

Cover article: “GDPR’s Impact on Healthcare Services”

by Vlad Irimia – Senior Associate Voicu & Filipescu

Once it is accepted that Regulation 2016/679 on data protection¹ (hereafter referred to as the “**Regulation**” or “**GDPR**”) is fully applicable not only to the various legal entities (including small companies with a rather reduced level of activity), but also in the case of individuals processing personal data, during their activity, the specific implications of the Regulation on healthcare activities can be raised.

In this context, alignment with GDPR requirements implies a detailed analysis of the particularities of the medical field, especially taking into account the legal provisions applicable in this field (including the specific legislation regulating the profession of physician) in order to respond to the aims of the Regulation.

Legal Changes of October 2018

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company’s activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in:

- Banking & Finance
- Data Protection
- Employment
- Energy
- Insurance
- Litigation & Arbitration
- Public Procurement

+ VF News

Article [Autoritatea de supraveghere din România \(A.N.S.P.D.C.P.\) începe presiunea pe conformarea la GDPR: publică spre consultare activitățile care necesită DPIA](#) by Voicu Filipescu Senior Partner Marta Popa, published on Bizlawyer. [Click here](#) to read the article.

Article [Insolvency and the Urgent Amendments Thereto](#) by VF Insolvency Partner Mariana Popa, published on CEE Legal Matters. [Click here](#) to read the article.

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[IFLR 1000, 2019 edition](#) recommends Voicu & Filipescu for our lawyer’s activity in three practice areas: M&A, Banking and Finance and Project Development.

[Legal500 EMEA 2018](#) recommends Voicu & Filipescu for our lawyers’ activity in 7 practice areas: commercial, corporate and M&A, employment, energy and natural resources, PPP and procurement, real estate and construction, restructuring and insolvency, TMT. Mugur Filipescu, Marta Popa, Roxana Negutu, Raluca Mihaï and Mariana Popa are also recommended by the prestigious guide for their activity.

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC

cover article

GDPR's Impact on Healthcare Services

by Vlad Irimia, Senior Associate Voicu & Filipescu

Once it is accepted that Regulation 2016/679 on data protection² (hereafter referred to as the "**Regulation**" or "**GDPR**") is fully applicable not only to the various legal entities (including small companies with a rather reduced level of activity), but also in the case of individuals processing personal data, during their activity, the specific implications of the Regulation on healthcare activities can be raised.

In this context, alignment with GDPR requirements implies a detailed analysis of the particularities of the medical field, especially taking into account the legal provisions applicable in this field (including the specific legislation regulating the profession of physician) in order to respond to the aims of the Regulation.

Specific aspects

In addition to the general need to comply with GDPR provisions - issues that are not negligible, however, taking into account the various relevant issues in the context of an analysis (such as: activity level, specific information flows, type and level of relationships with others, belonging to a group of companies or complex operations with an impact on the processed personal data) - the specific nature of the medical field can bring additional implications that need to be addressed from a data protection perspective in the particular context of a regulated activity and where a significant part of the information represents special categories of personal data, in the GDPR sense.

At first glance, it may be concluded that, at the level of a medical practice, the requirements of the Regulation can be more easily implemented and observed during their application; one main argument could be that the current activity in a simple medical practice involves a less complicated flow and level of information, and the main GDPR compliance issues can be easily identified.

Depending on the specific way of organizing the practice, in accordance with the legal provisions, and taking into account the relationships established by the medical practice with its various partners - relationships that include specific service providers (e.g. IT service providers, accounting / payroll services providers) as well as collaborations with other practices or companies / clinics operating in the medical field - a number of rather complex issues that may make compliance with Regulation more difficult could arise.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC

Potential difficulty aspects

Among others, the following specific matters might involve difficulties in analysis:

(a) Identifying relationships with partners

In addition to correct identification of all processed personal data, implementation of minimum protection measures, drafting and providing the data subjects with the necessary information under GDPR, or ensuring conditions for them to exercise their specific rights, in practice, it may prove quite difficult to analyze the relationships established with different contractors, from the perspective of the Regulation.

