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News in Laws – Legal Monthly Newsletter
February 2020

Clarifications concerning the application of the anti-money laundering legislation - which are the reporting entities and what are the novelties brought on by the rules developed by ONPCSB

by Raluca Mihai, Partner Voicu & Filipescu

The occurrence of Anti-Money Laundering and Terrorist Financing Law no. 129/2019 has created numerous discussions in the market regarding the scope, reporting entities, as well as the effective implementation of the obligations imposed by the law.

Legal Changes of January 2020

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:

- Constructions
- Corporate
- Data Protection
- Litigation & Arbitration

VF News

Article "Beneficiarul real al unei companii – o obligație cu termen și câteva dificultăți practice" by Voicu & Filipescu Senior Associate Andreea Botez, published on Juridice.ro. Click here to read the article.

Voicu & Filipescu is pleased to announce that two of the transactions in which the Firm was involved were included among the most important deals on the Romanian M&A market in the research made by the specialists of the Ziarul Financiar newspaper for the 2019 edition of their Top Deals Directory. Click here to read the details.

Chambers and Partners Europe, 2019 edition recommends Voicu & Filipescu for Corporate and M&A practice.

IFLR 1000, 2020 edition recommends Voicu & Filipescu for our lawyer's activity in three practice areas: M&A, Banking and Finance and Project Development. Also, Mr. Dumitru Rusu – Partner, head of the Banking and Finance practice, was selected as a *Highly Regarded Lawyer* for the practice areas of Capital Markets and Banking.

Legal500 EMEA 2019 edition recommends Voicu & Filipescu for our lawyers' activity in 6 practice areas: Corporate, Commercial and M & A, Employment, PPP and Procurement, Real Estate and Construction, Restructuring and Insolvency and TMT. Daniel Voicu, Mugur Filipescu, Marta Popa, Roxana Negutu, Raluca Mihai, and Mariana Popa are also recommended by the prestigious guide for their activity.

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The occurrence of Anti-Money Laundering and Terrorist Financing Law no. 129/2019 has created numerous discussions in the market regarding the scope, reporting entities, as well as the effective implementation of the obligations imposed by the law.

The National Office for the Prevention and Fighting of Money Laundering (ONPCSB), the authority that coordinates the implementation of the risk assessment of money laundering and terrorist financing at the national level, has lately faced situations of declaring as reporting entities of some companies that do not fall under the requirements of Law 129/2019, everything starting from the agitation created regarding the importance of this law and the harsh sanctions it provides for violating its provisions.

It is true that Law no. 129/2019 contains quite strict and serious obligations for the reporting entities, and the sanctions for non-compliance can reach a percentage of the turnover for the legal persons (10% of the total revenues reported in the fiscal year ended, prior to the date of the issuance of the report on the offences committed and penalties incurred, plus Lei 90,000, Lei 120,000 or Lei 150,000, depending on the nature of the offence).

This is why it is important to clarify to whom apply the provisions of Law no. 129/2019, so which are the reporting entities obliged to register at ONPCSB with the designation of the person in charge within the entity with the application of Law no. 129/2019, and to implement internal procedures and norms for knowing the client, for identifying the beneficial owner and for fulfilling the other obligations imposed by the legislator.

Moreover, this article is intended to briefly present the novelties brought by the Norms of application of Law no. 129/2019, issued by ONPCSB on January 22, 2020 and published in Official Gazette Part I no. 75 of February 3, 2020, being in force from this date.

