

# BAD FAITH OF EMPLOYEES IN ACTUAL LABOUR LAW- THEORETICAL AND PRACTICAL IMPLICATIONS

Assistant professor **Ștefania-Alina DUMITRACHE**<sup>1</sup>

## **Abstract**

*In designing the study we started with the analysis of good faith in employment law, from Article 54 of the Romanian Constitution and reaching to Article 8 of the Labour Code. Regarding the bad faith of the employee, it exceeds the scope of abuse of law and must be addressed in relation to the three main stages of any individual labour contract. Thus, when negotiations for a labour contract, bad faith of an employee can occur by breaching of private information disclosed by the employer and by violating the correlative obligation to employer's right to correct information. In disciplinary matters, the form of guilt of the employee who commits a disciplinary offense and his failure to appear at prior disciplinary investigation to which he was called are important for the analyzed issues. Not even termination of an individual labour contract is protected from the event of adopting a malicious behaviour by the employees. The study concludes with launching the opinion that a way to prevent and control this type of behaviour could be the employee's personnel file.*

**Keywords:** good faith, bad faith, abuse of rights, labour, employer, employee

**JEL Classification:** K31

Good faith is a legal goal which finds its essence in the very text of Article 54 of the Romanian Constitution, according to which *Romanian citizens, foreign citizens and stateless persons shall exercise their rights and liberties in good faith, without infringing the rights and freedoms of others*. Romanian legislator does not refute the taken position, so establishes good faith as a principle of civil law in Article 14 paragraph 1 of the Romanian Civil Code<sup>2</sup>, and of labour law as shown in Article 8 of the Labour Code<sup>3</sup>. Under this last legal text *labour relations are based on consensus principle and good faith*.

To approach the subject of our study, we resort to a simple logical reasoning whereby opposite of good faith cannot be other than bad faith. In the juridical literature<sup>4</sup> it is considered that where good faith ceases it breaks through the bad faith because it begins, where appropriate, fraud, violence, evasion of law or abuse of rights, the last one representing the exercise of a subjective right by violating the principles of its exercise<sup>5</sup>. Some authors<sup>6</sup> consider that the legal institution of abuse of rights is intended not only to ensure inviolability of general interest, but also to remove selfishness in exercise of subjective rights harmonizing it with economic and moral demands of society.

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<sup>1</sup> Ștefania-Alina Dumitrache, Police Academy „Alexandru Ioan Cuza”, Bucharest, [stefania.dumitrache@academiadepolitie.ro](mailto:stefania.dumitrache@academiadepolitie.ro)

<sup>2</sup> Law no 287/2009 on the Civil Code was republished in the Official Gazette of Romania, Part I, no 505 of July 15, 2011 under Article 218 of Law no 71/2011 for implementation of the Law on the Civil Code no 287/2009 published in the Official Gazette of Romania, Part I, no 409 of June 10, 2011. According to the text cited *any natural or legal person must exercise their rights and perform their civil obligations in good faith, in accordance with public order and good morals. Good faith is presumed until proven otherwise*.

<sup>3</sup> Law no 53/2003 - Labour Code was republished in the Official Gazette of Romania, Part I, no 345 of May 18, 2011 pursuant to Article V of the Law no 40/2011 amending and supplementing Law no 53/2003 published in the Official Gazette of Romania, Part I, no 225 of March 31, 2011, the texts being renumbered.

<sup>4</sup> Ion Traian Ștefănescu, *Theoretical and practical treaty of labour law*, Universul Juridic Publishing House, Bucharest, 2010, page 79.

<sup>5</sup> See Gheorghe Beleiu, *Romanian civil law. Introduction in civil law study. Subjects of civil law*, The XI th Edition revised and enlarged by Marian Nicolae and Petrică Trușcă, Universul Juridic Publishing House, Bucharest, 2007, page 87.

<sup>6</sup> Ernest Lupan, Ioan Sabău-Pop, *Romanian civil law treaty*. Volume I. *General part*, C.H.Beck Publishing House, Bucharest, 2006, page 117.