Since the identification of a *controller - controller*, *controller - processor* or *joint controllers* relationship may impose a number of specific obligations (in accordance with the Regulation), both the agreed contractual circumstances and the reality of the relationship between the parties will be essential in order to determine the specific steps for ensuring protection of personal data.

Under these circumstances, the specific guidelines adopted by the former *Article 29 Working Party* on *controller* and *processor* concepts may prove extremely useful in the assessments to be made in this respect, on a case-by-case basis.

In addition, where available, various instructions, guidelines or other similar guidance adopted by professional associations, professional regulatory bodies and/or other bodies active in the healthcare field, should be taken into account, for the sake of clarity.

(b) Identifying specific obligations depending on the processing circumstances

Another potential issue that should be addressed appropriately derives from the specific scope of data processed in the medical field.

In particular, the principle of data minimization under the GDPR must be circumscribed in the context of the medical activity, since certain data that, at first sight, could be considered excessive, may be of particular relevance and its processing is necessary for the purpose of conducting medical consultations and prescribing specific recommendations / treatments (such as: information on eating habits or related to work or other personal issues).

Therefore, the information processing framework should be analyzed in detail, on a case-by-case basis, taking into account both the wider context of the medical service provided to the data subject and the need to process certain categories of data that can be of particular relevance together with various other elements relating to the data subject.

(c) Identifying the specific basis for data processing

This issue may also raise certain difficulties in the specific context of the processing of special patient data categories.

In particular, the specific requirements of the Regulation have a significant impact on the processing operations, bearing in mind that, historically, processing of patient data has in most cases been carried out on the basis of their implicit consent, but this aspect should be analyzed (and even reconsidered) from the GDPR perspective.

The basis for the processing of special categories of data will have to be identified both by reference to the provisions of art. 6 GDPR as well as by reference to the provisions of art. 9 GDPR, taking into account, *inter alia*, the purpose of the processing (which facilitates the correct identification of the basis of the processing operation).

Additionally, in the context of identifying the basis of processing, one should also consider and separately address the specific requirements under medical legislation and data protection rules, each with their own regulatory scope.

By way of example, there may be cases in which personal data is processed on the basis of legal requirements or legitimate interests, while also being necessary in the context of occupational healthcare requirements; at the same time, however, from medical legislation perspective, the medical service (and, implicitly, the data processing) can be performed on the basis of the patient's informed consent (which is different, with respect to content and purpose, from the consent for processing under the GDPR).

(d) The need to conduct a data protection impact assessment

Last but not least, the data protection impact assessment (DPIA) is also a sensitive query that should be considered in the specific context of the activity being carried out.

This issue should have to be dealt with on the basis of the specific requirements of the Regulation (including by reference to the relevant recitals in the GDPR preamble) and taking into account the mandatory cases defined at national level for carrying out such an impact assessment (as detailed in the content of ANSPDCP³ Decision No 17/2018).

Particularly relevant is the situation of large-scale processing of patients' genetic and/or health data, or the large-scale processing of employee's data (through automatic monitoring and/or systematic recording of behavior) where an appropriate impact assessment is required. Generally speaking, the key issue in these cases is the manner of interpretation and application of the concept of *large scale*, a matter that might prove even more problematic in the case of a simple medical practice than that of a private health clinic.

³ ANSPDCP is the National Personal Data Processing Supervising Authority.

Conclusions

The very diverse nature of the personal data which is typically processed by healthcare professionals, the specific regulations in this field as well as the particular context of relationships established with both the data subjects and the various persons involved in the data processing activities need to be analyzed in detail, to properly identify and address the implications of these operations, in the light of the requirements of the Regulation, as well as according to the realities of the medical activity.

Any materials prepared by various professional associations, regulatory bodies and/or other bodies active in the medical field may prove extremely useful in defining, at least in principle, certain recommendations to be followed by those acting in this field. Indicatively, one can take into account materials prepared by national authorities in the field of personal data protection or various guidelines prepared at the level of professional associations / bodies from other EU Member States, which may provide useful recommendations in the context of compliance with GDPR requirements.

banking & finance - legal changes published in October 2018

The Regulation for amending and supplementing the Regulation of the National Bank of Romania no. 17/2012 on certain credit conditions, as subsequently amended and supplemented, was passed by the Board of Directors of the National Bank of Romania on 17 October 2018.

