

dispute resolution - legal changes published in May 2017

Court Decision no. 23/03.04.2017 ruled by the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 365/17.05.2017. In connection with the application of Art. 1279 para. (3) point I and Art. 1669 (1) of the Civil Code, the High Court of Cassation and Justice ruled that, in order for the promise to sell a real estate to be concluded, for the purpose of ruling a court decision that would replace a notarized document, the notarized form thereof is not mandatory.

Court Decision no. 5/2017 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 375/19.05.2017. The High Court of Cassation and Justice ruled that, as regards the construal and application of the provisions of Art. 485 para. (1) letter b) point I of the Criminal Proceedings Code, the withdrawal by the perpetrator in front of the court of law of his/her consent which has been validly expressed in the course of the criminal investigations as per the provisions of Art. 482 letter g) of the Criminal Proceedings Code does not represent grounds for the guilt admission agreement to be rejected, whereas admitting the possibility for the consent to be withdrawn equals to an inefficient procedure for guilt admission, as such is lawfully stipulated, and in the same times represents the usefulness thereof in terms of the opportunity to render the criminal legal file shorter, for which purpose the concept of negotiated justice has actually been regulated, as a derogation from the common law, allowing the perpetrator to make use or not of the guilt admission procedure, while the lawgiver has not stipulated the possibility for the agreement to be rejected grounded on the perpetrator's no longer admitting his/her offences or withdrawing his/her consent.

Court Decision no. 28/24.04.2017 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 378/22.05.2017. The High Court of Cassation and Justice ruled that the term of "public body", as such is defined by the provisions of Art. 2 para. (1) letter b) of the Administrative Contentious Law no. 554/2004 is not similar to the one of "public institution" as such is defined by the provisions of Art. 2 para. (1) item 39 of Law no. 273/2006 on local public finance.

Court Decision no. 6/2017 ruled by the Sections of the High Court of Cassation and Justice for the resolution of appeals on points of law was published in the Official Gazette of Romania, Part I, no. 381/22.05.2017. The appeal on points of law filed by the Romanian Ombudsman refers to the application of the provisions of Art. 7 para. (4) of the Government Ordinance no. 105/1999 regarding the granting of certain rights to persons persecuted for ethnical reasons by the regimes governing Romania between September 6, 1940 and March 6, 1945, namely calling for a resolution on whether or not the court decisions ruled in the legal files regarding the refusal to grant the rights stipulated by said legal act are subject to appeal, according to the Administrative Contentious Law no. 554/2004.

The High Court of Cassation and Justice, by systematically interpreting the legal provisions and considering the lawgiver's express intent to correlate the entire civil proceedings legislation with the provisions of the new Civil Proceedings Code, has reached the decision that the provisions of Art. 7 para. (4) of the Government Decision no. 105/1999 shall be interpreted in the sense that the court decisions ruled in the legal files regarding claims against decisions issued by committees within county pensions houses or within the Bucharest Pensions House are not subject to appeal, whereas the court decision ruled by the first procedural court is final.

Court Decision no. 45/12.12.2016 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 386/23.05.2017. By said decision resolutions have been given to the following questions of law:

- on the interpretation and application of the provisions of Art. 21 para. (2) section I of the Administrative Contentious Law no. 554/2004, the claim for review is admissible based on a decision from the EU Court of Justice, irrespective of the moment when such is ruled and of whether or not in the main litigation there are invoked or not provisions of European law which had previously existed, breached by the decision the review of which is claimed, and
- the term within which a claim for review can be filed grounded on the provisions of Art. 21 para. (2) of Law no. 554/2004 is of one month and starts as of the date when the final decision is communicated, which is subject to review.

Court Decision no. 10/2017 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 392/25.05.2017. The High Court of Cassation and Justice has decided that for the interpreting and application of Art. 426 letter b) of the Criminal Proceedings Code, the court in charge with solving the annulment claim cannot reanalyze a cause for termination of the criminal legal file, in case the court of appeal debated and analyzed the incidence of said cause for termination of the criminal legal file, whereas a claim for annulment can be filed grounded on the provisions of Art. 456 letter b) only when the court rules a condemnation verdict, although evidences exist that a cause for terminating the criminal legal file exist. Moreover, any aspect subjected to the parties' debate by the court of appeal and in regard to which said rules a final decision represents a matter covered by the power of already trialed matter, therefore such cannot be invoked as case of claim for annulment.