Reporting entities

Art. 5 of Law no. 129/2019 mentions the types of entities the law applies to, namely:

(a) credit institutions - Romanian legal persons and branches of credit institutions - foreign legal persons;

(b) financial institutions - Romanian legal entities and the branches of financial institutions - foreign legal entities;

(c) managers of private pension funds, in their own name and for the private pension funds they manage, except for occupational pension houses;

(d) providers of gambling services;

(e) auditors, the accounting experts and authorized accountants, auditors, persons who provide fiscal, financial, business or accounting advice;

(f) public notaries, lawyers, executors and other persons exercising liberal legal professions, if they provide assistance for the preparation or completion of operations for their clients regarding the purchase or sale of immovable property, shares, equity or business, administration of financial instruments, securities or other assets of clients, operations or transactions involving an amount of money or a transfer of property, the establishment or administration of bank accounts, savings or financial instruments, the organization of the underwriting process necessary for the establishment, operation or administration of a company; the establishment, administration or management of such companies, collective investment undertakings in securities or other similar structures, as well as if they participate on behalf or for their clients in any operation of financial character or aiming at immovable property;

(g) service providers for companies or trusts, other than those provided in letters e) and f);

(h) real estate agents; and

(i) other entities and natural persons who sell, as professionals, goods or services, insofar as they carry out cash transactions whose minimum limit represents the equivalent in lei of 10,000 Euro, regardless of whether the transaction is performed through a single operation or through several operations that have a connection between them.

Out of these, the two who can create confusion are those mentioned in letters g) and i) above.

Thus, by **service providers for companies and trusts**, we must understand, according to art. 2 let. l) of Law no. 129/2019 **any natural or legal person providing professionally any of the following services for third parties**:

(1) establishes companies or other legal persons;

(2) exercise the function of director or administrator of a company or has the status of partner within a partnership or joint venture or a similar quality within other legal persons or intermediates so that another person exercises these functions or qualities;

(3) provides a registered office, a chosen residence or any other service related to a company or any other legal person or similar legal entity;

(4) exercises the quality of trustee in a trust or similar construction or intermediary for another person to exercise that quality;

(5) acts or intermediates for another person to act as a shareholder for a legal person, other than a company whose shares are traded on a regulated market that is subject to advertising requirements in accordance with European Union law or standards set at international level.

Art. 3 let. e) from the Implementation Norms comes with a further clarification and indicates that **in the category of service providers for companies and trusts**, as defined by the Law, the entities that carry out activities according to NACE classes also include: (i) **6420 – activities of holding companies** - this class includes activities of holding companies, for example units that hold assets (having different levels of control of shares) of a group of subsidiaries and whose main activity is the management of the shares (properties) of the group; and (ii) **6820 - renting and leasing of own or leased real estate** - this class includes: leasing and leasing of own or leased real estate: apartment buildings and individual residences, non-residential buildings, including trade show venues, warehouses, land, supplies and apartments furnished or unfurnished for use for longer periods, usually monthly or annually; this class also includes the development of construction projects for personal leasing and the operation of sites for mobile homes.

Thus, we are concerned with the companies from point 3 of art. 2 let. l) of the Law - those that provide a registered office, a chosen residence or any other service related to a company or any other legal person or similar legal construction, which will include, according to the clarification provided by the Norms of application of Law no. 129/2019, those companies that lease real estate assets, for professional purposes, to other companies, so that the latter establish a registered office or residence or any other secondary office, assimilated to them.

These companies fall into the category of reporting entities, along with those that provide, generically speaking, various services regarding companies - business consulting, setting up companies, personal administration, etc.

Regarding the category from point i) of art. 5 of Law no. 129/2019 - **other entities and natural persons who market, as professionals, goods or services, insofar as they carry out cash transactions whose minimum limit represents the equivalent in lei of 10,000 Euros**, regardless of whether the transaction is executed through a single operation or through several operations that have a connection between them, this category includes practically any entity or natural person, who sells goods or provides professional services, but only insofar as they carry out cash transactions of at least Euro 10,000.

However, cash transactions in the case of legal entities are limited according to the provisions of Law no. 70/2015 for the strengthening of the financial discipline regarding the operations of cash receipts and payments to Lei 5,000 Lei or Lei 10,000 per day, depending on the category of collection or payment.

Thus, the provisions of Law no. 129/2019 must also be corroborated with those of Law no. 70/2015, following those transactions executed through several operations that are related to each other and which, even if they respect the daily limit of cash trading provided by Law no. 70/2015, added as value exceed the minimum limit of Euro 10,000, equivalent in Lei. Such transactions should be reported to ONPCSB, with suspicions regarding the source of funds.