The Regulation provides the maximum level of indebtedness which will be 40% of the net income on loans in lei and 20% for the foreign currency loans. The total indebtedness is determined as the ratio of the total monthly payment obligations relative to the monthly net income.

Also, the maximum borrowing rate is increased by 5 percent for loans for the purchase of the first dwelling to be occupied by the borrower.

The amendments provided for by the Regulation will apply to both banking institutions and NFIs, to be published in the Official Gazette and will enter into force on January 1, 2019.

Regulation no. 5/2018 amending and supplementing the Regulation of the National Bank of Romania no. 5/2013 on prudential requirements for credit institutions was published in the Official Gazette of Romania, Part I, no. 881 of October 18, 2018.

The regulation introduces the notion of a banking agent and requires credit institutions to draw up and submit a list of bank agents to the National Bank of Romania - the Supervision Department within 30 days of the entry into force of the Regulation. On the basis of the list, the banking agents are registered in a registry kept by the National Bank of Romania, which will be continuously updated.

data protection - legal changes published in October 2018

Decision no. 161/2018 regarding the approval of the Investigation Procedure by the National Supervisory Authority for Personal Data Processing - ANSPDCP was published on October 23, 2018.

According to the Investigation Procedure, investigations can be carried out:

- a) **ex officio**: upon proposal of the departments with control responsibilities within ANSPDCP; upon proposal of the president or vice-president of the ANSPDCP - by a written resolution; upon proposal of the other departments within the ANSPDCP; as a result of personal data breach notices; for the verification of data and information on the processing of personal data obtained by ANSPDCP from sources other than those targeted by the complaint, including on the basis of notices or information received from another supervisory authority or from another public authority; or for international cooperation including with the supervisory authorities in other Member States in the field of personal data protection, including in the framework of joint operations and mutual assistance.
- b) **or upon a complaint** lodged according to the Procedure for receiving and solving complaints, approved by decision of the ANSPDCP president.

The procedure determines how to conduct investigations: field investigations; investigations at ANSPDCP headquarters; investigations in writing or investigations with public authorities / bodies.

Each type of investigation contains detailed procedures regarding the way it is deployed, the rights and obligations of the entities under scrutiny, and how to enforce sanctions for breaching the provisions governing data protection.

The main civil offence sanctions applied by ANSPDCP are warnings and fines.

Decision no. 161/2018 was published in the Official Gazette no. 892/23.10.2018 and entered into force on the date of its publication in the Official Gazette.

Decision no. 174/2018 on the list of operations for which a data protection impact assessment is mandatory was published on 31st October 2018.

Decision no. 174/2018 of the National Authority for the Supervision of Personal Data Processing (ANSPDCP) establishes the cases when it is mandatory for controllers to carry out the data protection impact assessment, namely:

- a) the processing of personal data in order to carry out a systematic and comprehensive assessment of personal aspects relating to individuals, which is based on automatic processing, including profiling, and which is the basis

for decisions which produce legal effects on the individual or which similarly affects the individual to a significant extent;

- b) extensive processing of personal data on racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, genetic data, biometric data, for the sole identification of an individual, health data, gender or sexual orientation of an individual or personal data relating to criminal convictions and offenses;
- c) the processing of personal data for the purpose of systematic large scale monitoring of an area accessible to the public, such as video surveillance in shopping centers, stadiums, markets, parks or other such spaces;
- d) large scale processing of personal data of vulnerable persons, especially minors and employees, by means of automatic monitoring and/or systematic recording of behavior, including for advertising and marketing activities;
- e) large-scale processing of personal data by innovative use or implementation of new technologies, in particular where such operations limit the ability of data subjects to exercise their rights, such as the use of facial recognition techniques to facilitate access to different spaces;
- f) large-scale processing of data generated by sensing devices transmitting data over the Internet or other means ("Internet of Things" applications such as smart TVs, connected vehicles, smart meters, smart toys, smart cities or other such applications);
- g) large-scale and/or systematic processing of traffic and/or location data of individuals (such as Wi-Fi monitoring, geographic location of passenger transport in public transport or other such situations) when processing is not required for providing a service requested by the data subject.

