

litigation and arbitration - legal changes published in December 2020

The Decision of the European Court of Human Rights dated May 26, 2020 ruled in the Aftanache Case against Romania (Application no. 999/19) was published in the Official Gazette, Part I no. 1,312 of December 30, 2020 and it is applicable from the same date.

The application is based on claims amounting to EUR 1,040 for compensation for pecuniary damage suffered, representing court costs, as well as claims amounting to EUR 284,000 for non-pecuniary damage suffered as a result of the refusal to administer his insulin treatment, despite his poor health, and also due to an alleged unlawful deprivation of liberty when the applicant was taken against his will to hospital for testing, regardless of his medical condition. Therefore, the Court held that: a) the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement: (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; (ii) EUR 17 (seventeen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses; b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

The Decision of the European Court of Human Rights dated June 9, 2020 ruled in the Lascau Case against Romania (Application no. 39,855/13) was published in the Official Gazette, Part I no. 1,247 of December 17, 2020 and it is applicable from the same date.

The application is based on claims of EUR 140,000 for compensation for pecuniary damage suffered, corresponding to uncollected wages, as a consequence of the applicant's dismissal from public office, and, at the same time, blaming the High Court of Cassation and Justice on the fact that the applicant was convicted of bribery and money laundering, in the absence of direct evidence administration and especially of testimonies. The applicant leaves to the Court's discretion the amount of compensation for non-pecuniary damage. The European Court of Human Rights ruled that article 6 §1 of the Convention has been breached and held that: a) the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement; b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Decision of the High Court of Cassation and Justice no. 13/2020 on the examination of the appeal in the interest of the law submitted by the Board of Brasov Court of Appeal was published in the Official Gazette, Part I, no. 1,309, of December 30, 2020 and it is applicable from the same date.

The HCCJ admitted notification formulated by the Board of Brasov Court of Appeal, in order to pronounce an appeal in the interest of the law and, consequently, established that, in the interpretation and application of the provisions of article 226 paragraph (1) of Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code, as amended, in relation with article 22 paragraph (1) of Law no. 132/2017 on the compulsory motor vehicle liability insurance for damages caused to third parties by vehicles and tram accidents, *"in disputes relating to the payment of the compensation for pecuniary and non-pecuniary damages, formulated by third parties who have been injured*

by traffic accidents, where the MTPL insurer has the passive legal standing and the guilty party has the status of a forced intervener or of a defendant together with the MTPL insurer, as well as, in disputes regarding recourse actions taken by the insurer against the person responsible for the accident, the specialized sections shall have legal jurisdiction in proceedings.

Decision of the High Court of Cassation and Justice no. 22/2020 on the examination of the appeal in the interest of the law, submitted by the Board of Brasov Court of Appeal was published in the Official Gazette, Part I, no. 1,208, of December 10, 2020 and it is applicable from the same date. The HCCJ admitted the notification formulated by the Board of Brasov Court of Appeal, in order to pronounce an appeal in the interest of the law and, consequently, established that, in the interpretation and application of the provisions of the Law of Administrative Litigation no. 554/2004, as subsequently amended and supplemented, in case of civil service disputes aimed at obliging employers to pay outstanding wages, as well as when the employer did not issue an administrative act or the respective act was not communicated to the civil servant, such civil servant may address directly the administrative court, without the need to have requested to the employer to have been granted the same rights before the court was seised.

Emergency Ordinance no. 215/2020 regarding the adoption of some measures relating to the composition of the panel of judges on appeal was published in the Official Gazette, Part I, no. 1,316, of December 30, 2020 and it is applicable from the same date. The Emergency Ordinance includes a single article, establishing that the provisions of article no. 54 paragraph (2) of Law no. 304/2004 on the judicial organization, republished, as amended and supplemented, regarding the trial of appeals in panels of three judges, applies to appeals filed in proceedings initiated starting with January 1, 2023, and in trials initiated between January 1, 2021 and up to December 31, 2022 (inclusive), appeals shall be judged in panels consisting of two judges. These provisions are also applicable in criminal cases.