By transposing principles of the exercise of subjective civil rights<sup>7</sup> in labour law, we obtain the following rules that should govern the exercise of rights by the employer and employee: rights must be exercised in compliance with laws, internal regulations, the individual employment contract, applicable collective agreement; rights must be exercised in good faith; the right must be exercised within the limits that were outlined in the triangular system known in the field of labour law-collective agreements- individual employment contracts.

According to Article 1170 Civil Code *parties must act in good faith to negotiate and conclude the contract and throughout its execution*, they cannot remove or limit this duty. In addition, under Article 14, paragraph 2 Civil Code *good faith is presumed until proven otherwise*. We appreciate that the obligation subsists and if the individual employment contract, which is essentially a legal act<sup>8</sup>. So, as a rule, employment law reflects the existence of good faith in the exercise of subjective rights and the obligations that form the content of legal work relations. As stated in juridical literature<sup>9</sup>, the assumption of good faith has as starting point the assumption that people behave honestly, are sincere and loyal to each other, being the main criteria for assessing labour relations, which are built on trust, giving a relative legal presumption that gives legal force to relative relationship.

To identify the situations in which an employee would be bad faith, we refer to the three important stages of any employment contract, namely the negotiation and conclusion, performance and termination.

With regard to a person's attitude during negotiations to conclusion the individual employment contract, we believe that there are incidents the provisions of Article 1183 Civil Code which title is even *Good faith in negotiations*. According to this legal text, by engaging in a negotiation the part is required to comply with the requirements of good faith, without any exception in another sense. The conduct of the person concerned by a particular employer to negotiate without intending to conclude an employment contract is contrary to good faith requirements and may even attract liability for damage caused to the employer concerned in accordance with civil law<sup>10</sup>. It's hard to believe, however, that the injured person will spend resources (physical and financial) at the malicious party.

According to Article 1184 Civil Code, any employee has the obligation not to disclose or use for their own benefit confidential information that have been made aware during negotiations of the individual labour contract. The confidential information that employee became aware during performance of the contract may be object of a confidentiality clause based on Article 26 of the Labour Code. Of course, a contrary conduct of the employee draws, which therefore, obligation to pay damages.

Hiding the truth about one's studies and work experience is also a malicious behaviour, except that, this time, is precisely aimed the conclusion of an individual employment contract. We note that in public institutions and authorities, or other budgetary units hiring is done only through competition or exam<sup>11</sup>. Otherwise, the methods of recruitment are determined by collective agreement, personal status and internal rules. In practice, employers in private sector mostly use the interview as a selection method and we must recognize that this appreciated individually, not always provides accurate information about the interviewee, coming after the conclusion of the contract that the selected person does not match the job that has been assigned. The solution of the employer is dismissal for professional unsuitability under Article 61 letter of

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<sup>7</sup> Gheorghe Beleiu, *cited work*, p.86.

<sup>8</sup> For the same point of view, see Dan Țop, *Labour law treaty*, Bibliotheca Publishing House, Târgoviște, 2006, page 61.

<sup>9</sup> *Idem*.

<sup>10</sup> Article 1183 paragraph 3 and 4 Civil Code.

<sup>11</sup> Article 30 of Labour Code

Labour Code. Occupational mismatch was defined in doctrine<sup>12</sup> as an objective or subjective circumstance that leads or is able to lead to the achievement of professional performance lower than those that the employer is reasonably entitled to expect from the employee. To believe that the employee does not match the job, professional duties failure should not rely on his guilt, when the act constitutes a disciplinary misconduct and the employee will be the subject of disciplinary liability<sup>13</sup>.

Put into question the text of Article 8 paragraph 2 of the Labour Code which provides that for the purposes of labour relations, "participants in labour relations will be informed (...) each, according to the law and collective agreements". It goes without saying that our legislature considered the right to correct information of each party and its correlative obligation.