By way of exception to the above, the data protection impact assessment is not mandatory when processing carried out under Art. 6 par. (1) let. (c) or (e) GDPR has a legal basis in EU or national law and a data protection impact assessment has already been carried out as part of a general impact assessment in the context of the adoption of the relevant acts.

Decision no. 174/2018 was published in the Official Gazette no. 919/31.10.2018 and entered into force on the date of its publication in the Official Gazette.

employment - legal changes published in October 2018

Order of the Minister of Labor and Social Justice no. 2.004/2018 regarding the approval of the framework templates of the internship certificate and contract, as well as that of the application for requesting the employment bonus was published in the Official Gazette of Romania, Part I, no. 865 of October 12, 2018, entering into force on the same date.

Thus, the internship certificate provides the identification data of the person who carried out the internship program and the host organization, the number of the internship contract that was concluded, the subject of the activity carried out, the acquired skills/competences, and also the assigned work schedule in hours/day and hours/week.

The mandatory provisions of the internship contract include, on the one hand, *the rights and obligations of the intern*, with the right to benefit from the assistance and coordination of the mentor appointed by the host organization, the right to have access to information that will enable them to consolidate the knowledge and the development of abilities, but also the obligation to observe the tasks assigned by the mentor, the confidentiality rules and the provisions of the internal regulations. On the other hand, *the rights and obligations of the host organization* are also provided, which also has the right to use the theoretical and practical knowledge of the intern during the internship program, the right to exercise control over the way of carrying out and performing the activities as well as numerous obligations, such as ensuring adequate logistical, technical and technological endowment, necessary to capitalize on the theoretical knowledge of the intern and to developing practical knowledge. The provisions of the internship contract will be supplemented by the provisions of Law no. 176/2018 on internship.

Annex no. 3 of the Order provides the template of the application for the employment promotion bonus (provided in Article 22 paragraph (3) of Law no. 176/2018 on internship). This application contains, *inter alia*, the identification data of the employer, the employee, the number and date of the individual employment agreement concluded between the parties, to which one attaches the copy of the internship contract registered with the County Employment Agency, the copy of the internship certificate, the copy the individual employment agreement recorded in the general registry of employees and other documents proving the employment relations were maintained for an uninterrupted period of at least 24 months with the employee in question.

energy - legal changes published in October 2018

Order of the National Regulatory Authority for Energy no. 177/2018 regarding the approval of the Framework Conditions for the implementation timetable of the smart electricity metering systems at national level, was published in the Official Gazette, Part I no. 866 of October 12, 2018, applicable from the same date.

The act approves the Framework Conditions for the implementation timetable of the smart electricity metering systems at national level, stipulated in the appendix, which is an integral part of the Order.

According to the Order, the electricity distribution operators perform cost-benefit analyzes for the establishment of plans for the implementation of smart meters in the concession area, broken down annually for the period 2019-2028. Cost-benefit analyzes must reflect the cost structure taken into account in meeting the mandatory functionality set out in the Order, as well as the benefits achieved, including for end-users, after the installation of the meters.

Implementation projects for smart meters that are economically efficient as a result of cost-benefit analyzes are included in the annual investment plans starting with 2019, in line with the regulatory framework in force. These projects must meet the Framework Conditions for the implementation timetable for smart metering systems at national level.

On the basis of the cost-benefit analyzes, the electricity distribution operators delegates to the NRAE the proposals regarding the plans for implementation of the intelligent electricity metering systems for the period 2019-2028, within 90 days from the date of coming into force of the Order. The NRAE verifies the respective proposals and requests, as appropriate, the amendment or supplementation of the plans for the implementation of smart metering systems in accordance with the provisions of the Order.

