

## litigation and arbitration - legal changes published in July 2018

**Decision of the High Court of Cassation and Justice no. 12/2018 regarding the examination of the appeal in the interest of the law submitted by The Leading Board of Cluj Court of Appeal regarding the interpretation of the provisions of Law no. 165/2013 on the measures for completing the restitution in kind or equivalent of buildings and lands abusively taken over during the communist regime in Romania, as further modified and amended (Law no. 165/2013), with respect to the possibility of granting, in the case of buildings and lands abusively taken over, assets other than those included in the list of assets drawn up in accordance with the provisions of Art. 221 par. (5) of the Norms for the application of Law no. 165/2013, approved by the Government Decision no. 401/2013 (Norms for the application of Law No 165/2013), as supplemented by Government Decision no. 89/2014, was published in the Official Gazette of Romania, Part I, no. 570 of July 6, 2018 and is applicable from the same date.**

HCCJ has been notified for a judgment to ensure the interpretation and uniform application of the provisions of Law no. 165/2013 on the possibility of offsetting, for buildings and lands abusively taken over, of assets other than those included in the list of assets drawn up in accordance with the provisions of Art. 221 par. (5) of the Norms for the application of Law no. 165/2013. The HCCJ stated that in the interpretation and uniform application of the provisions of Art. 1 par. (2) of the Law no. 165/2013 regarding the measures for the completion of the restitution in kind or equivalent of the buildings and lands abusively taken over during the communist regime in Romania, corroborated with art. 221-223 of the Norms for the application of Law no. 165/2013, assets other than those mentioned in the list drawn up by the entity invested with the settlement of the request made on the basis of Law no. 10/2001 *on the legal regime of buildings and lands abusively taken over from 6 March 1945 to 22 December 1989* may be compensated, if the entitled person proves their availability.

**Decision of the Constitutional Court of Romania no. 354/2018 regarding the admission of the objection of unconstitutionality of the provisions of art. 2523 par. (3) the final sentence from The Code of Criminal Procedure, was published in the Official Gazette of Romania, Part I, no. 579 from July 9, 2018 and is applicable from the same date.**

Through the objection of unconstitutionality, it is argued that the provisions of art. 2523 par. (3) the final sentence of the Code of Criminal Procedure are unconstitutional because they do not provide for the possibility of appealing the decision by which the court orders the sale of seized movable goods. The Court stated that the exclusion from court scrutiny of the decision by which the court, during the trial, rules upon the sale of a seized mobile good, leads to a violation of the principle of free access to justice, since the persons concerned are covered by an effective procedural guarantee to defend their property right affected by the introduction of this measure. At the same time, the Court found that whereas, in the course of the criminal prosecution, the decision of the judge of rights and freedoms on the sale of seized movable goods can be appealed, both with regard to the sale disposal and the performance manner of this measure[ see art. 2522 par. (4) and Art. 2524 par. (1) the first sentence of the Code of Criminal Procedure], during the trial, the decision of the court

on the sale of seized movable goods may be appealed, only in respect of the manner in which such decision is executed, meanwhile the measure of selling seized movable goods is not subject to be appealed (see Art. 2524 par. (1) third sentence of the Code of Criminal Procedure]. For these reasons, the Constitutional Court upheld the objection of unconstitutionality, finding that the legislative solution contained in art. 2523 par. (3) the final sentence of the Code of Criminal Procedure, which does not allow the appeal against the court decision on the measure of selling seized movable goods is unconstitutional.

**Decision of the High Court of Cassation and Justice no. 52/18.06.2018 regarding the examination of the joined complaints formulated by the Bucharest Court of Appeal - Civil Section IV in case file no. 41.380/299/2016, the High Court of Cassation and Justice - Civil Section I in case file no. 6.892/101/2014 and Bucharest Court of Appeal - Civil Section V in case file no. 529/2/2018, for the issuance of a preliminary ruling, was published in the Official Gazette of Romania, Part I, no. 609 of July 17, 2018 and is applicable from the same date.** The HCCJ has determined that in a non-retrospective interpretation and application of the Decision no. 369 dated May 30, 2017, issued by the Constitutional Court of Romania, to the litigations started before the date of such decision's publication in the Official Gazette of Romania (July 20, 2017), the remedies shall be those provided by the law in force at the date of commencement of the proceedings (respectively the unmodified form of the provisions of art. XVIII par. (2) of Law no. 2/2013]. As a result, the effects of the unconstitutionality decision will concern all court judgments delivered after the date of its publication, but in proceedings commenced after 20 July 2017.

Thus, the HCCJ has stated that in interpreting and applying the provisions of art. 27 of the Civil Procedure Code, with reference to art. 147 par. (4) of the Romanian Constitution, the effects of the Decision no. 369 of May 30, 2017, issued by the Constitutional Court of Romania are made on the judgments delivered after its publication in the Official Gazette of Romania, in pecuniary litigations of up to RON 1,000,000.00 commenced after the publication of the decision (July 20, 2017). According to the provisions of art. 521 par. (3) of the Civil Procedure Code, this decision is binding.