When abuse occurs in the development of legal labour relations and meets the elements of a disciplinary misconduct there appears disciplinary liability of the employee concerned. However, abuse is not the same as a disciplinary offense because the first implies the existence of a right that is exercised in disregard of the above principles, while disciplinary misconduct involves an offense in connection with work which breach laws, rules of contract individual employment or collective agreement applicable and hierarchical legal orders.

However, in disciplinary matters, the form of guilt of the employee who commits a disciplinary offense and his failure to appear at prior disciplinary investigation to which he was called are important for the analyzed issues.

Mental attitude of the employee towards the act committed, attitude expressed in that person's guilt, with its immediate result and the causal link between the first two, all form the subjective side disciplinary offence. In criminal law doctrine<sup>14</sup>, the guilt is defined as the mental attitude of the person that in the moment of committing a dangerous act, had the representation of socially dangerous act and its consequences, or even without this representation of the crime and follow-up consequences he had a real possibility of this representation. Actual representing or at least potential representation of these consequences existence is main determinant for the existence of guilt and its forms<sup>15</sup>. In form of guilt, disciplinary offense may be committed intentionally - when the employee who commits an act contrary to the specific obligations of legal labour relations, provides the harmful result and designed to produce that result or, without seeking, accepts the possibility of its occurrence - or negligent – when the employee provides harmful result of his act, but did not seek and did not accept the event's occurrence and acted without reason as that outcome will not occur or he did not provided the result, although it should and could have made. Note that, until the entry into force of the current Civil Code, intentional and negligent terminology was borrowed from criminal law, civil law<sup>16</sup> with reference to guilt under the term "fault" or "negligence" or "reckless". Today, though, Article 16 Civil Code not only refers *expressis verbis* to the two forms of guilt, but it also defines the meaning of those mentioned above. The novelty of the text is drawn from the second sentence of paragraph 3 which enshrines in our law, the concept of *gross negligence* which means negligence or recklessness that no person would have manifested to their own interests.

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<sup>12</sup> See Raluca Dimitriu, *Employees dismissal, Romanian and comparative law*, Omnia Uni S.A.S.T. Publishing House, Braşov, 1999, page 192.

<sup>13</sup> Nicolae Voiculescu, *Labour law. Internal and community regulations*, Wolters Kluwer Publishing House, Bucharest, 2007, page 82; Ion Traian Ştefănescu, *cited work.*, page 402; Alexandru Ţiclea, *Treaty of labor law. Legislation. Doctrine. Jurisprudence*, Sixth edition revised and enlarged, Universul Juridic Publishing House, Bucharest, 2012, page 711.

<sup>14</sup> See Costică Bulai, Bogdan N. Bulai, *Handbook of criminal law. General part*, Universul Juridic Publishing House, Bucharest, 2007, page 157.

<sup>15</sup> *Ibidem*, page 158.

<sup>16</sup> Article 998 and 999 of Civil Code from 1864.

Guilt is a constituent element of disciplinary offence and judicial practice showed that the offense committed without guilt may not result in disciplinary liability of the employee<sup>17</sup>. Guilt must be assessed *in concreto*, case by case basis, taking into account the training, ability, experience and personal skills of the author<sup>18</sup>. Within disciplinary liability, degree of guilt is one of the criteria used for dispensing punishments, for individualizing them<sup>19</sup>. Certainly, a disciplinary offense committed by an employee in the terms in which he realizes the dangerous outcomes and consequences of his act or accepts the event of their production, will present a more pronounced degree of social danger than the misconduct committed by negligence<sup>20</sup>. Under the same conditions, in determining the applicable sanction to negligent employee who has violated labour discipline, will be taken into account the degree of his fault (*culpa lata, levis* or *levissima*), reflecting the different levels of seriousness of the offense in relation to the employee's subjective position towards the consequences of his offense<sup>21</sup>.