Court Decision no. 34/15.05.2017 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law, pending publication in the Official Gazette of Romania. According to this decision, for the interpreting and application of Art. 182 and 183 of the Civil Proceedings Code, the procedural act filed by facsimile or e-mail on the last date of the term calculated by days, after the hour when the activity of the court closes, is not considered submitted in due time. The provisions of this decision are yet inapplicable, whereas the date is relevant of their publication in the Official Gazette of Romania, Part I.

The Decision no. 2/2017 ruled by the Constitutional Court on the admissibility of the unconstitutionality exception regarding the provisions of Art. 453 para. (3) and (4) section one and of Art. 457 para. (2) of the Criminal Proceedings Code was published in the Official Gazette of Romania, Part I, no. 324/2.05.2017. According to the legal provisions subject to criticism, the cases for review stipulated at para. (1) letter a) and f) – namely if (i) facts or circumstances are unrevealed which were not known when the legal file was resolved and which render the court decision ruled in the legal file ungrounded and if (ii) the court decision is based on a legal provision which, after the court decision became final, was declared unconstitutional in result of an exception in said case being ruled – can be invoked as reasons for review only in favor of the prosecuted individual or in favor of the person regarding whom a waiver to apply a punishment or a decision to postpone the application of a punishment were ruled. The provisions of Art. 453 para. (3) of the Criminal Proceedings Code regarding the case for review stipulated at para. (1) letter a), as well as the legislative solution included in the provisions of Art. 453 para. (4) section one of same code, excluding the possibility to review an acquittal decision for the case stipulated at para. (1) letter a) breaches the constitutional provisions of Art. 16 regarding the equality of rights, of Art. 21 regarding the free access to justice and of Art. 131

regarding the role of the Public Ministry, whereas in such case the civil party lacks the possibility to have its lawful rights and interests defended, and respectively the prosecutor lacks the necessary leverage for putting into practice his/her specific role in the criminal trial.

The court acknowledged that in case facts or circumstances are unrevealed which were not known when the legal file was resolved and which render the acquittal decision ungrounded, then both the civil party as well as the prosecutor need to be given the possibility to claim and to obtain the reinstatement of the judicial truth, by withdrawing the court decision ruled in that case. Thus, the unconstitutionality decision has been ruled, whereas ascertaining that:

- the provisions of Art. 453 para. (3) of the Criminal Proceedings Code are unconstitutional regarding the review case stipulated at para. (1) letter a);
- the provisions of Art. 453 para. (4) section one of the Criminal Proceedings Code, which exclude the possibility for the acquittal decision to be reviewed for the case stipulated at para. (1) letter a) are unconstitutional;
- the legislative solution stipulated by Art. 457 para. (2) of the Criminal Proceedings Code, which excludes the review case stipulated at Art. 453 para. (1) letter a) is unconstitutional.

The Decision no. 372/30.05.2017 ruled by the Constitutional Court, pending publication in the Official Gazette of Romania, by which the unconstitutionality exception was admitted regarding the provisions of Art. XVIII para. (2) of Law no. 2/2013 regarding some measures for easing the workload of the courts of justice, as well as for preparing the implementation of Law no. 134/2010 regarding the Civil Proceedings Code by comparing such against the provisions of Art. 483 para. (2) of Law no. 134/2010, by ascertaining that the wording “as well as in other claims which can be measured in money with a value of up to lei 1 million inclusively” is unconstitutional. Although the decision of the Constitutional Court is pending publication, the press release issued on May 30, 2017 by the External Affairs, Media Relations and Protocol Department of the Constitutional Court mentions that by accepting the mentioned value threshold the principle of equality in rights had been breached, whereas citizens would no longer be equal in their right to make use of the extraordinary means of appeal. The provisions of this decision are not applicable yet, whereas the date is relevant of their publication in the Official Gazette of Romania, Part I.

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