

litigation and arbitration - legal changes published in November 2020

Law no. 274/2020 for amending Law no. 286/2009 regarding the Criminal Code was published in the Official Gazette, Part I no. 1144 of November 26, 2020 and it is applicable from November 29, 2020.

The Law amends article 154 (Statute of limitation for criminal liability), paragraph (4) and article 231 (Prior complaint and reconciliation). Therefore, article 154 paragraph (4) of the Criminal Code has, as a result of the legislative amendment, the following text: *“Except for the offenses laid down in articles 218 and 220, in case of offenses against sexual freedom and integrity, those of trafficking and exploitation of vulnerable persons, as well as those of child pornography crime, committed towards a minor, the limitation period runs from the date on which it became major. If the minor died before reaching adulthood, the limitation period runs from the date of death”* – before the amendment, article 154 paragraph (4) mentioned only the offenses against sexual freedom and integrity of the minor, and article 231: *“(1) The deeds set out in this chapter, committed between family members by a minor in the damage of its guardian or by the person who lives with the injured party or hosted by it, shall be punished only complaint of the injured party. (2) In case of the deeds stipulated in article 228 and article 230, reconciliation of the parties removes criminal liability.”* – there were removed from paragraph (2) the deeds mentioned in article 229 paragraph (1), paragraph (2), letters (b) and (c) – various theft offenses.

The Decision of the European Court for Human Rights dated June 24, 2015 ruled in the Veres Case against Romania was published in the Official Gazette, Part I, no. 1121 of 23 November 2020 and it is applicable from the same date.

At the origin of the case it is the application no. 47.615/11 directed against Romania, by which a national of this state, Mr. Cornel Veres, brought an action before the Court on 22 July 2011, under the article no. 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR considered that authorities had not conducted an in-depth and effective investigation into Mr. Veres' credible accusation that a police agent had subjected him to ill-treatment and declared the application admissible, deciding that article no. 3 of the Convention has been infringed under material and procedural terms. Therefore, the Court ruled that: a) the defendant State must pay to the applicant, within three months of the date of the final decision, in accordance with Article 44 § 2 of the Convention, an amount of EUR 12,000, plus any amount that may be due as tax, as a matter of non-pecuniary damage, which will be converted into the currency of the defendant State at the exchange rate applicable on the date of payment, and b) that, from the expiry of the period until payment, this amount must be increased by a simple interest rate, at a rate equal to the European Central Bank's marginal lending facility rate, applicable during that period and increased by three percentage points.

Decision of the Constitutional Court of Romania no. 355/2020 regarding the admission of the exception of unconstitutionality of the expression "after the persons concerned have obtained Romanian citizenship", contained in article II paragraph (4) of Title II of Government Emergency Ordinance no. 184/2002 amending and supplementing Law no. 10/2001 regarding the legal regime of certain buildings abusively confiscated within the period March 6, 1945 –December 22, 1989, as well as establishing measures in order to speed up its implementation and to speed up the Emergency Ordinance of the Government no. 94/2000 regarding the restitution of certain real estate belongings to religious denominations in Romania, approved with modifications and additions by Law no. 501/2002, was published in the Official Gazette, Part I no. 1084 of November 16, 2020 and it is applicable from the same date. The Constitutional Court admitted the exception of unconstitutionality raised by

Dieter Junker and Helga Junker in file no. 17.478/325/2016 of the Timis Court – Civil Division I and ascertained that the phrase “*after obtaining Romanian citizenship by the persons concerned*” contained in article II paragraph (4) of Title II of Government Emergency Ordinance no. 184/2002 is unconstitutional, in so far as it applies to foreign nationals and stateless persons who fulfill the conditions laid down in article 44 paragraph (2), second sentence, from the Romanian Constitution.

Decision of the High Court of Cassation and Justice no. 16/2020 regarding the admission of examination of the case brought by General Prosecutor of the Prosecutor’s Office of High Court of Cassation and Justice on a matter of law that has been published in the Official Gazette, part I, no. 1047 as of November 9, 2020 and it is applicable from the same date. The HCCJ has established that, in the interpretation and application of the provisions of article 13 paragraph (2) of Government Ordinance no. 2/2001 regarding the legal regime of offenses, approved with amendments and additions by Law no. 180/2002, with its subsequent amendments and additions, with reference to the provisions of article no. 31, corroborated with those of article 37 paragraph (5) of Law no. 50/1991 concerning the authorization to execute construction works, republished, with subsequent amendments and supplements, the statute of limitation term of the contravention liability for the contraventions regulated by article no. 26 paragraph (1) letter a) of Law no. 50/1991, republished, consisting in the execution, without a construction permit, of a construction that captures all the structural elements necessary to be considered to have been completed at the time of the finding of the contravention, runs from the date the construction it is actually completed.

Decision of the High Court of Cassation and Justice no. 15/2020 for the solutioning of the appeal in the interest of the law which represents the object of the Case no. 1048/1/2020 was published in the Official Gazette, Part I no. 1021, as of November 3, 2020 and it is applicable from the same date. The HCCJ admitted the appeal in the interest of the law submitted by the Management Board of the Suceava Court of Appeal and, consequently, ruled that: The legal action promoted by the employer in contradiction with the employee regarding the refund of the paid amounts by the first to the second, voluntarily, before enforcement begins, by means of an enforceable court decision, at first court, which is subsequently cancelled in appeal, shall have the legal nature of a conflict of employment, whose resolution is in accordance with the provisions of article 256 paragraph (1) of the Law no. 53/2003 regarding the Labour Code, republished, with subsequent amendments and additions, drawing the substantive jurisdiction in first court in favor of the Tribunal – Specialized Court Section on Labour Conflicts and Social Insurances, according to the provisions of article no. 208 and 210 of the Social Dialogue Law no. 62/2011, republished, as amended and supplemented.