Novelties brought on by the Application Norms of Law no. 129/2019

In addition to clarifying the category of reporting entities of service providers for companies or trusts, the Norms for the application of Law no. 129/2019 elaborated by ONPCSB also provide the following clarifications regarding the obligations of reporting entities:

- the persons designated to be in charge with the application of the Law must be appointed by the legal representatives of the reporting entities following an internal test to confirm that they are suitable and appropriate to fulfill the respective tasks, testing that will be resumed at least once a year;

- in the process of selecting the designated persons, their skills and knowledge in the field of money laundering and terrorist financing should be taken into consideration, both before being appointed and subsequently, continuously, as well as their professional reputation, which can be based on the criminal record and references of previous employers;

- for the purpose of testing the rules, procedures, mechanisms and policies to be issued by reporting entities, referred to as entities regulated by the Norms, they have the obligation to ensure an independent audit function when, in the last financial year ended, they exceed at least two of the following criteria: (i) total assets: Lei 5,000,000; total net turnover: Lei 10,000,000; and the average number of employees: 30;

- regarding the process of verification and proper training of employees, this is achieved at least by imposing adequate standards for hiring persons with responsibilities in applying the provisions provided by the Law, including in the job descriptions of employees the specific and concrete tasks that they have, periodic evaluation of their knowledge and obligations, but also participation in training programs aimed at recognizing the employees of operations that may be related to money laundering or terrorist financing;

- simplified measures are provided for the purpose of knowing the client, which may be applied depending on the risk of the regulated entities: a) limiting the extension, type or time allocated to the client's knowledge measures; b) obtaining a smaller volume of information regarding customer identification; c) simplification of the checks performed on the identity of the clients; d) reducing the frequency of updating information regarding the identification of clients during the business relationship; e) reducing the intensity of extension and the degree of monitoring and verification of transactions;

- additional measures are provided for the purpose of knowing the client: a) obtaining additional information regarding the proxy, the beneficial owner, the headquarters, the occupation, the source of income, the volume of assets, etc. and other information available from public databases; b) conducting additional searches, such as internet searches using independent and open sources; c) obtaining additional information and, as the case may be, justification through related documents regarding the nature of the business relationship and the source of the client's funds/assets; d) obtaining information on the reasons underlying the transactions; e) lowering the 25% threshold provided for in the definition of the beneficial owner from art. 4 paragraph (2) letter a) and d) of the Law; f) conducting additional monitoring of the business relationship, by increasing the number and duration of the checks carried out and selecting the transaction models that require additional checks; g) raising awareness, in the case of transactions and clients with high risk, in all departments that have

a business relationship with the client, including the possibility of additional information of the personnel responsible for the client;

- for the application of the know the client measures, the regulated entities will keep from each client, including for the beneficial owner, the data provided in the following documents: (a) for natural persons - the identification data provided in the identity cards, passports or permits of residence; and (b) for legal persons, but also for their beneficial owners - the identification data from the articles of association of the regulated entities, the certificates of registration or their extracts, documents showing the identity of the beneficial owner, as well as fiscal certificates and, as the case may be, tax residence certificates issued by national / international tax authorities;

Finally, we recommend to companies that are reporting entities (regulated) based on the provisions of Law no. 129/2019 and its Application Norms to analyze rigorously the acts indicated and to comply with the obligations imposed, taking into account the fact that the violation of their provisions attracts the civil, disciplinary, administrative or criminal liability, as the case may be. It should also be mentioned that, the application of the sanction of the administrative fine is subject to a limitation period of 5 years from the date of the commission of the offence.

