

dispute resolution - legal changes published in June 2017

Decision of the Constitutional Court no. 224/2017, published in the Official Gazette of Romania, Part I, no. 427 of June 9, 2017. The objection of unconstitutionality refers to the provisions of art. 6, point 6 final thesis of Government Emergency Ordinance no. 195/2002 on the public road traffic. The Constitutional Court upheld the objection of unconstitutionality, finding that the legislative solution contained in art. 335 par. (1) of the Criminal Code, which does not criminalize the driving on the public roads of an agricultural or forestry tractor without a driving license, is unconstitutional.

Decision of the High Court of Cassation and Justice no. 13/2017 regarding the pronouncement of a preliminary ruling on a matter of law, published in the Official Gazette of Romania, Part I, no. 464 of 21 June 2017. HCCJ has determined that the provisions of Art. 6 of the Criminal Code are incident in the case where the more favorable criminal law intervened after the conditional release of the convicted person, and subsequently the rest of the sentence was ordered by a new final conviction, by which the court did not rule on the application of more favorable criminal law after the final hearing of the case, since the purpose of art. 6 is to provide legal support for a final punishment in relation to the new law and until the end of any effects of the conviction that will intervene through rehabilitation.

Decision of the Constitutional Court no. 257/2017, published in the Official Gazette of Romania, Part I, no. 472 of 22 June 2017.

The exception of unconstitutionality refers to the provisions of art. 20 par. (1) and art. 21 par. (1) of the Code of Criminal Procedure. The Court held that the possibility of the injured party, who was a civil party, to request the civilly liable party to be introduced in the criminal trial "until the commencement of the judicial inquiry" in any trial phase, including the closure of the preliminary chamber procedure, violates the right of free access to justice of the civilly responsible party, enshrined in Art. 21 of the Constitution. The Constitutional Court found that the criminal procedural rules of art. 21 par. (1), regulating the possibility of the injured party who was a civil party to request the civilly liable party to be introduced in the criminal proceedings "until the commencement of the judicial inquiry", are unable to maintain the balance between the fundamental rights in competition, and the phrase "within the deadline provided in Article 20 paragraph (1)" of the content of art. 21 par. (1) of the Code of Criminal Procedure is unconstitutional.

Decision of the High Court of Cassation and Justice no. 11/2017, published in the Official Gazette of Romania, Part I, no. 479 of 26 June 2017. The HCCJ has established that in interpreting the notion of "motor vehicle", provided by art. 334 par. (1) of the Criminal Code and art. 335 par. (1) of the Criminal Code, referring to art. 6 point 6 and point 30 of O.U.G. no. 195/2002, modified by GO no. 21 / 26.08.2014, the driving on the public roads of an agricultural / forestry tractor unregistered according to the law or by a person who does not have a driving license does not meet the typical conditions of the offenses provided by art. 334 par. (1) of the Criminal Code, respectively by art. 335 par. (1) of the Criminal Code.

The Official Gazette of Romania, Part I, no. 501 of 30 June 2017 published the judgment of the European Court of Human Rights in the case of Calin and Others v. Romania. The Court held that the establishment limitation period, as it had the effects in the present case, restricted the applicants' right to take action in the determination of paternity until it had ceased to exist. The Court also considers that the national courts did not maintain a "fair balance" between the various interests involved and that the interference with the applicants' right to privacy was therefore not proportionate to the legitimate aims pursued. The ECHR therefore declared two of the three applications admissible, the Romanian State having to pay: (i) EUR 4500 to each of the two claimants for moral damage; (ii) EUR 300 plus any amount which may be owed by the claimant as tax, for legal expenses, to one of the claimants, and EUR 4,104 plus any amount which may be owed as tax, for the other party's legal expenses.

Decision of the Constitutional Court no. 392/2017, published in the Official Gazette of Romania, Part I, no. 504 of 30 June 2017. The objection of unconstitutionality concerns the provisions of art. 248 of the Criminal Code of 1969, art. 297 par. (1) of the Criminal Code and of art. 132 of the Law no. 78/2000 on the prevention, detection and sanctioning of graft. The Court found that the provisions criticized breached the provisions of Art. 1 par. (4) and (5) of the Constitution in that they allow the confiscation of the material element of the objective side of the offense of abuse in service through the activity of other bodies other than the Parliament - through the adoption of the law, 73 par. (1) of the Constitution - or the Government - by adopting ordinances and emergency ordinances, under the delegation provided by art. 115 of the Constitution. Thus, the Court upheld the objection and found their constitutionality only in so far as the phrase "defective fulfilment" in their contents means "fulfills by breaking the law". In relation to the other provisions criticized, the Court rejected, as inadmissible, the objection of unconstitutionality of the provisions of Art. 297 par. (1) of the Criminal Code, respectively dismissed as unfounded, the objection of unconstitutionality regarding art. 132 of the Law no. 78/2000 on the prevention, detection and sanctioning of graft.