

litigation & arbitration - legal changes published in January 2018

Decision of the High Court of Cassation and Justice no. 77/2017 regarding the examination of the referral filed by the Bucharest County Court - Civil Section IV in Case no. 13.765 / 299/2016, in order to issue a preliminary ruling, was published in the Official Gazette of Romania, Part I, no. 23 of 10 January 2018, applicable from the same date.

The High Court has been tasked with a prior ruling on the issue of the law relating to the "timely application of the provisions of Article 666 (2) of the Code of Civil Procedure - in the form in force prior to their amendment by GEO No. 1 / 2016, regarding the approval of the mandatory enforcement given by the bailiff after the decision of the Constitutional Court No. 895 of December 17, 2015, prior to the publication of this decision, a matter raised in due time as a ground for nullity through a challenge to enforcement registered with the courts after the publication of Decision No 895 of 17 December 2015." The High Court accepted the complaint and stated that, in interpreting and applying in time the provisions of Art. 666 par. (2) of the Code of Civil Procedure, the form prior to the modification by GEO no. 1/2016, the effects of the Constitutional Court's Decision no. 895 of December 17, 2015 shall also apply to the approval of mandatory enforcement given by the bailiff before the publication of this decision, if the ground for invalidity resulting from the lack of competence of the bailiff was invoked in the challenge on enforcement, submitted in due time after the decision of the constitutional court was published in the Official Gazette of Romania.

Decision of the High Court of Cassation and Justice no. 86/2017 regarding the examination of the referral filed by the Bucharest County Court - Civil Section VI, in Case no. 114.907 / 299/2015, for the purpose of issuing a preliminary ruling, was published in the Official Gazette of Romania, Part I, no. 46 of 17 January 2018, applicable from the same date.

The HCCJ has upheld the Bucharest County Court referral to issue a preliminary ruling and has decided that in the case of compulsory civil liability insurance for damage caused by vehicle accidents the insurer subrogated in the rights of the injured person is entitled to obtain the penalties provided by the provisions of Art. 38 of the Norm of the Financial Supervisory Authority no. 23/2014 on compulsory motor insurance in respect of damage caused by vehicle accidents, as subsequently amended and supplemented, if the insurer fails to meet its obligations at maturity or fails to fulfill them appropriately.

Decision of the High Court of Cassation and Justice no. 81/2017 regarding the examination of the referral filed by Cluj County Court - Civil Section in Case no. 3.633/211/2016, for issuing a preliminary ruling, was published in the Official Gazette of Romania, Part I, no. 49 of 18 January 2018, applicable from the same date.

In the case, the County Court of Cluj - Civil Section has ordered the referral to the High Court of Cassation and Justice for issuing a preliminary ruling on the following question of law: the provisions of Art. 9 par. (1) of the Law

no. 112/1995 for the regulation of the legal status of some residential buildings, which are state property, are applicable after February 14, 2001, taking account of the provisions of art. 52 and art. 42 para. (3) of the Law no. 10/2001 regarding the legal regime of some real estate properties abusively taken over between 6 March 1945 and 22 December 1989.

The High Court of Cassation and Justice upheld the referral filed by the Cluj County Court - Civil Section in case no. 3.633/211/2016 for a preliminary ruling and established that, in the interpretation and application of the provisions of art. 42 para. (3) of the Law no. 10/2001 regarding the legal regime of properties abusively taken over between 6 March 1945 and 22 December 1989, republished, with the subsequent amendments and additions, besides the preemptive right, the tenants have the right to opt for the purchase of the residential buildings, a right provided by art. 9 par. (1) of the Law no. 112/1995 for the regulation of the legal status of some residential buildings, which have been taken into state ownership.

The judgment of the European Court of Human Rights in the Valdhuter v. Romania case of 27 June 2017 was published in the Official Gazette of Romania, Part I, no. 59 of 19 January 2018, applicable from the same date.

The applicant claims that his right to a fair trial was not observed on the grounds that during the proceedings before the courts he was unable to challenge IR, initially a defendant along with the applicant, despite the fact that the latter's statement was taken into account for his conviction. He complains that the courts, both those who pronounce on ordinary claims and those who have ruled on the review, that, without any other valid reason, he did not conduct a hearing of I.R. The Court noted that the first courts did not invoke any reason to justify the omission of I.R.'s hearing. Subsequently, in the context of the measures preceding the review initiated by the applicant, that witness was heard only by the prosecutor. The Court merely finds that the applicant had no opportunity, either at the stage of the prosecution or before the courts, to submit questions for witnesses whose statements were taken into account by the national courts. Moreover, the applicant himself was heard in person only at the appeal stage. In addition, the courts did not proceed to a thorough examination of the credibility of the absent witnesses and the reliability of their statements. The Court found that there were no procedural steps taken by the national courts to compensate for the applicant's impossibility to directly address questions to I.R., the courts not taking the compensatory measures which would have allowed a fair and appropriate assessment of the reliability of the unverified evidence. Thus, the Court has concluded that Art. 6 § 1 and art. 6 § 3 let. d) of the Convention were breached.