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constructions - legal changes published in January 2020

Law no. 7/2020 for amending and supplementing Law no. 10/1995 regarding the quality in constructions and Law no. 50/1991 regarding the authorization of the execution of the construction works was published in the Official Gazette, Part I no. 8 of January 8, 2020 and is applicable as of January 11, 2020. The law amends the provisions of art. 37 paragraph (6) of Law no. 50/1991, the main novelty consist in the possibility to register in the Land Book the ownership right on the basis of a certificate attesting the construction of the building, even for constructions built without a building permit, but for which the 3-years period covering the right to impose administrative offences and to apply fines has passed. The certificate regarding the building's construction may be issued by the local authority on the basis of the following documents: (i) the technical opinion regarding compliance with the applicable fundamental requirements regarding the quality in construction and (ii) the cadastral documentation.

Until now, the constructions built without a building permit were considered unfinished and, consequently, they could not be registered with the land book, not even by invoking in the courts the real estate accession procedure of acquisition, taking into account the aspects retained by the Romanian High Court by Decision no. 13/08.04.2019 through an appeal in the interest of the law: *"the lack of the building permit or the non-observance of its provisions, as well as the lack of the minutes of acceptance at the completion of the works represent impediments to the judicial recognition, within a declaratory action of the right of ownership on a construction realized by the owner of the land."*

Another amendment aims to remedy the legislative inconsistency introduced by Law 193/2019 which provided that the building or demolition permits issued with violation of the legal provisions can be canceled by the prefect, following the control activity of the State Inspectorate for Construction - ISC. Thus, the new regulation stipulates that the building or demolition permits issued with violation of the legal provisions can be canceled in courts based on the action submitted by the prefect, following the control activity of the State Inspectorate in Construction. The current wording still can raise further discussions as it can be interpreted that the building permits can be canceled only after the prefect has introduced the action.

Last but not least, the new provisions establish that the acceptance minutes at the end of the construction works for all types of buildings will no longer be possible without the finalization of the connections to the technical-public infrastructure. Moreover, it is forbidden to use the building until the acceptance at the completion of the works and commissioning of authorized and definitive connections to the public utility networks.

Order no. 3454/2019 for amending and supplementing the Methodological Norms for the application of Law no. 50/1991 regarding the authorization of the execution of the construction works, approved by the Order of the Minister of Regional Development and Housing no. 839/2009 was published in the Official Gazette, Part I no. 4 of January 6, 2020.

One of the most important changes introduced by the new provisions aims to regulate the provisions of article 59 from the old implementing rules approved by Order no. 839/2009, from the "Entry into legality" to "Construction works

executed without a building permit or without observing its provisions" and repealing par. (3) in art. 59, the content of which was:
"(3) If the construction executed without a building permit meets the zoning conditions of integration within the pre-existing built-up surroundings, the competent local public administration authority may proceed with the issuance of a building permit in order to make the construction legal, in conjunction with taking the legal measures required, only on the basis of the conclusion of a technical opinion for the essential requirement of quality "mechanical strength and stability" regarding the state of the supporting structure in the physical stage the construction is at, as well as for the essential requirement of quality "fire safety", only after issuing the Environmental Agreement, according to the law"

Thus, the only regulation regarding the authorization of construction works for entry into legality (art. 59 paragraph (3) of the Norms) was repealed with the consequence that this procedure of entry into legality no longer exists in the applicable law at this date, being replaced by the provisions of art. 37 paragraph (6) of Law no. 50/1991, analyzed above, in the sense that there is the possibility to register in the Land Book constructions built without building permits, based on a certificate attesting the building's construction, but only for the buildings for which the limitation period has elapsed.

corporate - legal changes published in January 2020

Judgment on matters of law regarding the action for the annulment of the decisions adopted by the special shareholders meeting

High Court of Cassation and Justice - The panel for the settlement of certain matters of law decided, in the session of January 20, 2020, that:

*"The court admits the complaint made by the Oradea Court of Appeals - II[nd] civil Section, administrative and fiscal litigation, in case no. 3666/111/2017 **, with a view to issuing a preliminary ruling and, consequently, states that:*

In the interpretation and application of the provisions of art. 132 of the Companies Law no. 31/1990, republished, with subsequent modifications and additions, in relation to art. 116 of the same law, the decisions adopted by the special shareholders meeting may be challenged in court, through an action for annulment.