Law no. 240/2018 for the approval of Government Emergency Ordinance no. 26/2018 regarding the adoption of measures for the security of the electricity supply, published in the Official Gazette of Romania, Part I, no. 314 of April 10, 2018. The Law for the approval of GEO no. 26/2018 was published in the Official Gazette, Part I no. 871 of 15 October 2018 and is applicable from 18 October 2018.

The act approves the measures adopted for the security of supply for the period 15 April 2018 - 30 June 2020 by Government Emergency Ordinance no. 26/2018, according to which, in order to maintain the safety level of the National Power System, the Hunedoara Energy Complex - S.A. has the obligation to provide technological system services to the Transmission System Operator at a power value of at least 400 MW, under the conditions of the regulations issued by NRAE. The transmission and system operator will establish the monthly capacity corresponding to the technological system services representing a slow tertiary reserve, of which a capacity of 400 MW will be allocated to Hunedoara Energy Complex SA. In the case of accidental or unforeseen situations in the functioning of energy groups within the Hunedoara Energy Complex, which determines the unavailability of the technological system services, the producer has the obligation to notify the Transmission System Operator according to the normative acts in force, and this will purchase the respective system services under competitive conditions.

Order of the National Regulatory Authority for Energy no. 178/2018 amending and supplementing the Regulation on the organization and functioning of the Green Certificates Market, approved by the Order of the President of the National Regulatory Authority for Energy no. 77/2017, was published in the Official Gazette, Part I no. 901 of October 26, 2018, applicable from December 1, 2018.

The act provides, inter alia, the following:

- (i) Redefining the terms of "revoked green certificate", " blocked green certificate", " temporarily blocked green certificate ", " expired green certificate ", " transferred green certificate ", " valid green certificate " transaction confirmation", "bilateral green certificates contract", "bilateral green certificates contract market", "negotiated price on the bilateral green certificates contract market";
- (ii) Redefinition of the GCM, in the sense that it is a competitive market separate from the electricity market, where one trades GCs afferent to the E-RES produced in the power plants benefiting or having benefitted from the GC promotion system established by the Law;
- (iii) The redefinition of BGCCM, in the sense that it is a market consisting of an anonymous centralized green certificates market and a market for GC bilateral contracts concluded through direct negotiation between electricity generators from renewable energy sources owning groups/plants benefitting or having benefitted from the GC promotion system and own GCs, with installed power of up to 3 MW per generator, and end-user electricity suppliers;
- (iv) The fact that the GCM participants are:
 - accredited power generators from renewable energy sources;
 - electricity suppliers purchasing electricity for their final consumption as well as for sale to end users in Romania;
 - electricity suppliers electricity purchasing electricity produced in Romania for sale to end users/ other suppliers outside Romania in the countries with which the Government of Romania has signed bilateral agreements in this respect;
 - electricity generators using the electricity produced for their own final consumption, other than the own technological consumption, except for the end use of prosumer individuals who are provided under art. 14 par. (66) of the Law;
 - electricity generators using the electricity produced for supplying customers directly connected by power lines to the plant.

insurance - legal changes published in October 2018

Law no. 236/2018 on insurance distribution was published in the Official Gazette, Part I no. 853 of October 8, 2018, which entered into force on October 1, 2018.

This law transposes the provisions of the European Parliament and Council Directive (EU) 2016/97 on insurance distribution (known as the IDD - Insurance Distribution Directive), published in the Official Gazette of the European Union, L series, no. 26 February 2, 2016. It repeals Law 32/2000 on the activity and supervision of insurance and reinsurance intermediaries, and the Financial Supervisory Authority (FSA) will issue new implementing rules, the draft thereof being currently subject to public debate.

It regulates the distribution of insurance and reinsurance products, including at cross-border level and through electronic distribution channels, by:

- (a) insurance undertakings,
- (b) primary intermediaries (insurance brokers, credit institutions and investment firms),
- (c) secondary intermediaries (agents, assistants acting under responsibility of insurers or primary intermediaries),
- (d) ancillary insurance intermediaries (distributing only insurance products that are complementary to a good or service supplied as part of their principal professional business) and
- (e) exempted ancillary insurance intermediaries (in case the insurance provides coverage for (i) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider, or (ii) damage to, or loss of, baggage or other risks associated with a travel booked with that provider, and the amount of the premium calculated on a pro rata annual basis, does not exceed EUR 600 or, if the duration of the service is less than, or equal to, three months, the amount of the premium does not exceed EUR 200).