We emphasize that guilt as an essential feature of disciplinary offence and guilt as part of disciplinary content are identical<sup>22</sup>, whereas the existence of the former involves, necessarily, the existence of the second one. Differentiation of concepts would be required if the legislator had laid down some forms of guilt for the existence of different disciplinary offences, after criminal law model, but impossible in practical terms, when there could be guilty as essential feature, without any guilt as an element of subjective side of the disciplinary offence. It seems that such a situation was considered by the legislature, in the Article 16 of Civil Code, since it refers to a situation where the law conditions the legal consequences of committing an act with negligence, when condition is fulfilled and if the offense is committed intentionally, without the reverse to be true.

In this context, we conclude that in labour law, bad faith means intention as a form of guilt for committing disciplinary offences.

In terms of employee failure to convene correctly made without an objective reason, the lack of an objective reason to justify such behaviour itself shows bad faith of the employee - subject of prior disciplinary research. This outlines the employer's right to have enforcement, without any prior disciplinary investigation under paragraph 3 of Article 251 of the Labour Code, the provisions of which we consider, among other authors<sup>23</sup>, as being mandatory. In legal literature<sup>24</sup> has expressed the contrary point of view that the employer should carry out prior disciplinary research even in such situation, because otherwise there would be a legal presumption of guilt of the employee who does not appear to call, proposing that legal text stating unequivocally that "the failure of the employee without motive shall not preclude completion of prior disciplinary investigation and, if appropriate, punish the employee".

*Per a contrario*, the employer can not penalize the employee if he could not be present at the time and place fixed in the notice for objective reasons, which did not take his will, the decision imposing sanctions in this context is null absolutely. Was deemed to be such objective

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<sup>17</sup> See Court of Appeal Pitesti, Civil, labor disputes and social security Division, civil decision no 145/2006 in Alexandru Țiclea (coordinator), Daniela Diko, Leontina Duțescu, Laura Georgescu, Ioan Mara, Aurelia Popa, *Commented and annotated Labor Code with legislation, doctrine and jurisprudence*, Volume II, Universul Juridic Publishing, Bucharest, 2008, page 407.

<sup>18</sup> Sanda Ghimpu, *Some aspects of disciplinary ceasing of employment contract in the light of the Law regarding organization and work discipline in state socialist units* in "Romanian Journal of Law" no 7/1970, page 37.

<sup>19</sup> Sanda Ghimpu, Alexandru Țiclea, *Labour law*, Third edition, Publishing house and press „Șansa” S.R.L., Bucharest, 1998, page 399.

<sup>20</sup> See Sanda Ghimpu, *Some aspects...*, work cited, page 37.

<sup>21</sup> *Ibidem*, page 38.

<sup>22</sup> For details regarding the difference between those two notions in criminal law, see Alexandru Boroi, *Criminal law. General part. According to New Criminal Code*, C.H.Beck Publishing House, Bucharest, 2010, p.171.

<sup>23</sup> See Ion Traian Ștefănescu, *cited work*, page 725.

<sup>24</sup> See Ovidiu Ținca, *About prior disciplinary research* in "Romanian Journal of Labour Law" no 1/2006, page 39.

reasons a great distance to the establishment situated in another town combined with the short time available to the employee for making travels<sup>25</sup> and delays for passenger trains<sup>26</sup>; employee's temporary disability leave, not annual leave<sup>27</sup>; proven disease employee<sup>28</sup>; any special circumstances, unforeseeable occurred in the family or at employee's home<sup>29</sup>.

In juridical doctrine, the issue is whether the failure of the employee to convene represents a distinct disciplinary offence, which could be punished. The answer is controversial.

In the first view<sup>30</sup>, it is considered that it is inconceivable the employee can be sanctioned if he refuses to submit to the convening made as provided in paragraph 2 of Article 251 of the Labour Code, the only consequence being the possibility of the employer to sanction that employee, without being required prior disciplinary investigation.

Likewise, it is argued that the failure of the employee to disciplinary investigation cannot be a disciplinary offense, as has the value of a notice convening that the time, date and place to discuss and analyze the employee's behaviour, who may pose to explain further and if he considers that the situation is clear, he may not be present<sup>31</sup>.

