

## dispute resolution - legal changes published in November and December 2016

**Emergency Ordinance no. 95/2016 for the extension of deadlines and the establishment of measures necessary to prepare for the implementation of certain provisions of Law no. 134/2010 on the Code of Civil Procedure** was published in the Official Gazette of Romania, Part I, no. 1009 of December 15, 2016.

This ordinance extends application of certain provisions of the Civil Procedure Code until January 1, 2019. The provisions of the code relating to the preparation of the case file of appeal or, where appropriate, second appeal to the court whose decision is appealed, it applies on trials started from January 1, 2019. It also extends the application of the trial research and, where appropriate, debate on the merits in the council chamber until the same date. The Ministry of Justice will carry out an action plan comprising the necessary premises for regulating the research process and, where appropriate, the merits debate in the chamber and monitor the implementation thereof and shall inform the Government on the status of its application until December 31, 2017 and quarterly during 2018.

**Decision no. 35/2016 of the High Court of Cassation and Justice regarding a prior judgment for solving a question of law concerning the application of art. 24 para. (1) of the Administrative Litigation Law** was published in the Official Gazette of Romania, Part I, no. 1023 of December 20, 2016.

The High Court of Cassation and Justice was asked to rule on whether the application of art. 24 para. (1) of the Law no. 554/2004, regarding the period for issuing the acts of the administrative authority must take into account the time limits of art. 32 of Law no. 165/2013 on measures to complete restitution in kind or compensation, real estate properties abusively taken during the communist regime in Romania. On this issue, HCCJ established that the interpretation and application of art. 24 para. (1) must take into account the time limits of this article, and not those covered by art. 32 of Law no. 165/2013, whereas the time limits established by art. 32 of Law no. 165/2013 holders are covered for restitution claims so that they could be just the opposite of those holders who have agreed not to invoke the benefit of these terms, but - on the contrary - have resorted to administrative court referral for constraining the authority to enforce swiftly the judgment which became final before the entry into force of Law no. 165/2013.

**Decision no. 39/2016 of the High Court of Cassation and Justice regarding a prior judgment to solving a question of law concerning the interpretation and application of art. 21 para. (2) of the Land Law no. 18/1991** was published in the Official Gazette, Part I no. 1055 of December 28, 2016.

The referral was aimed at the interpretation of the provisions concerning the conditions for establishing residence in the town where the land is assigned and also the regime of this legal requirement for issuance of the title deed by the beneficiary of the establishment right. After analyzing the legal provisions, it was established that the interpretation and application of art. 21 para. (2) of the Land Fund Law no. 18/1991, the condition to establish residence in the town where the land is assigned can be carried out after the issuance of the title deed, failure to observe it attracting the sanction required under the provisions of art. 49 of the same Law for loss of ownership of land and buildings of any kind erected on it.

**Decision no. 44/2016 of the High Court of Cassation and Justice on a judgment prior to unraveling a question of law concerning the interpretation of art. 31 para. (1) of the Government Ordinance on legal regime of offenses** was published in the Official Gazette, Part I no. 1055 of December 28, 2016.

The legal matter of the referral is represented by the obligation to justify the civil offence complaint, where the record of findings and penalties is challenged according to art. 31 par. (1) of GO no. 2/2001 on the legal regime of civil offences. After analyzing the legal provisions, the court found that in the interpretation and application of art.

31 par (1) of Government Ordinance no. 2/2001 on the legal regime of civil offences, the complaint against the record of findings and penalties must also be justified within 15 days from submission or communication of the record of findings. The above mentioned complaint will be subject to the regularization procedure regulated by art. 200 of the Civil procedure code.

**Decision no. 20/2016 of the High Court of Cassation and Justice on examining the appeal on points of law concerning the interpretation and application of art. 915 par. (2) of the Code of Civil Procedure** was published in the Official Gazette, Part I no. 1049 of December 27, 2016.

By the referral lodged by the Managing College of the High Court of Cassation and Justice it has been shown that there is no single point of view in judicial practice regarding the interpretation and application of art. 915 par. (2) of the Civil Procedure Code regarding the choice of court agreement in the event that neither the applicant nor the defendant don't have residence in the country. Specifically, the question of the meaning of the term "agreement" of the parties in the wording of the second sentence of this legal text, and the formal conditions that must be met by the parties' agreement on the choice of forum which would settle the divorce proceedings. In resolving the appeal on points of law, the court determined that in the interpretation and application of art. 915 par. (2) of the Code of Civil Procedure, the parties' agreement on the choice of court to resolve divorce proceedings must be expressly included.

**Order no. 3454/2016 issued by the Ministry of Finance which approves the enforcement proceedings for debtors who are owed certain, liquid and due amounts from public authorities or institutions** was published in the Official Gazette of Romania, Part I, no. 968 of November 29, 2016.

In that order it is stated that the debtor having outstanding tax obligations for whom there are ongoing enforcement measures applied by the competent tax authority and who is owed certain, liquid and due amounts from public authorities or institutions may submit to the competent tax authority an address, accompanied by the document issued by the public authority or institution, requiring the application of art. 230 of Law 207/2015 regarding the Fiscal Procedure Code relating to the debt payment notice.

In cases where the enforcement is initiated and the debtor submits to the competent tax authority the request and document issued to by the public authority or institution, the proceedings will be continued through the garnishment of certain, liquid and due amounts owed to the debtor by the public institution or authority. The amounts obtained after the establishment of garnishment settle the fiscal receivables included in the enforceable titles for which this measure was applied.

**Order no. 3418/2016 issued by the National Agency for Fiscal Administration** was published in the Official Gazette, Part I no. 960 of November 28, 2016 which brings some changes to special cases of enforcement.

The order mentions that currently enforcement procedures can also be generated by: (i) documents issued in criminal matters by the courts or other competent bodies according to the law, on the fulfillment, by the authorities for enforcement with the National Agency for Fiscal Administration, of precautionary measures or, where appropriate, lifting them (ii) other enforceable titles which set interest, late penalties, delay penalties or other amounts, ordered, but not individualized by final judgment pronounced in criminal matters, including those that establish the amount of the costs of enforcement, those that establish the amount of the price difference and / or costs related to the pursuit of the good and the decisions of attracting joint liability issued according to the law for purposes of recovering budgetary claims established by final judgment in criminal matters.