Within 120 days from the date of entry into force of this law, credit institutions and investment firms currently carrying out bancassurance activities, or who are brokerage assistants, shall choose to carry out the distribution activity according to the new legal provisions (they may opt for the capacity as primary intermediary, with the approval of the FSA and, in the absence of their notice in this respect to the FSA, they may carry out distribution activities as secondary intermediaries).

Among the main novelties, we highlight the following:

- new requirements of professional competence and moral probity applicable from February 23, 2019;
- new conduct requirements for acting in accordance with the best interests of the clients;
- new requirements for pre-contractual information (including the provision of a standardized information document called PID, according to the provisions of Regulation 1469/2017, if the product is included in the general insurance classes);
- provisions on the remuneration of intermediaries;
- provisions regarding advising prior to concluding a specific insurance contract, obtaining the necessary information for the demands and needs test (DNT), depending on the complexity of the insurance product and the type of client;

- special provisions on the possibility of separately purchasing the different components of a package offered (cross-selling);
- provisions on internal product governance requirements and the possibility for the primary intermediaries (brokers, credit institutions and investment firms) to create insurance products in association with insurance undertakings.

The draft FSA Norm on Insurance Distribution provides that insurance brokerage firms may also carry out the distribution of (i) pension products in accordance with applicable law, (ii) capital market investment products as delegated agents, in accordance with applicable law (iii) products created by credit institutions, non-banking financial institutions, payment institutions and electronic currency institutions, according to the applicable national law, with the authorization or approval of the FSA, as the case may be.

litigation and arbitration - legal changes published in October 2018

Decision of the Constitutional Court of Romania no. 454/2018 regarding the objection of unconstitutionality against the provisions of art. I point 37 (referring to art. 402 of the Code of Civil Procedure) and point 58 (referring to art. 497 of the Code of Civil Procedure), as well as art. III pt. 3 (referring to art. XVIII par. (2) of the Law no. 2/2013) and point 4 (with reference to art. XVIII¹ of the Law no. 2/2013) of the Law for amending and supplementing the Law no. 134/2010 on the Civil Procedure Code, as well as for amending and supplementing other acts, was published in the Official Gazette of Romania, Part I no. 836 of 1 October 2018 and is applicable from the same date. The Court partially upheld the objection of unconstitutionality and found that art. III pt. 3 (referring to art. XVIII par. (2) of the Law no. 2/2013) and point 4 (referring to art. XVIII¹ of the Law no. 2/2013) of the Law for amending and supplementing the Law no. 134/2010 on the Civil Procedure Code, as well as for amending and supplementing other acts are unconstitutional.

Regarding art. III (4) of the Law, the Court found that it is understood from its wording that "*the date of entry into force of this law*" refers to the law subject to constitutional review, so that, from that date, the power to solve second appeals in respect of appraisable claims worth up to/over lei 200,000, are shared between the courts of appeal and the High Court of Cassation and Justice. This applies to decisions subject to second appeal from the date of entry into force of the law subject to constitutional review. According to paragraph (1), this division of competence concerns the processes commenced from the date of entry into force of the law subject to constitutionality control, and, according to par. (2), this will also apply to trials commenced between February 15, 2013 and the date of entry into force of the law subject to constitutional review. It follows that the division of jurisdiction relates to judgments subject to second appeal issued after the entry into force of this law subject to constitutional review, both in the proceedings which had begun before and after its entry into force, not ruling on the judgments subject to second appeal issued between July 20, 2017 and the date of entry into force of this law. It would therefore be understood that all second appeals are to be judged by the High Court of Cassation and Justice.

