

## litigation - legal changes published in December 2018

**Decision of the Constitutional Court no. 601/2018 regarding the admission of the unconstitutionality exception of the provisions of art. 129 par. (2) let. b) of the Criminal Code** was published in the Official Gazette of Romania, Part I, no. 1057 of 13 December 2018 and is applicable from the same date.

The Court upheld the objection of unconstitutionality of the provisions of Art. 129 par. (2) let. b) of the Criminal Code, invoked by Vasile Adrian Harpa in Case no. 550/279/2017 of the Piatra Neamț District Court - criminal section and found that the "**at least**" phrase in their content is unconstitutional, violating the provisions of art. 16 and art. 23 of the Constitution.

Thus, the Court found that the existence of this phrase establishes **a disproportionate sanctioning regime**, which also means a lack of correlation between the provisions of Art. 129 par. (2) let. b) of the Criminal Code with the provisions of art. 113 et seq. of the Criminal Code and determines an unjustified restriction of the individual liberty of the former, with the consequence of violation of the provisions of art. 23 of the Constitution, compounded by the fact that in the case of the criminal sanctioning regime, the legislator provided a limited increase, equal to one third of all other penalties established, in the case of the plurality of offenses provided in art. 129 par. (2) let. b) of the Criminal Code, only the minimum limit of the applicable rate is regulated (*it is increased by a duration of at least one fourth of the duration of the educational measure or of the remaining non-executed punishment*), the amount of which is left to the discretion of the court and is limited, theoretically, according to the way in which the text was formulated, only to the maximum general limit of the prison sentence applicable to the resulting punishment.

**Decision of the Constitutional Court no. 584/2018 regarding the admissibility of the objection of unconstitutionality of the provisions of the sole article point 1 of the Law for amending and completing art. 12 of the Law no. 78/2000 on the prevention, detection and sanctioning of corruption acts as well as of the law as a whole** was published in the Official Gazette of Romania, Part I, no. 1070 of 18 December 2018 and is applicable from the same date.

The Court upheld the objection of unconstitutionality and found that the provisions of the sole article item 1 of the Law for amending and supplementing art. 12 of the Law no. 78/2000 on the prevention, detection and sanctioning of corruption are unconstitutional **in violation of art. 11 par. (1) of the Constitution, referring to art. 3 of the Criminal convention on corruption, adopted at the Council of Europe level, and art. 15 let. b) of the United Nations Convention against Corruption.**

Among other things, the Court found that the margin of decision of the state in the framing of its criminal policy is limited, in addition to the requirements explicitly laid down in the Constitution, to the international obligations it has assumed, and, as regards the fight against corruption, an area in which international acts create obligations for states to regulate such crimes, the state has to criminalize such facts, its normative activity being directed to such a purpose. The decriminalization of acts of corruption, resulting from the interpretations of regulations regarding the objective aspect of the existing laws (replacing the *undue advantage* phrase with *undue material advantage*), as in the present case, amounts to a violation of its international obligations. **The violation of Romania's obligations under the treaties to which it is party contravenes the constitutional provisions of art. 11 par. (1), which enshrines the obligation of the Romanian State to fully and faithfully respect its obligations under the treaties to which it is a party.**

**Decision of the Constitutional Court no. 651/2018 regarding the admissibility of the objection of unconstitutionality of the provisions of art. 595 par. (1) of the Criminal Procedure Code and of Art. 4 of the Criminal Code** was published in the Official Gazette of Romania, Part I, no. 1083 of 20 December 2018 and is applicable from the same date.

The Court upheld the objection of unconstitutionality invoked by Remus Adrian Borza in Case no. 3.514 / 2/2016 before the Bucharest Court of Appeals - Criminal Section I and by Viorel Popescu in Case no. 2.499 / 93/2016 of the Ilfov County Court - Criminal Section and found that the legislative solution contained in art. 595 par. (1) of the Code of Criminal Procedure is unconstitutional.

The Court also upheld the exception of unconstitutionality raised by the same persons in the same cases of the same courts and found that the legislative solution contained in Art. 4 of the Criminal Code, which does not assimilate the effects of a decision of the Constitutional Court which establishes the unconstitutionality of a norm of criminalization with that of a penal decriminalization law, is unconstitutional.

In its statement of reasons, the Court notes, inter alia, that since the effects of the Constitutional Court's decision on admission concerning a rule of criminalization must be **immediate, applicable both in pending and final cases and independent of the passivity of the legislator**, the legislative solution contained in art. 595 par. (1) of the Criminal Procedure Code, which does not include the decision of the Constitutional Court, which establishes the unconstitutionality of a norm of criminalization as a case of removing or modifying the punishment/correctional measure, and the legislative solution contained in art. 4 of the Criminal Code, which does not assimilate the effects of a decision of the Constitutional Court which establishes the unconstitutionality of a norm of criminalization with the effects of a penal law of decriminalization, affects the constitutional provisions of art. 16 par. (1) on equal rights of citizens, art. 23 par. (12) on the establishment and enforcement of punishment and art. 147 par. (1) and par. (4) regarding both the termination of the legal effects of the rules of criminality found to be unconstitutional and the general binding nature of the decisions of the Constitutional Court, as well as the

provisions of **art. 7 - No punishment without law of the Convention for the Protection of Human Rights and Liberties.**

**Law no. 310/2018 for amending and completing the Law no. 134/2010 on the Civil Procedure Code, as well as for the modification and completion of other normative acts**

was published in the Official Gazette of Romania, Part I, no. 1074 of 18 December 2018, entering into force on 21 December 2018.

This law brings many changes, among which we mention:

- In the regularization procedure, new provisions are introduced on the information the plaintiff has to enter in the claim for legal action. Thus, the plaintiff **will not normally be required to supplement or amend the court claim with data or information which it does not personally have, and for which court intervention is required.**
- Substantial changes also occur with regard to the setting of the first court hearing in the sense that **it is no longer obligatory to submit an answer to the statement of defense.** As a consequence, the 3-day deadline for the judge to fix the first court hearing **will start running from the date the statement of defense is submitted** (and not from the time the answer was submitted as previously provided).
- It is no longer mandatory to hold a hearing at the research stage of the trial in the council chamber, **the research of the trial shall be held only in public hearing, unless the law provides otherwise.**
- A new case of **optional stay of proceedings** is introduced when the European Union Court of Justice has been notified with a request for a preliminary ruling in a similar case.
- Courts may extend the 30-day deadline for drafting and signing decisions only in duly motivated cases at most twice by 30 days.

**The law repeals the provisions on the screening of second appeals** which were provided for second appeals in the jurisdiction of the High Court of Cassation and Justice. In these cases, starting with the date of entry into force of Law no. 310/2018, the High Court will apply the other special provisions laid down for second appeals under its jurisdiction, which will be complemented by the common law procedure also provided for the other courts.