

## litigation and arbitration - legal changes published in February 2021

**The Decision of the European Court of Human Rights dated 5 August 2020 ruled in Kovesi against Romania Case (Application no. 3594/19) was published in the Official Gazette, Part I no. 112 dated February 2, 2021 and it is applicable from the same date.**

The application is based on applicant's complaints regarding the denial of access to a court in order to contest the premature termination of her mandate as chief prosecutor of the National Anticorruption Directorate, as well as the complaint concerning the fact that her mandate had been terminated as a result of the views and positions that she had publicly expressed in her professional capacity concerning legislative reforms affecting the judiciary system. She relied on Articles 6 § 1, 10 and 13 of the Convention. The European Court of Human Rights held as follows: (i) joined to the merits the Government's preliminary objection as to the non-exhaustion of domestic remedies, and dismissed it; (ii) declared the applicant's complaints under Article 6 § 1 and Article 10 of the Convention admissible; (iii) that there has been a violation of Article 6 § 1 of the Convention; (iv) that there has been a violation of Article 10 of the Convention; (v) that there is no need to examine the admissibility and merits of the complaint under Article 13 in conjunction with Articles 6 § 1 and 10 of the Convention.

**Decision of the High Court of Cassation and Justice no. 14/2020 on the examination of the referral submitted by the Oradea Court of Appeal – Criminal and minors cases Division in the case file no. 918/271/2019, in order to issue a preliminary ruling was published in the Official Gazette Part I no. 135 dated February 10, 2021 and is and it is applicable from the same date.**

The High Court granted the referral submitted by Oradea Court of Appeal – Criminal and minors cases Division in the case file no. 918/271/2019 in order to deliver a preliminary ruling and consequently, determined that, in the interpretation and application of the provisions of Article 335 paragraph (3) of the Criminal code, an act of a person who entrusts a vehicle for driving on public roads to a person about whom he/she knew that was under the influence of alcohol, these must target a person having an alcohol content of more than 0,80 g/l of pure alcohol in the blood.

**Decision of the High Court of Cassation and Justice no. 24/2020 on the examination of the appeal in the interest of the law submitted by the Leading Board of Brasov Court of Appeal was published in the Official Gazette, Part I no. 144 dated February 11, 2021 and it is applicable from the same date.**

The High Court granted the referral submitted by the Leading Board of Brasov Court of Appeal related to of the issuance of an appeal in the interest of the law and, consequently, held that, (i) in case the judge is invested to judge an extraordinary appeal formulated against a decision also ruled in an extraordinary appeal procedure successively exercised against the his decision ruled in the appeal or second appeal phase, the provisions of the first sentence of Article 41 paragraph (1) of the Civil Procedure Code are not applicable if it is clear from the particular circumstances of the dispute that the judge is not required to assess, directly or indirectly, his own judgment; (ii) according to Article 41 paragraph (1) of the Code of civil procedure, the judge who ruled the decision in appeal is absolutely incompatible with resolving the motion for revision or the appeal for annulment formulated against the decision ruled in the second appeal against his appeal decision.

**Decision of the High Court of Cassation and Justice no. 4/2021 on the examination of the referral submitted by the Brasov Court of Appeal – Criminal Division in the case file no. 9010/197/2019, in order to rule a preliminary decision was published in the Official Gazette Part I no. 171 dated February 19, 2021 and is and it is applicable from the same date.** The High Court granted the referral submitted by Brasov Court of Appeal – Criminal Division in the case file no. 9010/197/2019 in order to deliver a preliminary decision and consequently, determined that, in the interpretation and application of the provisions of Article 325 of the Criminal code, the act of opening and using an account on a social media network open to public, using as a user name the name of other person and entering real personal data, which allows its identification, meets two of the essential requirements of cyber forgery offense, provided by the Article 325 of Criminal code, respectively, that the action of entering computer data is be carried out without right and that the action of entering such data into the system results in untrue data.