The Court found that since most money claims relate to claims less than lei 1,000,000 in order not to affect the fairness of judicial proceedings by overcrowding and hindering the supreme court's activity with such requests, and in the absence other mechanisms to overcome these difficulties, the legislator opted for a sharing of competence between the courts of appeal and the High Court of Cassation and Justice. However, this legislative solution, provided by the law under scrutiny, seeks only to resolve the second appeals lodged with regard to the judgments which may be made after the entry into force of this law subject to constitutionality control, both in the earlier and subsequent proceedings and the second appeals in respect of the judgments which are likely to be subject to them following the decision of the Constitutional Court no. 369 of May 30, 2017 in the cases started after the entry into force of the new Code of Civil Procedure be judged by the High Court of Cassation and Justice. The Court found that art. III point 4 (with reference to

Article XVIII¹⁾ of the law contradicts art. 1 par. (5) of the Constitution, which enshrines the legal security of a person, a concept which is defined as a complex of guarantees of a constitutional nature or having constitutional value inherent in the rule of law, in respect of which the legislator has the constitutional obligation to ensure both a natural stability to the right, and also the optimal exercise of fundamental rights and freedoms.

The decision of the European Court of Human Rights in Hulpe and Others vs. Romania (revision) of 2018 was published in the Official Gazette of Romania, Part I, no. 836 of 1 October 2018 and is applicable from the same date.

The case originated in five claims against Romania, in which four Romanian nationals and a Romanian company brought the case before the Court under art. 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The claimants have lost the civil litigations which took place in their absence. They were notified of the procedure only by displaying summons on a door or on the gate of a building ("*summons by displaying*"). The ECHR found that the applicants had not established a causal link between the alleged breach and the alleged material damage; therefore, it dismissed the claims for damages. Furthermore, in the light of all the circumstances of the hereby cases, the Court has acknowledged that the applicants must have suffered non-pecuniary damage which cannot be compensated by simply finding an infringement, ordering compensations for non-pecuniary damage. In addition, the ECHR noted that art. 509 par. (1) point 10 of the Code of Civil Procedure allows the internal procedure to be revised to remedy the breaches found. With regard to the nature of the heads of claim submitted by the claimants and the reasons why the Court found a violation of art. 6§1 of the Convention, the Court considered that in these cases the most appropriate form of remedy would be the timely reopening of the proceedings in question upon request of the claimants.

Decision of the High Court of Cassation and Justice no. 17/2018 regarding the examination of the second appeal in the interest of the law formulated by the Board of the Suceava Court of Appeals regarding the interpretation of the provisions of art. 129 par. (2) point 2, art. 129 par. (3), art. 130 par. (2) and (3), art. 131, art. 136 par. (1), art. 200 par. (2) of the Code of Civil Procedure, in order to determine whether the procedural lack of material competence of the specialized section/department is an objection of public or private order has been published in the Official Gazette of Romania, Part I no. 872 of 16 October 2018 and is applicable from the same date.

The HCCJ upheld the second appeal in the interest of the law lodged by the Suceava Court of Appeals, and consequently found that in the interpretation and uniform application of the provisions of art. 129 par. (2) point 2, art. 129 par. (3), art. 130 par. (2) and (3), art. 131, art. 136 par. (1), art. 200 par. (2) of the Code of Civil Procedure and art. 35 par. (2) and art. 36 par. (3) of the Law no. 304/2004, the procedural lack of material competence of the specialized section/department is of public order. It was argued that the specialization of judges and sections of the courts is not regulated by the Code of Civil Procedure but by Law no. 304/2004 regarding the judicial organization,

having the character of public order. The rules governing procedural (specialized) competence are clearly public order as they protect a public interest.

Decision of the High Court of Cassation and Justice no. 15/2018 regarding the examination of the second appeal in the interest of the law lodged by the Attorney General with the Prosecutor's Office attached to the High Court of Cassation and Justice regarding the establishment of the court competent to judge the claims submitted by convicts during the execution of their sentence, if at the time of their submission the convict is temporarily in a place of detention other than the one established for the execution of the sentence, according to art. 11 par. (5) of the Law no. 254/2013 regarding the execution of sentences and the deprivation of liberty ordered by the judicial bodies during the criminal trial, with subsequent amendments and completions, was published in the Official Gazette of Romania, Part I no. 885 of 22 October 2018 and is applicable from the same date. The HCCJ upheld the second appeal in the interest of the law lodged by the Attorney General with the Prosecutor's Office attached to the High Court of Cassation and Justice and consequently determined that the competent court to resolve the claims submitted by convicted persons during the execution of the sentence is the court with jurisdiction over the place of detention at the time the claim is submitted, regardless of whether the place of detention is represented by the penitentiary originally established or by the penitentiary established by the permanent or temporary transfer of the convicted person.

