), § 73.

<sup>48</sup> The daily allowance for Romanian employees in the public sector who temporarily work abroad is set by the Governmental Decision n° 518/1998. The maximum level of the daily allowance is expressly settled by this regulation and it depends on the country where work is performed. For EU member states, the daily allowance for Romanian employees in the public sector who temporarily work abroad is 35 Euros/day. According to the Romanian Tax Code, employers in the private sector may pay a tax-free daily allowance to Romanian employees in the private sector who temporarily work abroad up to 2.5 times the level set for the employees in the public sector. It means that in the private sector, the tax-free daily allowance of workers is 87.5 Euros/day. The parties may agree upon a higher level of the daily allowance, the upper limit in the private sector is used only for tax-exemption purposes.

<sup>49</sup> According to Article 3 paragraph 2 of the ILO Convention concerning the Protection of Wages, No 95, 1949: „the competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or, where not so provided, with the consent of the worker concerned”.

by cheque is not very usual among individuals, but the Romanian Labour Code expressly allows the use of electronic bank transfer for payment of wages<sup>50</sup>.

Unlike the International Labour Organisation's Convention No 95 concerning the Protection of Wages, the Romanian legislation makes no specific reference to promissory notes, vouchers or coupons<sup>51</sup>, protecting employees indirectly by stipulating that the employment contract has to provide for the payment of wages in money; payment of a part of the agreed wages in kind is possible only under specific circumstances, expressly set by law.

There is an *employee privilege* settled by the Romanian Labour Code, as wages shall be paid before any other pecuniary obligations of the employers. Wage shall be paid in money at least once a month, at the dates laid down in the employment contract or in the applicable collective agreement.

Article 168 of the Romanian Labour Code requires a written proof of the payment. The payment of the wage shall be proven by the employee signing the pay lists and by any other supporting documents proving the payment to the entitled employee. According to the law, the pay lists/pay roll and the other supporting documents shall be kept and archived by the employer under the same conditions and terms as the accounting documents. The text is a reminiscence against the former Romanian Civil Code, adopted in 1864, according to which the employer was always considered to have said the truth about the fact that he has paid the employee's salary and about the level of the salary, as agreed with the employee. On the other hand, the pay lists and other accounting documents serve for tax, social security and labour force evidence purposes.

The principle is that wages must be paid *directly to the worker concerned*. Even if they aren't expressly set by the Labour Code, the principle carries certain exceptions, as it is the case of arrangements intended to ensure the maintenance of the worker's family (such as child support). However, the Romanian Labour Code establishes in detail the person entitled to receive the payment of wages in case of employee death: the surviving spouse, the adult children of the deceased or his/her parents. If there are no such categories of persons, the wage shall be paid to other heirs, under the terms of the civil regulations<sup>52</sup>.

The Romanian Labour Code doesn't set the day nor the place where payment should be made, in case of payment in cash<sup>53</sup>, but it sets the principle that employee has to be paid on regular basis. According to Article 166 paragraph 1 of the Labour Code, wages shall be paid at least once a month, on the dates stipulated in the employment contract, in the applicable collec-

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<sup>50</sup> Article 166 paragraph 2 of the Romanian Labour Code. According to the Committee, 'the payment of wages by electronic bank transfer is compatible with the Convention so long as the provisions of Article 5 are fulfilled, which includes that such payment can be made if the worker expressly consents. This consent may be withdrawn by the worker at any time and should not be imposed on the worker by reason of the employer's preferred method of payment' –Report III (1B)–2003, § 84. However, the Romanian Labour Code, in its amended 2011 version, doesn't require anymore the employee's express consent to the use of electronic bank transfer for payment of wages, but it is generally accepted that the employees reasonable opposition to such method of payment must be respected by the employer.

<sup>51</sup> According to Article 3 paragraph 1 of the ILO Convention concerning the Protection of Wages, No 95, 1949: „wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited”.

<sup>52</sup> Article 167 paragraph 2 of the Romanian Labour Code. Article 5 of ILO's Convention No 95 concerning the Protection of Wages requires that wages be paid directly to the worker concerned, subject to any exceptions provided by national laws or regulations, collective agreement or arbitration award or agreement by the individual worker.