Recent legal doctrine<sup>32</sup> showed that the presentation to the convening of the employee is a right of him and not an obligation, since this is the fundamental right of defence, because no one can be forced to defend themselves. Thus, it is impossible to accept that the right to defence is exercised in the employee's obligation to present to the convening made by his employer. Justification for such support is given by the fact that the parties' rights and obligations in a legal relationship are correlative, so that the employer's obligation to make prior disciplinary investigation and to convene the employee may correspond only the right of the employee to be present at this convocation. Failure to call means that that person has agreed to waive the right to defence against the employer, having been deprived of the opportunity to defend themselves, to take evidence and to motivate their behaviour. Therefore the employee implicitly recognizes committing the disciplinary offence he is charged with and tacitly accepts the penalty that is to be applied. The immediate consequence of failure is that the employer has the right to punish, without any preliminary investigation. It further, there is pointed out that prior disciplinary investigation is provided solely in the interests of the employee, so that the absence can not be criticized, and failure can not in any way constitute another punishable misconduct<sup>33</sup>.

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<sup>25</sup> In such situation convening to prior disciplinary investigation was regarded as merely formal, not effective, which issues absolute nullity sanction of the disciplinary decision in such a situation - see *Commented jurisprudence* (Leontina Constantina Duțescu), "Romanian Journal of labour law" no 4/2009, pages 117-119.

<sup>26</sup> See Court of Appeal Bucharest, Civil Division, decision no 648/2006 in G.G.Schmutzer, *Labour Law Jurisprudence* 2006-2008, Moroșan Publishing House, Bucharest, 2008, pages 217-219.

<sup>27</sup> In this regard, see Court of Appeal Alba Iulia, department for labor disputes and social security decision no 753/2008 in Lucia Uță, Florentina Rotaru, Simona Cristescu, *Labour Code annotated*. Second volume – Articles 154-298 : *Legislation. Community and national law. Notes and comments* Hamangiu Publishing House, Bucharest, 2009, page 552.

<sup>28</sup> See Magda Volonciu, Note to civil decision no 4121/R/2007 Section VII of the Civil and causes of labor disputes and social security division, the Court of Appeal Bucharest in "Romanian Journal of Jurisprudence" no 1/2009, pages 169-179

<sup>29</sup> Ion Traian Ștefănescu, *Effects of unjustified refusal of the employee to be present at disciplinary investigation prior to disciplinary sanction* in "Law Review" no 1/2005, page 77, note no4.

<sup>30</sup> Duicu Sabău, *Unjustified refusal of the employee to be present at the convocation to prior disciplinary investigation could be - itself - a disciplinary offense* in "Law Review" no 9/2004, pages 84-85.

<sup>31</sup> Costel Gilcă, *Effects of the unjustified refusal of the employee to be present at prior disciplinary investigation (I)* in "Law Review" no 8/2005, pages 116-122. It is also made a discussion on the legal force convening so that the witness employee this is an order and his failure is a disciplinary offense to be punished, while to the employee presumed to be guilty, the call has only the value of a notice.

<sup>32</sup> See Alexandru Țiclea, *Considerations about prior disciplinary investigation* in "Romanian Journal of Labour Law" no 1/2010, page 29.

<sup>33</sup> *Ibidem*, page 30.

In another view<sup>34</sup>, diametrically opposed, is considered that unjustified refusal of the employee to be present at the convocation made under the Labour Code is, itself, a distinct disciplinary offence from that the employee was summoned whereas this behaviour, employee rejects the guilt and the legal orders of hierarchical leadership.

This latter view is shared by other authors who support it with strong arguments. It is considered that only the defence in the occasion of convening is a right of the employee, while presenting to the convocation is an obligation arising from the subordination of the employee to the employer<sup>35</sup>. In addition, the refusal of the employee to be present at the prior disciplinary investigation represents a misconduct related to work, a violation of a rule of law and ordered by the commission of inquiry convened under Article 251 paragraph 2, which is a disciplinary offence<sup>36</sup>.