Mandatory, according to the provisions of art. 521 paragraph (3) of the Code of Civil Procedure.

Delivered in public session today, January 20, 2020".

Special meetings are attended by the shareholders holding preferential shares (shares with priority dividends), under the conditions established by the articles of association of the company. Any holder of such shares may attend these meetings.

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data protection - legal changes published in January 2020

1 DATA PRIVACY DAY – WHAT TO EXPECT IN 2020?

Data Privacy Day (or Data Protection Day as it is known in Europe) is an international event that occurs every year on 28th January. It is currently observed in the United States, Canada, Israel and 47 European countries. The purpose of Data Privacy Day is to raise awareness and promote privacy and data protection best practices.

The priorities established for 2020 are:

- Increased GDPR enforcement;
- Brexit;
- Marketing technologies (Adtech);
- Biometric data (such as facial recognition);
- Artificial intelligence (AI) and new technologies (for example, a unitary approach to voice assistants offered by big tech companies);
- International data transfer;
- Confidentiality of electronic communications (e-Privacy Regulation, expected to enter into force in 2020)

2 EUROPEAN DATA PROTECTION BOARD – THE 17TH PLENARY SESSION HELD ON JANUARY 28TH AND 29TH 2020

During the plenary, the following main documents were adopted:

- **Guidelines 3/2019 on processing of personal data through video devices**

Following the analysis of the proposals submitted in the public consultation phase***, the guidelines were adopted in their final form***, which is a useful tool in the activity of controllers and processors using video surveillance devices. It mainly addresses issues regarding the legality of the processing, the disclosure of images to third parties, the confidentiality and security of the processing, with many relevant examples.

- **Guidelines on connected vehicles**

This document aims to analyze the processing of personal data in the context where the volume of the data used by vehicles has increased significantly. ***The guidelines are under public consultation.***

- **Opinions regarding the drafts of the accreditation requirements of the certification bodies, subject to analysis by the authorities of the United Kingdom and Luxembourg under art. 43 paragraph (3) of the GDPR**

3 GDPR ENFORCEMENT – NATIONAL AND EUROPEAN DEVELOPMENTS

3.1 Romania. 10,000 EURO fine applied to the controller Entirely Shipping & Trading S.R.L. for violating the conditions of video surveillance of employees

On ***January 16, 2020***, the National Authority for Data Protection in Romania informed that it completed on December 13, 2019 an investigation into the controller Entirely Shipping & Trading S.R.L. Following the investigation, the Authority concluded that the controller violated the provisions of the Regulation by not complying with the provisions of art. 12 and art. 13, art. 6 and art. 7, art. 5 paragraph (1) let. c), art. 9, art. 5 paragraph (1) let. a), b) and e) of Regulation (EU) no. 679/2016.

In this case, the Authority became aware, following a ***complaint***, that Entirely Shipping & Trading S.R.L. installed ***audio-video surveillance cameras in employees' offices, changing rooms and in the cafeteria*** and that, in certain locations (restricted access premises), ***access was fingerprint-based***. It was also claimed that the controller ***used the identity of a former employee in sending work e-mails*** without the latter having been informed in advance.

During the investigation, the Authority found that:

- the controller did not prove a ***supported legitimate interest*** for the ***video surveillance*** system installed at its headquarters, which would prevail over the interests or fundamental rights and freedoms of the data subjects, did not prove having ***consulted the union*** or, as the case may be, the ***representatives of the employees*** before the introduction of the surveillance systems, as well as the fact that other less intrusive forms and ways of achieving the purpose pursued by the employer have not previously proved their effectiveness;
- the controller did not prove the existence of ***adequate data protection policies*** and the implementation of ***adequate technical and organizational measures*** to ensure an adequate level of security for this risk;
- ***processing of the biometric data*** through the access control system was not collected for adequate and relevant purposes, limited to what was needed, in relation to the purposes for which they were processed;
- the controller did not carry out a ***data protection impact assessment***

Thus, the controller was sanctioned with **two warnings** but also received **two fines** in the amount of **10,000 Euro** because it excessively processed the personal data (image) of its employees through video cameras, but also for non-compliance with the provisions regarding the processing of employees' biometric data (fingerprints).

