

litigation and arbitration - legal changes published in May 2021

Decision of the European Court of Human Rights dated 17 November 2020 ruled in Mihancea against Romania Case (Application no. 26.354/14) was published in the Official Gazette, Part I no. 478 dated May 7, 2021 and it is applicable from the same date. The application concerns an infringement of the applicant's right of access to a court in order to oblige the Financial Supervisory Authority and a third party to reimburse the amounts invested in the financial market. The applicant considers that the annulment of his appeal by the High Court of Cassation and Justice due to the said failure to pay the stamp duty was the result of an error occurred during the procedure. The applicant also considers that this represents a violation of article 6 § 1 of the Convention. Thus, the European Court of Human Rights, unanimously, held as follows: (i) that there has been a violation of article 6 § 1 of the Convention; (ii) the respondent State shall pay to 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 exchange rate applicable at the date of settlement: (a) EUR 5,000 (five thousand euros) for non-pecuniary damage; (b) EUR 1,000 (one thousand euros) for other taxes.

Decision of the High Court of Cassation and Justice no. 28/2021 on the examination of the referral submitted by Oradea Court of Appeal – 2nd Civil Section in order to issue a preliminary ruling was published in the Official Gazette Part I no. 544 dated May 26, 2021 and is and it is applicable from the same date. The High Court granted the referral submitted by Oradea Court of Appeal – 2nd Civil Section in case file no. 482/111/C/2018*, in order to issue a preliminary ruling and consequently, determined that, *"the hypotheses of exclusion of the associate, provided by article 222 of Law no. 31/1990, republished, as amended and supplemented, is not to be completed with the provisions of article 1,928 of the Law no. 287/2009 regarding the Civil Code.*

Decision of the High Court of Cassation and Justice no. 22/2021 on the examination of the referral submitted by the Bucharest Court of Appeal – 3rd Civil matters and for cases with minors and family Section in order to issue a preliminary ruling was published in the Official Gazette Part I no. 480 dated May 10, 2021 and it is applicable from the same date. The High Court granted the referral submitted by Bucharest Court of Appeal – 3rd Civil matters and for cases with minors and family Section in case file no. 22,239/3/2017, in order to issue a preliminary ruling and consequently, determined that, *"in the interpretation of the provisions of article 43 of Law no. 165/2013 regarding the measures to complete the process of restitution, in-kind or by compensation, of properties abusively taken over during the communist regime in Romania, as amended and supplemented, in applications covered by this text of law, the status of entitled person, for lands that fell within the scope of application of the land fund laws on the date of entry into force of Law no. 165/2013, shall be established according to the provisions of these laws".*

Decision of the Constitutional Court no. 136/2021 regarding the admission of the constitutional challenge of article 539 of the Criminal procedure code was published in the Official Gazette Part I no. 494 dated May 12, 2021 and it is applicable from the same date. The Constitutional Court upheld the constitutional challenge raised by Cristian Marius Nișă in case file no. 25,090/63/2017 of Dolj Country Court – 1st Civil Section and determined that *"the legislative solution contained in the provisions of article 539 of the Criminal procedure code which excludes the right to damage repartion in case of deprivation of liberty, ordered during the criminal proceedings, resolved through a decision of closing the case, according to the provisions of article 16 paragraph (1) a)-d) of the Criminal procedure code or acquittal is unconstitutional".*