Regarding ways of sanctioning these disciplinary offences, there were taken into consideration two possible ways: worsening penalty imposed by the employer for the first offense investigated or distinctly punish them<sup>37</sup>. However, in the latter case, the rule of principle – Article 251 paragraph 2 of the Labour Code - requires the employer to summon the employee to disciplinary investigation prior to disciplinary sanctioning of the second disciplinary offence and any default of the person concerned without an objective reason, attract, for the second time the enforcement of Article 251 paragraph 3 with all the consequences that flow from it<sup>38</sup>.

This theory has the disadvantage that trigger prior disciplinary research to this second offence committed by the employer return it to the point of beginning of the procedure of prior disciplinary investigation - convening the employee, employer who can face again the unjustified refusal of the employee to present to disciplinary investigation, getting in a vicious circle, in which the only way out seems to be dismissal for repeated misconduct which could be viewed as an abuse of the employer. So far as we are concerned, we believe that the failure of the employee to prior disciplinary investigation is not a disciplinary offence<sup>39</sup>, as it was defined in Article 247 paragraph 2 of the Labour Code. Convening issued by the employer, according to Article 251, paragraph 2 of the Labour Code is a way to notify the employee of the fact that, for him, was initiated disciplinary proceedings, not a legal provision to be observed under the subordination of the employee to the employer - labour relations feature. Immediate consequences of the employee's refusal to submit to prior disciplinary investigation consist on one hand in the right of the employer to issue the disciplinary sanction without prior investigation and on the other employee forfeiture of the right to propose defence and to motivate behaviour.

To remove this controversy we think it would be welcome the legislature intervention in the sense of expressly stipulate whether or not this behaviour is a disciplinary offence<sup>40</sup>. If one accepts that the unjustified refusal of the employee to be present at the convocation discussed is not a disciplinary offence, then neither the employer nor the social partners can give this character by internal rules or collective agreements<sup>41</sup>.

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<sup>34</sup> See Mircea Furtună, *Is the unjustified refusal of the employee to be present at the convocation provided by Article 267 paragraph 2 of the Labour Code a disciplinary offence?* In "Law Review" no1/2005, pages 73-75.

<sup>35</sup> See Ion Traian Ștefănescu, *cited work*, page 725. For the same point of view, see Irina Sorică, *Disciplinary liability of employees*, Wolters Kluwer Publishing House, Bucharest, 2010, pages 143-144.

<sup>36</sup> Ion Traian Ștefănescu, *Effects...*, *op.cit.supra.*, pages 77-78.

<sup>37</sup> Raluca Dimitriu, *Individual labour contract, present and further perspectives*, Tribuna Economică Publishing House, Bucharest, 2005, page 327

<sup>38</sup> Șerban Beligrădeanu, *Effects of unjustified refusal of the employee to present to the preliminary disciplinary investigation (I)* in "Law Review" no 8/2005, page 126. Also see Ion Traian Ștefănescu, *Effect...*, *cit.supra.*, page 78.

<sup>39</sup> See Ștefania Dumitrache, *Disciplinary liability in interna land comparative labour law*, Sitech Publishing House, Craiova, 2011, page 113.

<sup>40</sup> Also, see Ion Traian Ștefănescu, *cited work*, page 725.

<sup>41</sup> Șerban Beligrădeanu, *Effects...*, *cited work*, page 130.

Article 251, paragraph 3 of the Labour Code provides that failure to convene employee without a good reason shall entitle the employer to have punishment, without any prior disciplinary investigation, which is the exception to the rule of paragraph 1 of the same legal text, that any disciplinary sanction may be imposed without conducting in advance a disciplinary investigation. Thus, we can not agree with the view<sup>42</sup> that the employer is required to make prior disciplinary investigation in any case; otherwise there is a legal presumption of guilt of the employee who is not present at the convening power to conduct disciplinary investigation or research committee, as appropriate.

