

dispute resolution - legal changes published in July 2017

Decision of the European Court of Human Rights in Ichim v. Romania case dated March 10, 2009 was published in the Official Gazette of Romania, Part I, no. 575 of 19 July 2017, being applicable with the same date.

ECHR was notified by the applicant Petru Ichim on 14 April 2001, pursuant to Art. 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In fact, based upon the provisions of Law no. 85/1992, the applicant bought a company accommodation flat in 1993. The title of ownership of the land belonging to the apartment was issued to the same in May 1996. In August 1995, company I. obtained from the Ministry of Industry a certificate attesting its ownership on the land adjacent to the building where the applicant's flat was located. Company I. filed to Iasi Court two claims for the annulment of the ownership title against the applicant and the county commission. The first claim was dismissed. By the final settlement of the second claim, company I. obtained the annulment of the title. The European Court finds that following the validation of the ownership title in a first judicial procedure, the Romanian courts, following a second proceeding engaged by the successor of the company I., ignored the principle of *res judicata* by ordering the annulment of the plaintiff's ownership title, therefore violating art. 1 of Protocol no. 1.

Decision of the European Court of Human Rights in Timar and Others v. Romania case dated February 28, 2017 was published in the Official Gazette of Romania, Part I, no. 577 of 19 July 2017, being applicable with the same date.

The eight applicants showed that they had no knowledge of the hearing term because they did not receive the relevant summons, the latter being displayed on the door or on the fence. National courts dismissed the complaints submitted, arguing that the law allows displaying of subpoenas, without examining the complaints on the merits. ECHR established that the plaintiffs were not informed on the terms of the court hearings and were not therefore able to be present in courts and, despite their absence from the trial, the national courts did not attempt in any way to ensure that they were informed of the terms of the court hearings. Consequently, the European Court found that there had been a violation of Art. 6 (1) of the Convention on the plaintiffs' lack of access to court.

Decision of the Constitutional Court no. 241/2017 was published in the Official Gazette of Romania, Part I, no. 577 of July 19, 2017, being applicable with the same date,

refers to the admissibility of the constitutional challenge of the provisions of art. 9 par. (3) of the Law no. 198/2004 on certain measures for the construction of motorways and national roads, as amended by art. IV point 3 of Government Emergency Ordinance no. 228/2008 for the amendment and supplementing of some normative acts, in relation with the phrase "*at the date of drawing up the expert report*" contained in the provisions of art. 26 par. (2) of Law no. 33/1994 on expropriation for public utility cause. The Court held that the determination of the amount of compensation is a connected and indissociably measure related to the moment of the transfer of the right of ownership, as this is the decisive factor in the legal relationship that arises between the expropriated and the expropriator and not at any other later randomly set point. Consequently, in this regard, the law maker has no margin of discretion in appreciating the value of the expropriated property, that can not be different from the one established at the time of the transfer of the right. Thus, the Court admitted the constitutional challenge and found

that the provisions of Art. 9 par. (3) of the Law no. 198/2004, as amended by art. IV point 3 of GEO no. 228/2008, by reference to the phrase "*at the date of drawing up the expert report*" contained in the provisions of art. 26 par. (2) of Law no. 33/1994 are unconstitutional.

Decision of the Constitutional Court no. 369/2017 was published in the Official Gazette of Romania, Part I, no. 582 of July 20, 2017, being applicable with the same date, with

reference to the admission of the constitutional challenge of the phrase "*as well as in other evaluable claims worth up to Lei 1,000,000 inclusively*" comprised in art. XVIII par. (2) of Law no. 2/2013 on measures to relieve the courts and to prepare for the implementation of Law no. 134/2010 on the Code of Civil Procedure. The Court admitted the constitutional challenge and determined that the phrase "*as well as in other evaluable claims worth up to Lei 1,000,000 inclusively*" is unconstitutional because, in the case of appeals within the jurisdiction of the High Court of Cassation and Justice, the challenged legal provisions determine a double measure in assessing the legality of judgments, establishing, on the one hand, that the supreme court only exercises this role in certain situations and, secondly, only exercises that role when value-for-money claims have a certain value. Therefore, in the case of appeals which fall within the competence of the High Court of Cassation and Justice, the phrase "*as well as in other evaluable claims worth up to Lei 1,000,000 inclusively*" contravenes the provisions of art. 126 par. (3) of the Constitution.

Law no. 193/2017 for the amendment of Law no. 286/2009 on the Criminal Code was published in the Official Gazette of Romania, Part I, no. 598 of July 25, 2017 and entered into force on July 28, 2017. Thus, the Criminal Code is implemented with the following amendments:

- the new name of art. 301 (conflict of interest) is "use of the function of favoring certain persons", a crime defined as the act of a civil servant who, in the exercise of his duties, has fulfilled an act through which a patrimonial benefit has been obtained for himself, for his spouse, for a relative or an in-law up to 2nd grade inclusive. The offense is punished by imprisonment from one to five years and the ban on exercising the right to hold a public office for a period of three years. These provisions shall not apply in case the act or decision concerns: (i) the issuance, approval or adoption of regulatory acts; and (ii) the exercise of a right recognized by law or in fulfillment of a statutory duty, subject to the conditions and the limits set out therein.
- Article 301 is removed from the enumeration made under Art. 308 of the Criminal Code, the act of using the function on favoring some persons is no longer properly applicable to the acts committed by or in connection with the persons who permanently or temporarily, with or without remuneration, exercise any kind of service for a physical person included in the provisions of art. 175 par. (2) of the Criminal Code or within any legal entity.