

Litigation and arbitration - legal changes published in December 2017

Decision of the High Court of Cassation and Justice no. 19/2017 regarding the examination of the appeal in the interest of the law formulated by the Brasov Court of Appeals regarding the compulsoriness of taking the precautionary measures in the criminal cases during the trial, when the investigations made showed that the defendant has no assets in his property,

published in the Official Gazette of Romania, Part I, no. 953 of 4 December 2017, applicable from the same date. The High Court considered that, in the absence of a law providing such an additional obligation for the judiciary body, it is not possible to support the obligation to perform prior investigations at the time of the establishment of the precautionary measure in order to determine the existence and identification of the assets in the patrimony of the person concerned by the measure in question, because it would be unacceptable to extend the law and it would be contrary to the principle of the lawfulness of the criminal proceedings.

In conclusion, the High Court admitted the appeal in the interest of the law declared by the Brasov Court of Appeal and established that when the precautionary measures are instituted in the criminal proceedings, it is not necessary to indicate or prove or individualize the assets on which the protective measure is established.

Decision of the High Court of Cassation and Justice no. 66/2017 on the examination of the petition formulated by the Bacau Court – 2nd Department of Civil, administrative and fiscal litigation regarding the pronouncement of a preliminary ruling concerning a matter of law, published in the Official Gazette of Romania, Part I, no. 969 of 07 December 2017, applicable from the same date.

The HCCJ has been notified to give a preliminary ruling on the following matter of law: how to interpret and apply the provisions of Art. 623 of the Civil Procedure Code related to Art. 220 para. (3) and (5) and Art. 226 par. (3) of the Law no. 207/2015 on the Fiscal Procedure Code, as subsequently amended and supplemented, art. 3 par. (1) of the Law no. 273/2006 on local public finances, as subsequently amended and supplemented, and art. 3 point 18 of the Fiscal-Budgetary Responsibility Act no. 69/2010. In the interpretation of the aforementioned provisions, The HCCJ stated that the enforced execution of enforceable titles such as rulings on budgetary debts owed on the basis of contractual legal relationships that are earned to consolidate the state budget is performed by tax bailiffs as enforcing bodies of the state.

Decision of the Constitutional Court no. 671/2017 regarding the objection of the unconstitutionality of the provisions of Art. 21 par. (4) and Art. 41 par. (5) of the Law no. 165/2013 regarding the measures for completing the restitution in kind or equivalent of the properties abusively taken over during the communist regime in Romania, published in the Official Gazette of Romania, Part I, no. 1015 of 21 December 2017, applicable from the same date.

With regard to the provisions of Art. 21 par. (4) of the Law no. 165/2013, the Court notices that there is always the premise of impossibility to fulfill the orders within a final / irrevocable court decision, which is contrary to art. 1 par. (4) of the Constitution regarding the principle of the separation of powers in the state. As such, the Court states that

the provisions of Art. 21 par. (4) of the Law no. 165/2013 are regulating a condition for the enforcement of the rulings pronounced prior to the entry into force of Law no. 165/2013. However, a law subsequent to the moment when a ruling becomes final / irrevocable cannot provide an obstacle to its enforcement, just procedural rules regarding its enforcement, but not prejudicial to its binding force. Thus, the Constitutional Court upheld the objection of unconstitutionality and stated that the phrase "*only after the depletion of the plots of agricultural land assigned to in kind restitution identified locally*" provided in Art. 21 par. (4) of the Law no. 165/2013 regarding the measures for completing the restitution in kind or equivalent of the properties abusively taken over during the communist regime in Romania is constitutional insofar as it does not apply to the existence of final / irrevocable rulings whereby the courts ordered compensations in cash equivalent.

Decision of the High Court of Cassation and Justice no. 21/2017 published in the Official Gazette of Romania, Part I, no. 1024 of 27 December 2017, applicable from the same date.

The High Court of Cassation and Justice accepted the appeal in the interest of the law and established that the act of highlighting in the accounting documents or other legal documents the expenses that are not based on actual operations or showing other fictitious operations by using fake invoices and receipts, for the purpose of circumventing tax obligations, constitutes the offense of tax evasion provided by art. 9 par. (1) let. c) of Law no. 241/2005 for the prevention and combating of tax evasion.

Decision of the Management Board of the Chamber of Commerce and Industry of Romania no. 5/2017 for the approval of the Regulation on the organization and functioning of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, published in the Official Gazette of Romania, Part I, no. 1017 of 21 December 2017, applicable from the same date.

The normative approves the Regulation on the organization and operation of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania. Thus, the Decision of the Management Board of the Chamber of Commerce and Industry of Romania no. 7/2016 approving the previous version of the Regulation is repealed.

Decision of the Chamber of Commerce and Industry of Romania (CCIR) no. 27/2017 regarding the adoption of the Arbitration Procedure Rules of the Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry, published in the Official Gazette of Romania, Part I, no. 1025 of 27 December 2017, applicable from the same date.

The decision approves the rules of arbitration procedure of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania which establish the principles and rules for solving internal and international disputes subject to institutionalized arbitration organized by the Court of International Commercial Arbitration with The Chamber of Commerce and Industry of Romania, their application in time and space, the request for arbitration, the commencement and performance of the procedure before the arbitral tribunal, the assembly of the arbitral court, the rules of evidence management before the Arbitral Court and the simplified arbitral procedure.