Nor individual employment termination is protected from the possibility of adopting a behaviour that can easily be described as the opposite of good faith. As an example we mention resignation – way of termination a labour contract at the initiative of the employee after serving a notice period agreed in the individual labour contract or collective agreement applicable. According to article 81, paragraph 4 of the Labour Code the notice period can not be longer than 20 working days for employees with executive positions, or more than 45 working days for employees occupying management positions. In this case, the period of notice is stipulated in favour of the employer in order to provide its physical time required to select another person to fulfil job requirements so that work may not be affected. However, in practice, there are lots of situations where the employee refuses to perform its contractual obligations in the period of notice. It is evident bad faith and nor this time, the employer has viable solutions. Of course, purely theoretical, the employer may prove the damage caused by the first who, in this context, could be held legally responsible.

The juridical doctrine<sup>43</sup> considers that good faith in employment relationships should act as loyalty in individual labour contract and collective agreement and fidelity which includes non-compete and confidentiality and cooperation during their execution. With regard to non-compete clause, thereby employee undertakes that after the termination of the individual labour contract does not provide for themselves or a third party competitor activity that rendered his employer in return for a monthly allowance competes. Pursuant to Article 21 paragraph 2 of the Labour Code, the *sine qua non* elements of non-compete clause are: activities prohibited to employee from specified termination date (except that there can not absolutely prohibit the profession or specialization held by the employee<sup>44</sup>); value of compete indemnity; period that becomes effective; third parties prohibited to perform for; the geographical area where the employee may be real competition with the employer. Penalty that occurs for violating with guilt the non-compete clause is stipulated by Article 24 of the Labour Code and consists in returning the compensation paid and, where appropriate, payment of damages corresponding to the loss caused to the employer. By using the wording "breach of guilt", the legislature intends to sanction bad faith of the employee and his guilt.

One way to prevent and control these behaviours that exceed the scope of good faith in labour relations could be represented by a personal file of the employee to accompany him throughout his career, as a constant of his quality of participant on labour market and possibly hindering his future employment. *De lege lata*, as a rule<sup>45</sup>, this is not possible given the provisions of Article 8, paragraph 1 of the Government Regulation no 500/2011 regarding general book on the employees<sup>46</sup> according to the employer is required to make a personal file<sup>47</sup>

<sup>42</sup> See Ovidiu Ținca, *About..., cited work*, page 39.

<sup>43</sup> Ion Traian Ștefănescu, *cited work*, page 78.

<sup>44</sup> Article 23 of the Labour Code.

<sup>45</sup> Exceptionally, remember the situation of civil servants

<sup>46</sup> Published in the "Official Gazette of Romania", Part I, no 372 of May 27, 2011, with subsequent changes made by Government Regulation no 1105/2011, published in the "Official Gazette of Romania", Part I, no 798 of November 10, 2011.

for each of employees, to keep it in good condition on the premises, and to present it to labour inspectors on request. We conclude by stating that the personal file of each employee is the "mirror" which reflects his behaviour at each job individually considered. Thus, we can only observe that in theory and in practice, the variable is the employee who moves from one employer to another, and not jobs that are succeeding in life of a person. An alternative to this personal file could be a document written *ad probationem*, a so-called disciplinary record, which accounts the behaviour of one employee in relation to all its employers. However, if we recognize the existence of such an instrument that would mean that, in determining the repeated character of one offence, with all the implications that flow from this, an employer can take into consideration the disciplinary offences committed by its employee during the time he was in work relations with another person or entity - solution seems difficult to accept. In this context, we recall the provisions of Article 29 paragraph 4 of the Labour Code which contains certain limitations regarding the information required to a former employer during verification of professional skills of the person selected for the admission to employment. Please note that these requests may relate only to the activities performed and the duration of employment, "activities performed" meaning the responsibilities according to job description<sup>48</sup>.

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<sup>47</sup> For the content of the employee's personal file, see article 8 paragraph 2 of Government Regulation no 500/2011 regarding general book on the employees.

<sup>48</sup> See Vlad Barbu, Ștefania Dumitrache, *Considerations regarding disciplinary rehabilitation in the context of current legislation* in "Romanian Journal of Labour Law" no 5/2012, page 66.

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