**Decision of the Constitutional Court of Romania no. 453/2018 regarding the admission of the objection of unconstitutionality of the provisions of the single article points 2 to 5 and point 10 of the Law for amending and completing the Law no. 254/2013 regarding the execution of the punishments and the deprivation of liberty ordered by the judicial bodies during the criminal trial was published in the Official Gazette of Romania, Part I, no. 617/July 18, 2018 and is applicable from the same date.** The CCR admitted the objection of unconstitutionality formulated by the High Court of Cassation and Justice, the United Sections, and stated that the provisions of the single article, points 2 to 5 and point 10 of the Law for amending and completing the Law no. 254/2013 on the execution of sentences and detention measures ordered by the judicial bodies during the criminal proceedings are unconstitutional.

**Decision of the Constitutional Court of Romania no. 418/2018 regarding the admissibility of the objection of unconstitutionality of the provisions of art. 29 para. (1) letter c) of Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for measures to**

**prevent and combat the financing of terrorism in the interpretation given by the Decision of the High Court of Cassation and Justice no. 16 of June 8, 2016, regarding the issuance of a preliminary decision for the resolution of certain legal issues related to the money laundering offense was published in the Official Gazette of Romania, Part I, no. 625/July 19, 2018 and is applicable from the same date.** The CCR accepted the objection of unconstitutionality raised by Mureș Tribunal- the Criminal Section, *ex officio*, in case files no. 2.100/102/2013 and no. 5.873 / 102/2013 and stated that the provisions of art. 29 para. (1) letter c) of Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for measures to prevent and combat the financing of terrorism in the interpretation given by the Decision of the High Court of Cassation and Justice no. 16 of June 8, 2016 on a preliminary ruling in respect of the active subject of the offense (point 2 of the decision's device) are unconstitutional.

**Decision of the Constitutional Court of Romania no. 290/2018 regarding the admissibility of the objection of unconstitutionality of the provisions of art. 127 par. (1) and (2) of the Civil Procedure Code was published in the Official Gazette of Romania, Part I, no. 638 of July 23, 2018 and is applicable from the same date.** CCR accepted the objection of unconstitutionality raised by Laura Ileana Gal, Florin Dănuț Ciucaș and Bihor Media Society - S.R.L. Oradea in case file no. 17.133/271/2015 pending to Oradea Court of Appeal - Civil Section and stated that the phrase "of the jurisdiction of the court in which it operates" of art. 127 par. (1) of the Civil Procedure Code, as well as the phrase "which carries out its activity in the court competent to hear the case" of art. 127 par. (2) of the Civil Procedure Code are unconstitutional. Moreover, the CCR accepted the objection of unconstitutionality raised by the Vâlcea Bar in case file no. 30.098/3/2014/a1 of the Bucharest Tribunal-Section II, administrative and fiscal contentious and stated that the provisions of art. 127 par. (1) and (2) of the Civil Procedure Code are constitutional insofar as they concern also the court as an applicant/defendant.

**Law no. 212/2018 for amending and supplementing the Law on administrative contentious no. 554/2004 and other normative acts was published in the Official Gazette of Romania, Part I, no. 638 of July 23, 2018 and is applicable as of August 2, 2018.** By this act, the Parliament of Romania amends a multitude of provisions of Law no. 554/2004, such as: art. 7, paras. (1), (3) and (5), art. 7, introductory wording and letter (b) of par. (6) and art. 8, paras. (1) and (2), it repeals some provisions and introduces some new ones. Moreover, the following provisions are amended by the same act: art. 53 of Law no. 101/2016 on remedies and redress in the award of public procurement contracts, sector contracts and works concession and service concession contracts, as well as the organization and functioning of the National Council for Solving Complaints, art. 35 of Law no. 165/2013 regarding the measures for the completion of the process of restitution, in kind or equivalent, of the buildings abusively taken over during the communist regime in Romania, art. 8 of Law no. 164/2014 regarding some measures for speeding up and finalizing the process of solving the requests formulated under Law no. 9/1998 regarding the granting of compensations to the Romanian citizens for the goods that were passed into the ownership of the Bulgarian state following the application of the Treaty between Romania and Bulgaria, signed in Craiova on September 7, 1940, and of Law no. 290/2003 regarding the granting of reparations or compensations to the Romanian citizens for their property, seized, detained or remaining in Bessarabia, Northern Bucovina and Herța Land, as a result of the state of war and the application of the Peace Treaty between Romania and the Allied Powers, Associated, signed in Paris on February 10,

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1947, and for the amendment of some normative acts and art. 272 of Law no. 207/2015 on the Fiscal Procedure Code, published in the Official Gazette of Romania, Part I, no. 547 of July 23, 2015, as amended and supplemented, paragraphs 2 to 5.