At the same time, a series of **corrective measures** were applied to the controller.

3.2 Italy. 3,000 EURO fine applied to the controller Enel Energie S.A. for the processing of personal data without consent

The National Authority has sanctioned the controller Enel Energie S.A. for violating the provisions of art. 5 paragraph (1) let. d) and paragraph (2) in conjunction with art. 6 and art. 7 and art. 21 paragraph (1) of Regulation (EU) no. 679/2016.

The sanctions were imposed following a ***complaint*** alleging that S.C Enel Energie S.A. ***illegally processed the data of the claimant***, unable to prove his/her consent for ***sending notifications to his/her e-mail address*** and without respecting the principle of accuracy. In addition, the controller did not take the necessary measures to disable the transmission of notifications, although the petitioner exercised his/her right to object on several occasions.

The controller S.C. Enel Energie S.A. was sanctioned with **two fines**, each amounting to 14,334.30 lei, the equivalent of 3000 euros, for violating the provisions of Regulation (EU) no. 679/2016

3.3 UK. GBP 500,000 fine applied to a U.K. retail company for not implementing adequate technical and organizational measures for the protection of personal data.

The U.K. Data Protection Authority (ICO) sanctioned DSG Retail Limited for violating the GDPR provisions regarding ensuring an ***adequate level of security*** of personal data ***by not implementing technical and organizational measures appropriate to the risk***.

The investigation carried out by the ICO took place following the report of the ***security incident*** by the retailer on June 8, 2018, by which it confirmed ***unauthorized access to the personal data found in the point of sales terminals*** ("POS"). In this case, the company's IT systems were affected for a period of 9 months, between July 24, 2017 - April 25, 2018, a fact not discovered until April 5, 2018. The company investigated this security breach and discovered that the IT systems were accessed by an unauthorized person who installed a virus, allowing them to collect financial information from POS terminals for any transaction during that period. The controller classified this incident as a ***cyber-attack*** and confirmed that ***5,646,417 bank cards were the target of the attack***, the unauthorized access targeting financial data (card number, expiry date), as well as non-financial data (name, postal address, telephone number, e-mail address), belonging to approximately ***14 million data subjects***.

When setting the amount of the fine, ICO considered that:

- DSG notified 25 million data subjects potentially affected by e-mail and advertising;
- They established a call center to answer questions;
- They notified the ICO of the incident and cooperated with the authorities in the investigation;
- They made significant investments in data security processes and systems;
- They did not detect the breach of by themselves;

- DSG had previously been sanctioned for similar vulnerabilities

The fine is significant but DSG could be forced to also pay damages to the affected persons, which will increase the impact of this incident.

3.4 Cyprus. EUR 82,000 fine for LGS Handling Ltd, Louis Travel Ltd and Louis Aviation Ltd (Louis Group of Companies) for insufficient legal basis for data processing

On Monday***, January 27, 2020***, the Cyprus Authority imposed a fine of € 82,000 on controllers LGS Handling Ltd, Louis Travel Ltd and Louis Aviation Ltd following a ***complaint*** filed by the employees' union.

Following the investigation, it was discovered that the group of companies used the "Bradford Factor" tool to keep track of employees' medical leave. The Authority has found that ***the period and frequency of a person's medical leave***, regardless of whether their identity is directly or indirectly disclosed, ***involves the processing of "special categories of personal data"***, as defined in Article 9 (1) of the General Regulation on Protection data. Thus, the use of such an instrument must be in accordance with the standards set by the GDPR.

In this case, the Authority has established that such a processing operation has no legal basis and has prohibited the further processing of this data, as well as the deletion of the data accumulated until the investigation is completed.

The sanctions were applied as a result of the violation of the provisions of art. 6 paragraph (1) and art. 9 of the GDPR, according to a statement.

