



dispute resolution - legal changes published in September 2022

Decision of the High Court of Cassation and Justice no. 13/2022 regarding the issuance of an appeal in the interest of the law regarding the request that forms the object of Case File no. 471/1/2022, formulated by the Management Board of Galati Court of Appeal was published in the Official Gazette, Part I no. 907 of September 15, 2022 and it is applicable from the same date.

The High Court admitted the request submitted by Galati Court of Appeal in order to issue an appeal in the interest of the law and, consequently, established that in the interpretation and application of the provisions of art. 120 of Government Emergency Ordinance no. 99/2006, in relation to art. 405 para. (1) of the 1865 Civil Procedure Code, art. 706 para. (1) of the Civil Procedure Code, art. 201 of Law no. 71/2011 and art. 6 para. (1), (4) and (5) of the Civil Code, in conjunction with art. 1 para. (2) of Decree no. 167/1958 and art. 2,504 para. (1) of the Civil Code:

- The legal basis applicable to the statute of limitation of the right to obtain the enforced execution of the mortgage is governed by the rules of the substantive law in force at the time when the mortgagee's right to obtain enforcement of the secured claim is born, the procedural rules applicable to the enforcement procedure being irrelevant.
- The right to obtain forced execution based on the mortgage agreement is terminated, by way of accessory relief, as an effect of the limitation period of the right to obtain the enforcement of the claim based on the credit agreement, if the latter begins to run before October 1st, 2011.
- Whether the statute of limitation of the right to obtain the enforcement of the guaranteed debt starts to run after October 1, 2011 (included), the enforcement of the mortgage shall not be terminated, by way of accessory relief, even though the right to obtain forced execution of the main claim is time-barred, in which case the applicable statute of limitation period shall be as follows: (i) 3 years, according to art. 405 para. (1) first thesis of the 1865 Civil Procedure Code, if the limitation period of the mortgagee's right to obtain enforcement under the credit agreement began to run between October 1st, 2011 and February 14, 2013; (ii) 10 years, according to art. 706 para. (1) second thesis of the Civil Procedure Code, if the limitation period of the mortgagee's right to obtain enforcement under the credit agreement started to run after February 15, 2013 (included).