



## dispute resolution - legal changes published in November 2021

### **Decision of the High Court of Cassation and Justice no. 51/2021 regarding the examination of the request formulated by Oradea Court of Appeal - Criminal Section and for cases with minors, in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 1050 of November 3, 2021 and is applicable from the same date.**

The High Court admitted the request made by Oradea Court of Appeal - Criminal Section and for cases with minors in order to issue a preliminary ruling for resolving a matter of law and, consequently, established that the typicality of the crime of violation of privacy in the manner incriminated by art. 226 para. (2) of the Criminal Code is not conditioned by the possession of sounds, conversations or images unlawfully made, by photographing, capturing or recording images, listening with technical means or audio recording of a person in a house, in a room or in their outbuilding or a private conversation.

### **Decision of the High Court of Cassation and Justice no. 43/2021 regarding the request that forms the object of the File no. 643/1/2021 regarding the examination of the request formulated by Bucharest Tribunal - Civil Section V, in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 1051 of November 3, 2021 and is applicable from the same date.**

The High Court admitted the request formulated by Bucharest Tribunal - Civil Section V in order to issue a preliminary ruling for resolving a matter of law and, consequently, established that, in interpreting and applying the provisions of art. 2.279 and of art. 2.321 of the Civil Code, corroborated with art. 120 of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, the letter of guarantee issued by a credit institution constitutes an enforceable title only if it is issued as a guarantee of a credit agreement.

### **Decision of the Romanian Constitutional Court no. 561/2021 regarding the admission of the constitutional challenge of the provisions of article I of the Law amending article 369 of Law no. 286/2009 on the Criminal Code was published in the Official Gazette, Part I no. 1076 of November 10, 2021 and is applicable from the same date.**

The Constitutional Court admitted the constitutional challenge formulated by the President of Romania and found that the provisions of article I of the Law amending article 369 of Law no. 286/2009 on the Criminal Code are unconstitutional. Article 369 of Law no. 286/2009 regarding the Criminal Code in its amended form had the following content: „*Public incitement, through any means, to violence, hate or discrimination regarding a certain category of individuals or against of an individual provided that it is part of a certain category of individuals is punished by prison from 6 months to 3 years or by fine.*”.

### **Decision of the High Court of Cassation and Justice no. 20/2021 regarding the issuance of an appeal in the interest of the law regarding the request formulated by the Management Board of the High Court of Cassation and Justice was published in the Official Gazette, Part I no. 1083 of November 11, 2021 and is applicable from the same date.**

The High Court admitted the request made by the Board of the High Court of Cassation and Justice in order to issue an appeal in the interest of the law and, consequently, established that in the unitary interpretation and application of the provisions of art. 651 para. (1), art. 666, art. 712, art. 714 and art. 112 of the Code of Civil Procedure, the territorially competent enforcement court to resolve the actual appeal against enforcement filed by one of the debtors referred to in the enforceable title is the court that approved the enforcement of that title, unless the law provides otherwise.

### **Decision of the High Court of Cassation and Justice no. 18/2021 regarding the issuance of an appeal in the interest of the law regarding the request formulated by the General Prosecutor of**



**the Prosecutor's Office attached to the High Court of Cassation and Justice was published in the Official Gazette, Part I no. 1108 of November 22, 2021 and is applicable from the same date.** The High Court admitted the request made by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice in order to issue an appeal in the interest of the law and, consequently, established that in interpreting and applying the provisions of article 45 para. (5) of the Criminal Code, in matter of the criminal treatment of concurrent offenses, the application of the accessory punishment presumes its establishment first in addition to the initial main punishment and, then, in addition to the resulting main punishment.

**Decision of the High Court of Cassation and Justice no. 21/2021 regarding the issuance of an appeal in the interest of the law regarding the request formulated by the Management Board of the High Court of Cassation and Justice was published in the Official Gazette, Part I no. 1114 of November 23, 2021 and is applicable from the same date.** The High Court admitted the request made by the Board of the High Court of Cassation and Justice in order to issue an appeal in the interest of the law and, consequently, established that in the unitary interpretation and application of the provisions of art. 107, art. 113 para. (1) point 9 and art. 116 of the Code of Civil Procedure the phrase "*place of occurrence of damage*" in claims initiated by the collective copyright management bodies, having as object the users' obligation to pay the due remunerations for the public communication / unauthorized broadcasting of trade phonograms or published for commercial purposes or of their reproductions and / or artistic performances in the audiovisual field, corresponds to the place where the wrongful act was committed, and not to the place where the payment of the damage was made.