<sup>53</sup> According to Article 13, paragraph 1 of ILO's Convention No 95 concerning the Protection of Wages: „the payment of wages where made in cash shall be made on working days only and at or near the workplace, except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award, or where other arrangements known to the workers concerned are considered more appropriate”.

tive agreement or in the internal regulations, as applicable<sup>54</sup>. In addition, the manner and periodicity of payment of the agreed wage, the advances of wages, if any, must be set in detail in the employment contract. In the public sector, wages must be paid until the 15th of the month for the work performed the previous month.

As it is considered to be a modern law, the Labour Code doesn't prohibit the payment of wages in taverns or other similar establishments, as ILO's Convention No 95 concerning the Protection of Wages requires<sup>55</sup>. The official explanation is related to the fact that there weren't any cases of payment of wages in such 'dangerous' places, even if, according to the Committee of Experts on the Application of Conventions and Recommendations, practice alone would not be equivalent to a prohibition.

#### 4.2. Payment in kind.

Benefits in kind may be paid as a part of the salary only if such method of payment is authorised by the applicable collective agreements or by the employment contract itself<sup>56</sup>. In this case, the employee cannot be totally deprived of cash remuneration. According to Article 165 of the Romanian Labour Code, if benefits in kind are granted by way of collective agreements, the employee is entitled to a basic remuneration at least at the level of statutory minimum pay. Benefits in kind represent an additional form of remuneration, above the employee's basic pay levels<sup>57</sup>.

Employees frequently receive part of their remuneration "in kind", in the form of goods or services. Sometimes, payments in kind are provided in fixed quantities or in quantities corresponding to fixed exchange values (as it is the case of food and housing). Some other times, payments in kind are limited in quantity or value, while in yet other cases they are neither fixed nor limited in amount, but the worker may obtain them at reduced prices (for example, goods produced by the undertaking). In these cases, wages would not only include the actual sums of money handed over to workers, but also the money-value of any other benefits they receive as the result of their employment.

Such benefits may take the form of nonmonetary advantages, such as meals, housing, work clothing, holiday and convalescent homes, sports and recreation facilities, discount purchases, day care centres and nursery schools<sup>58</sup>, transport, the use of the employer's car or phone etc. As mentioned above, in order to respect the Romanian Labour Code, for the employees to whom the employer, according to the collective agreement or the employment contract, provides for food, accommodation or other facilities, the amount in money due for the activity performed may not be lower than the statutory minimum gross wage<sup>59</sup>.

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<sup>54</sup> According to Article 12, paragraph 1 of ILO's Convention No 95 concerning the Protection of Wages: „wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award”.

<sup>55</sup> According to Article 13, paragraph 1 of ILO's Convention No 95 concerning the Protection of Wages: „payment of wages in taverns or other similar establishments and, where necessary to prevent abuse, in shops or stores for the retail sale of merchandise and in places of amusement shall be prohibited except in the case of persons employed therein”.

<sup>56</sup> According to the Committee, the Convention is clear in providing that the conditions governing payments in kind have to be regulated by legislation, collective agreement or arbitration award and not left to individual agreements between employers and workers -Report III (1B)-2003, § 149.

<sup>57</sup> According to Article 4, paragraph 1 of ILO's Convention No 95 concerning the Protection of Wages: „national laws or regulations, collective agreements or arbitration awards may authorise the partial payment of wages in the form of allowances in kind in industries or occupations in which payment in the form of such allowances is customary or desirable because of the nature of the industry or occupation concerned; the payment of wages in the form of liquor of high alcoholic content or of noxious drugs shall not be permitted in any circumstances”.

<sup>58</sup> Report III (1B)-2003, § 100.

<sup>59</sup> Article 165 of the Romanian Labour Code.

The Romanian Labour Code seeks to guarantee that the worker is not totally deprived of cash remuneration, but –unlike the Spanish regulation– it doesn't offer guarantees that benefits in kind are fairly valued and meet the personal and family needs of the employee<sup>60</sup>. There is no proportion of wages that could be paid in kind set by the Romanian Labour Code (compared to the one third provided by the Spanish regulation), as the Romanian legislator (questionably) considers that the statutory minimum wage that must be paid in this case should be sufficient to insure a decent standard of living for the employees concerned and their families.