3.5 Greece. EUR 15,000 fine for ALLSEAS MARINE S.A for non-observance of employees' right of access to personal data and illegal use of video surveillance systems

On Tuesday, ***January 14, 2020***, the Greek Authority applied a fine of 82,000 Euros to the controller ALLSEAS MARINE SA following the investigation regarding both the legality of the processing of personal data stored on the company server and the employee's right of access to personal data stored in the computer used for the exercise of their profession.

The authority found that the controller ***did not take appropriate measures to allow employees to exercise their right of access*** to personal data, but also that ***the closed-circuit video surveillance system was illegally installed and operated***, and the recorded content presented to the authority was considered illegal.

As a result of the findings, the Authority decided to sanction the controller with ***a fine of 15,000 Euros*** and, at the same time, ordered the company to take measures regarding the compliance with the employees' right of access to personal data, and the use of video surveillance systems to be carried out in accordance with the provisions of the Regulation. The Authority also ordered the controller to review the implementation of the provisions of art. 5 paragraph (1) and (2) GDPR for compliance.

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litigation and arbitration - legal changes published in January 2020

Decision of the European Court of Human Rights of September 24, 2019, pronounced in Case Antohi v. Romania, which was published in the Official Gazette of Romania, Part I no. 15 of January 10th, 2020 and is applicable from the same date.

At the origin of the case is the Claim no. 48.093 / 15 against Romania, whereby Mr. Sorin Antohi notified the European Court of Human Rights on September 24, 2015, pursuant to art. 34 of the European Convention on Human Rights and Fundamental Freedoms. In fact, the Applicant claimed that, during the criminal proceedings against him, his right to a fair trial under art. 6 of the Convention was violated, arguing that the single judge of the first court, which ordered the conviction of the defendant, heard only the financial expert in question and rejected the defendant's requests to hear the three witnesses and to allow him to give a supplemental statement, none of the other testimonial evidence being presented directly to the judge who convicted the applicant in first court or the judges who *maintained* his conviction. The European Court of Human Rights, analyzing the circumstances of the case, decided to admit the claim made by the applicant pursuant to art. 6 of the Convention. In its reasoning, the Court upheld the aspects invoked by the applicant, considering that the direct hearing of the applicant and the witnesses was relevant in the circumstances of the case, given the importance granted to them with regard to the justification of the conviction. The court held that the right to the last word of the defendant cannot be assimilated to the right to be heard during the trial, and the mere availability of the transcripts of the statements cannot compensate for the lack of immediacy in the proceedings. The court held that the changes in the first-instance court's formation and the subsequent failure of the appellate court to hear the witnesses directly was tantamount to depriving the applicant of of the right to a fair trial.

The decision of the European Court of Human Rights of 23.06.2019, pronounced in the Tau v. Romania case, was published in the Official Gazette of Romania, Part I no. 49 of January 23, 2020 and is applicable from the same date.

At the origin of the case is the Claim no. 56.280/07 against Romania, whereby a Romanian, Mr. Ioan Tau, notified the Court on December 12, 2007, pursuant to art. 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In fact, the Applicant claimed that, in the criminal case opened against him for drug trafficking charges, the state violated his right to a fair trial under art. 6 §1 and §3 let. c) and d) of the Convention, showing that the first two dates when he was heard he was assisted by an ex officio lawyer, who, at the same time, was assisting the co-defendants F.D. and P.A., despite the fact that he had requested to be assisted by a chosen lawyer. The applicant also claimed that he was not given the opportunity to confront, in a public hearing, the witness F.D., whose statements were the basis of his conviction. The Court admitted the claims made under art. 6 of the Convention establishing that: a) the Romanian state must pay to the applicant, as moral damages, the amount of EUR 2,400, within three months, plus any amount that can be due as a tax; and b) from the expiration of the mentioned term and until the payment is made, these amounts must be increased by a simple interest, at a rate equal to the interest rate of the marginal lending facility practiced by the European Central Bank, applicable during this period and increased by three percentage points.