public procurement - legal changes published in October 2018

New NAPP working tools used in the ex-ante control activity - Press release published on the NAPP website on 10 October 2018.

In order to assist the contracting authorities in the procurement process, and in the creation of the contracting strategy, the awarding documentation, as well as in the bid evaluation process, the National Agency for Public Procurement has made available to all interested persons the following working tools used in the ex-ante control activity:

- ***Notice on the use of the Framework Agreement*** – a working tool that clarifies the issues related to the purpose, timeliness and context justifying the proper use of this specific instrument for the award of contracts;
- ***Notice on the issues to be considered when using the works schedule as a requirement for the preparation of the technical proposal for contracts of works*** - a working tool providing the necessary information on the conditions under which one can formulate in the awarding documentation the requirement with regard to the presentation of the implementation schedule of the contract, together with the aspects to be considered by the evaluation committee when determining the conformity of the technical proposal and granting of the technical score, if evaluation factors are used to differentiate between bids depending on how the execution/performance of the contract is planned. The reasoning presented also applies to service contracts having as object intellectual services, and for which evaluation factors of the type exemplified by the NAPP Instruction no. 1/2017 were established.

The two above mentioned notices can be consulted on the NAPP website under the ***Useful documents / Notices*** section or by accessing the following links: <http://anap.gov.ro/web/notificare-cu-privire-la-utilizarea-acordului-cadru/> and <http://anap.gov.ro/web/notificare-cu-privire-la-necesitatea-utilizarii-graficului-gantt-pentru-contractele-de-lucrari/>

Order of the President of the National Agency for Public Procurement no. 1.581/2018 on the approval of standard forms of interim evaluation minutes afferent to awarding procedures of public procurement contracts/framework agreements, sectoral framework agreements /contracts and works concession and service concession contracts was published in Official Gazette of Romania, Part I, no. 885 of October 22, 2018, entering into force on the same date.

This Order approves the standard forms of the interim evaluation minutes and the procedure report form relating to the procedures for awarding procedures of public procurement contracts/framework agreements, sectoral framework agreements /contracts and works concession and service concession contracts used by contracting authorities / entities to complete the phases of the bid / candidate evaluation process as follows:

- (i) Minutes on the evaluation of the tender bond, the information from the DUAE and the accompanying documents, as well as the fulfillment of the qualification requirements set out in Annex no. 1 to the Order;
- (ii) Intermediate report on the candidate selection stage, set out in Annex 2 to the Order;

- (iii) Minutes on the assessment of the conformity of the technical proposals against the provisions of the technical specifications and, where applicable, the assessment factors set out in Annex 3;
- (iv) Minutes on the evaluation of financial proposals, including verification of their compliance with the technical proposals, set out in Annex no. 4 to the Order;
- (v) And also the report of the procedure, set out in Annex no. 5.

At the end of each phase of the evaluation process, contracting authorities/entities shall fill in the appropriate standard report form, i.e. the report of the procedure, set out in the Annexes to this Order, and enter the outcome of the assessment phase in the electronic procurement system.

If the award procedure is subject to the *ex ante* control process exercised by the NAPP in accordance with the provisions of Art. 5 of the Government Emergency Ordinance no. 98/2017, the contracting authority/entity is required to transmit the minutes and the report of the procedure to obtain the approval as a prerequisite for the introduction of the outcome of the evaluation phase in the SEAP and the transition to the next phase of evaluation/completion of the award procedure.

These standard forms apply only to *award procedures for which the deadline set for the submission of bids /applications is set after the date of entry into force of the Order.*

For additional details on this material, please do not hesitate to contact us.

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