There is no express prohibition of the payment of wages in the form of liquor of high alcoholic content or of noxious drugs, as ILO's Convention No 95 concerning the Protection of Wages requires. The official explanation is – again– related to the fact that there weren't any cases of payment of wages in alcohol or drugs. According to the Committee, the Convention should be understood as proscribing the supply of any harmful products, such as alcoholic drinks, narcotic substances or tobacco, by way of remuneration<sup>61</sup>.

There is no specific legislative provision in Romania for protecting workers against any pressure exercised by the employer to induce them to make use of company stores either, in breach of Article 6 and 7 of ILO's Convention No 95 concerning the Protection of Wages requirements, according to which employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his/her wages. However, during the last 25 years, there weren't reported in Romania any cases of breaches of the employees' freedom to dispose of their wages.

### 4.3. The protection of employees in the event of the insolvency of their employer.

First of all, as mentioned above, there is an *employee privilege* settled by Article 161 of the Romanian Labour Code, as wages shall be paid before any other pecuniary obligations of the employer, even if the employer is not in a state of insolvency<sup>62</sup>. The Labour Code aims to ensure that claims arising from employment contracts are actually enforceable by recognising their priority compared to other –civil or commercial– claims.

If the employer is in a state of insolvency, Law no 200 of 2006<sup>63</sup> has been adopted in order to transpose Directive 2008/94/EC on the protection of employees. A fund has been created, based on the employers' monthly contribution<sup>64</sup>. The law applies to employees' claims arising

<sup>60</sup> According to Article 4, paragraph 2 of ILO's Convention No 95 concerning the Protection of Wages: if partial payment of wages in the form of allowances in kind is authorised, appropriate measures shall be taken to ensure that they are appropriate for the personal use and benefit of the worker and his family and that their value is fair and reasonable. The Committee has held that setting an overall limit on the proportion of the money wages which may be replaced by benefits in kind is not enough to ensure the fair valuation of such benefits: „such limits alone cannot ensure that the allowances in kind provided in any given case are in fact suitable for the needs and interests of the workers and their families, and even less that such allowances are not overvalued, to the detriment of real earnings of workers” (Report III (1B)-2003, § 159).

<sup>61</sup> Report III (1B)-2003, § 143. The Government of the neighbouring Republic of Moldova reported that in 99 establishments throughout the country, 14 enterprises were found to offer alcohol instead of cash wages, affecting 2,500 workers; in these cases, money wages were replaced by alcohol at the written request of workers on specific family occasions, such as weddings or funerals.

<sup>62</sup> The legal provision is in line with Article 11 paragraph 2 of ILO's Convention No 95 concerning the Protection of Wages.

<sup>63</sup> Law no 200 of 2006 on the establishment and functioning of the Guarantee Fund for the Payment of Employees' Claims resulting from Employment Contracts was published in the Romanian Official Gazette no 453 of 25th May 2006.

<sup>64</sup> Al. Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență*, Editura Universul Juridic, București, 2016, p. 578 – 580; I. T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, Editura Universul Juridic, București, 2012, p. 607 – 611; M. Gheorghe, *Dreptul individual al muncii*, Editura Universul Juridic, București, 2015, p. 357 – 359; R. Hidro, *Dreptul muncii*, Editura Universul Juridic, București, 2013, p. 257.

from employment contracts or collective agreements, such as: unpaid wages, unpaid compensation for annual leave, unpaid compensation in case of redundancy or work-place injury. However, each employee's claims cannot exceed the equivalent of three medium wages<sup>65</sup> and they are limited to the remuneration covering three months of the employment relationship and/or one compensation for annual leave. The law doesn't apply to contributions due under national statutory social security schemes.

## 5. DEDUCTIONS FROM WAGES.

The employee is entitled to his wage in full and any unlawful, arbitrary or excessive deductions from wages are prohibited<sup>66</sup>. This principle is guaranteed by Article 169 of the Romanian Labour Code, allowing for deductions from wages only under the conditions and to the extent prescribed by national laws. The legal conditions and limits of permissible deductions are set by law in a very restrictive manner<sup>67</sup>. Deductions from wages for the reimbursement of damages caused by bad or negligent work or for damage to materials or to the property of the employer may be withheld only in execution of court orders, if the damage is superior to five statutory minimum wages<sup>68</sup>. Deductions from wages in the form of caution money or security amounts are forbidden. The employer's power of deduction is extremely limited as deductions cannot be related to breach of discipline; disciplinary 'fines' are prohibited by the Labour Code.