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February 2020

The decision of the Constitutional Court no. 731/2019 regarding the objection of unconstitutionality of the provisions of the single article, point 2 [with reference to art. 4, paragraph (1_1) and paragraph (1_3)], point 3 [with reference to art. 4, paragraph (3) and (4)], point 6 [with reference to art. 7, paragraph (1_1)], point 7 [with reference to art. 7, paragraph (4)], point 8 [with reference to art. 7, paragraph (5_1)] and point 9 [with reference to art. 8, paragraph (5) second thesis] of the Law for amending and supplementing Law no. 77/2016 regarding giving in payment of immovable assets in order to release the obligations assumed by loans, which was published in the Official Gazette of Romania, Part I no. 59 of January 29, 2020 and is applicable from the same date.

The court found that the provisions of the single article point 2 [with reference to art. 4 paragraph (1_1)], point 3 [with reference to art. 4 paragraph (3) and (4)], point 6 [with reference to art. 7 paragraph (1_1)], point 8 [with reference to art. 7 paragraph (5_1)] and point 9 [with reference to art. 8 paragraph (5) second thesis] of the Law for amending and supplementing Law no. 77/2016 regarding giving in payment of immovable assets in order to release the obligations assumed by loans are unconstitutional. In its reasoning, the Court found that the text of the law introducing measurable criteria upon which it is considered that in the mortgage loan agreements operates the principle of hardship, violates the Constitution regarding the ownership rights of the creditors, but it also has deficiencies in wording, clarity, precision and logic. Thus, the Constitutional Court found that the regulation of a situation of the intervention of hardship which capitalizes a certain exchange rate difference that is confined in the sphere of inherent risk, namely 20%, is not proportional to the legitimate pursued purpose, and thus it represents a violation of art. 44 of the Constitution and, implicitly, of art. 147 paragraph (4) of the Constitution, as a result of non-compliance with the constitutional requirements regarding the relationship between private ownership law and hardship (unforeseen circumstances). It also notes that the analyzed legal provision has wording deficiencies, as it does not establish the reference currency against which the 20% fluctuation of the currency rate of the loan agreement, respectively the national currency, is calculated. From this perspective, the law violates art. 1 paragraph (5) of the Constitution as regards to the quality component of the law and legal security. The Court notes that exceeding the indebtedness ratio by 20% is not explicitly or implicitly reported to the income level of the date of the loan agreement or at a later date. Therefore, the Court found that art. 1 paragraph (5) of the Constitution as regards to the quality component of the law and legal security is violated.

Decision of the High Court of Cassation and Justice no. 29/2019 regarding the examination of the appeal in the interest of the law formulated by the Attorney General of the Prosecutor's Office with the High Court of Cassation and Justice, which is the subject of Case no. 1,574 / 1/2019, which was published in the Official Gazette of Romania, Part I no. 63 of January 30, 2020 and is applicable from the same date.

The High Court granted the appeal in the interest of the law, stating that, in the unitary interpretation and application of the provisions of art. 65 paragraph (3) of the Criminal Code, the application of accessory penalties consisting in the prohibition of the rights provided by art. 66 paragraph (1) let. a), b) and d) -o) of the Criminal Code, the exercise of which was forbidden by the court as a complementary punishment, is not possible in the case of a conviction to a fine penalty.

Decision of the High Court of Cassation and Justice no. 18/2019 regarding the resolution of the referral made by the Suceava Court of Appeals - Section for criminal cases and criminal cases involving minors in Case no. 7.322/285/2017, by which the High Court of Cassation and Justice is requested to solve a question of law was published in the Official Gazette of Romania, Part I no. 66 of January 30, 2020 and is applicable from the same date.

The court admitted the referral, stating that the defendant's obligation not to drive certain vehicles, imposed by the judicial body during the preventive measure of judicial control according to art. 215 paragraph (2) let. i) of the Code of criminal procedure, does not constitute a suspension of the exercise of the right to drive, and its violation does not meet the typical elements of the offense provided by art. 335 par. (2) of the Criminal Code.