



dispute resolution - legal changes published in January 2023

Decision of the High Court of Cassation and Justice no. 78/2022 regarding the examination of the request formulated by Alba Iulia Court of Appeal – Criminal Section regarding the request that forms the object of Case File no. 1.418/1/2022 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 51 of January 18, 2023 and it is applicable from the same date.

The High Court admitted the request made by Alba Iulia Court of Appeal – Criminal Section in order to issue a preliminary ruling, respectively, if, according to the Romanian legislation, it is mandatory for an individual driving a vehicle on public roads to own a driving license when the individual solely owns a Provisional Driving License issued by the competent authority in the United Kingdom, the mitigated form of the offence of driving a vehicle without a driving license referred to in art. 335 para. (2) of the Criminal Code shall be held, respectively the situation in which the individual does not have the right to drive vehicles in Romania.

Thus, the Court held that, in accordance with Romanian legislation, driving on public roads a vehicle by an individual who owns a Provisional Driving Licence, issued by the competent authority in the United Kingdom, meets the elements of the offence of driving a vehicle without a driving license provided by art. 335 para. (2) of the Criminal Code, if the individual is not entitled to drive vehicles in Romania.

Decision of the High Court of Cassation and Justice no. 79/2022 regarding the examination of the request formulated by the High Court of Cassation and Justice – 1st Civil Section regarding the request that forms the object of Case File no. 2.059/1/2022 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 61 of January 25, 2023 and it is applicable from the same date.

The High Court admitted the request made by the High Court of Cassation and Justice – 1st Civil Section in order to issue a preliminary ruling for resolving a matter of law and, consequently, established that in the interpretation and application of the provisions of art. 497 of the Civil Procedure Code, as amended by Law no. 310/2018 for amending and supplementing Law no. 134/2010 on the Civil Procedure Code, as amended and supplemented by other normative acts, in correlation with the provisions of art. 492 para. (1), art. 498 and art. 501 para. (3) and para(4) of the Civil Procedure Code, if, in the second phase of the proceedings, the second appeal is admitted and the challenged decision is overturned, the High Court of Cassation and Justice shall retain the case for retrial on the merits only when it would not be put in a position to proceed to an analysis of the facts by reclassifying the facts or by supplementing or re-administering the evidence, otherwise the case shall be sent back for retrial to the first court of appeal or, where applicable, to the first court.

Law no. 31/2023 for amending Government Emergency Ordinance no. 51/2008 on the public legal aid in civil matters was published in the Official Gazette of Romania, Part I, no. 38 of January 12, 2023, being in force starting with January 15, 2023.

The law regulates new provisions concerning the justice field in relation to the public legal aid in civil matters, therefore, starting with January 15, 2023, the following measures came into force:



- public legal aid shall be granted separately or cumulatively. The amount of legal aid granted, separately or cumulatively, shall not exceed, within a period of one year, the maximum amount equal to 10 times the gross minimum national basic salary for the year in which the application for the aid was made;
- furthermore, legal aid shall also be granted to individuals whose average net monthly income per family member, in the last two months before the application was submitted, is below the equivalent of 25% of the minimum gross basic salary. In this case, the amounts representing legal aid shall be paid in entirety by the state; and
- if the average net monthly income per family member, in the last two months before the application was submitted, is less than the equivalent of 50% of the minimum gross basic salary, 50% of the amount of money representing public legal aid shall be paid by the state.

According to Government Emergency Ordinance no. 51/2008, public legal aid represents a form of assistance provided by the state, which has the purpose of ensuring the right to a fair trial and guaranteeing equal access to justice. In this way, public legal aid shall be provided, when requested, to individuals who are unable to afford a lawyer or to pay the stamp duty required for civil proceedings.