Deductions made with the employee's written consent are forbidden, in order to exclude "private" arrangements which might involve unlawful or abusive deductions, to the detriment of the employee's earnings<sup>69</sup>. According to Article 170 of the Labour Code, the fact that the employee accepts only a part of the wages and/or the signature of the pay documents under such circumstances may not be understood as the employee waiving the entire wages due to him/her, according to the legal or contractual provisions.

However, deductions are frequently permitted for the repayment of loans, credits and other personal debts of the employee, for the settlement of trade union fees or the reimbursement of pay advances (in the case of overpayment made to employees as a result of accounting errors or any other extra amount, in the case of unaccounted advances for official travel or removal expenses or for any other economic expenses that have not been spent or returned in due time).

The cumulated amounts of deductions from the wages may not exceed one-half of the net amount of the employee's monthly wage.

The employer's failure to pay the agreed amount of wages is a breach of contract and gives right to a claim for the payment of unpaid salaries, of interests and other damages arising from the employers' failure or delay to pay wages, according to the legal or contractual provisions. Claims may also be brought to court for remuneration which take the form of bonuses. The contract of employment itself or the applicable collective agreement often provide for the method of calculation of such bonuses, and their provision will be used by the courts in order to ensure that employees receive entirely the agreed wage.

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<sup>65</sup> In 2016, the medium wage is 2681 lei (which is approximately 600 Euros), and the higher limit for the employees' claims in the event of the insolvency of their employer is 8043 lei (which is approximately 1800 Euros). In September 2016, the average medium gross wage was 2875 lei (which is approximately 650 Euros).

<sup>66</sup> Article 8 of the ILO Convention concerning the Protection of Wages, No 95, 1949; S. Deakin, G. S. Morris, *Labour Law*, Hart Publishing, Oxford, 2012, p. 304.

<sup>67</sup> M. Gheorghe, *Dreptul individual al muncii*, Editura Universul Juridic, București, 2015, p. 354 – 356.

<sup>68</sup> For 2016, if the damage is superior to 6250 lei, which is approximately 1400 Euros.

<sup>69</sup> Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker – as it is the case of temporary agency workers - to an employer or his representative or to any intermediary (such as a labour contractor or recruiter) it is also prohibited by the Labour Code.

## 6. CONCLUSIVE REMARKS.

The concept of wages can be contemplated from very different perspectives: that of labour law, of tax law, of social security law, but also from a psychological, economic or sociological perspective. The concept of wages is full meanings: an essential element of the employment contract; an essential aspect for the employee's decent life or even survival – the material meaning of life; the basis for social security rights and obligations; the measure of the employee's duty to pay taxes. The national rules on wage setting and payment inevitably bear the marks of history, of tradition and of practice that a brief analysis can only mention, without achieving to reveal them.

Romania makes no exception and the legal approach to wages inevitably bears the traces of the social, economic and political evolution of the country. One of the initial aims of this paper was to reveal the reality behind the myth of liberal labour regulation. One side of the reality behind the myth is the strong, detailed regulation concerning wage setting and payment. Another reality –supporting the myth– is the low level of wages, deepened by all the changes in the collective bargaining, mainly by the forced shift to single-employer bargaining.

The decentralisation of social dialogue had a significant impact on wage-setting mechanisms in the private sector in Romania and on the number of employees covered by collective agreements. Because of the forced shift to single-employer bargaining, mainly employees in large or medium-size companies tend to be covered, but the great majority of Romanian companies are small and medium companies. In addition, very diverse and often 'weak' collective agreements were concluded, providing only for a small number of rights and without any coordination of wage setting across different sectors.

All the changes in the collective bargaining were aiming to undermine wage setting in collective agreements, basically leaving the employer the power to negotiate on wages at company level and thus contributing to a low level of wages in Romania. Thus, the strong regulation of wages often lacks effective power and –even if statutory minimum pay and average minimum wages are constantly increasing– Romania remains one of the European countries with the lowest wages.