

Legal Bulletin

November 2007

Civil Procedure	1
Energy	1
Environmental protection	2
Forced execution	4
Insurance	4
Labour Law	5
Public Procurement & Concessions	6
Real Estate	7
Shipping	8

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Civil Procedure

Decision	Decision No. XXXVIII/07.05.2007 of the United Sections of the High Court of Cassation and Justice
Publication	Official Gazette of Romania, Part I, No. 764/12.11.2007
Connections with enactments	Code of Civil Procedure
Content of the decision	<p>The solution issued in the recourse in the interest of the law ends a controversy concerning the obligation to vest the decisions issued in commercial matters in first instance with executory formula.</p> <p>The United Sections of the High Court of Cassation and Justice established that a creditor can resort directly to the bailiff to start the execution procedure, without requiring the vesting with executory formula.</p> <p>The vesting with executory formula implies the application of a stamp with a specific content and is made after the favorable settlement of a request addressed to the competent court.</p> <p>As a result of Decision No. XXXVIII/07.05.2007, the implementation of a decision issued under the conditions set out above is simplified.</p>
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Energy

Name of the enactment	Government Emergency Ordinance No. 122/2007 for the amendment and completion of Gas Law No. 351/2004 ("GEO 122/2007")
Publication	Official Gazette of Romania, Part I, No. 756/07.11.2007
Entry into force	7 November 2007
Connections with other enactments	Gas Law No. 351/2004, as further amended and completed ("Law 351/2004")
Main provisions	The main focus in passing GEO 122/2007 was to effect an adequate protection of natural gas consumers against discrimination through price. Thus, according to the provisions of GEO 122/2007, all consumers have to be provided with natural

gas as per the same structure domestic generation/import of gas sources up to the convergence of the price for natural gas from domestic generation with that for imported natural gas. In this respect, it is important to note that, according to the former regulation, the abovementioned system of gas supply to consumers is meant to operate only until the total deregulation of the domestic natural gas market.

Also, for the disciplining of the natural gas market, GEO 122/2007 brings certain amendments in respect of the sanctioning regime regulated by Law 351/2004, either by enlarging the framework for hardening the actions prohibited by the abovementioned enactment, or by strengthening the sanctions provided in the case of committing such deeds. In this respect, there is a considerable increase in the amount of the fines provided in case of the misdemeanors committed by legal entities (ranging between a minimum of RON 1,500 to a maximum of RON 100,000).

Moreover, according to the new regulations brought by GEO 122/2007, in case of repeatedly committing certain infringements, the regulatory authority can apply a fine of 5% from the turnover of the person that committed the infringement, realized in the financial year prior to the sanctioning of the deed

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Environmental Protection

1 Amendment of the legal provisions concerning the Environmental Fund

Name of the enactment

Law No. 292/2007 for the amendment of Government Emergency Ordinance No. 196/2005 concerning the Environmental Fund ("Law 292/2007")

Publication

Official Gazette of Romania, Part I, No. 758/08.11.2007

Entry into force

11 November 2007

Connections with other enactments

Government Emergency Ordinance No. 196/2005 ("GEO 196/2005")

Main provisions

The amendments that were brought remove the business entities' obligation to pay fees for pollutants released in the atmosphere and generated by mobile sources.

2 The new procedure for the issuance of the environmental authorization

Name of the enactment	Order No. 1798/2007 of the Ministry of Environment and Sustainable Development for the approval of the Procedure of issuing the environmental authorization (“ Order 1798/2007 ”)
Publication	Official Gazette of Romania, Part I, No. 808/27.11.2007
Entry into force	27 November 2007
Connections with other enactments	Government Emergency Ordinance No. 195/2005 on environmental protection
Main provisions	<p>The order establishes a new procedure for obtaining the environmental authorization, which procedure differs in terms of certain aspects from the former procedure approved by Order No. 876/2004. In respect of the competence to issue the environmental authorization, the new procedure expressly regulates the case in which the activities subject to authorization are carried out within the territory of several regions; in this situation, the environmental authorization is released by the National Agency for Environmental Protection. Also, the amendments provide the supplementation of the documentation to be submitted for the purpose of obtaining the environmental authorization for the activity of zoos, public aquariums and rehabilitation and/or maintenance centers.</p> <p>In addition to the cases previously provided by the former procedure, the new procedure provides that the issuance of a revised environmental authorization is not possible in case of breach of provisions in the compliance program appended to the environmental authorization previously issued; also, the revised environmental authorization will not be issued in case of breach of the conditions imposed in the procedure of evaluating the impact on the environment.</p> <p>The new procedure no longer provides for the possibility of delaying the deadlines if the non-observance thereof was caused by objective reasons and the title-holder of the activity requests the delay before the expiry of such deadlines.</p> <p>Other amendments concern the list of activities subject to the procedure of issuing the environmental authorization.</p>
Repealed enactments	Order No. 876/2004 of the Ministry of Environment and Water Management for the approval of the Procedure of authorization of the activities with significant impact on the environment.
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Forced Execution

Decision	Decision No. XV/05.02.2007 of the United Sections of the High Court of Cassation of Justice
Publication	Official Gazette of Romania, part I, No. 764/12.11.2007
Connections with enactments	The Code of Civil Procedure
Content of the decision	<p>The High Court of Cassation and Justice issued its decision concerning the interpretation and application of Articles 400 and 402 of the Code of Civil Procedure, and established the material competence for the settlement in first instance of the contestation to execution:</p> <ul style="list-style-type: none">• the competence for settling the contestation to execution per se (the contestation against the deeds of execution or against the forced execution against itself) is incumbent on the court of law;• the competence for settling the contestation to a title belongs, as the case may be, to:<ul style="list-style-type: none">- the court of law, in the case of the contestation concerning the clarification of the meaning, the scope or application of the title of execution which was not issued by a jurisdiction body;- the court or the jurisdiction body which pronounced the decision which is being executed, in the case of the contestation concerning the clarification of the meaning, the scope or application of the title of execution consisting in a court decision or another title issued by a jurisdiction body. If the title consists in a court decision in the commercial field, the competence for the settlement of the contestation to the title is also incumbent on the commercial court. <p>The Decision of the High Court of Cassation and Justice is mandatory for courts as of its publication in the Official Gazette (12 November 2007).</p>

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Insurance

Name of the enactment	Law No. 304/2007 for the amendment and completion of Law No. 136/1995 on insurance and reinsurance activities in Romania ("Law 304/2007")
Publication	Official Gazette of Romania, Part I, No. 784/ 19.11.2007
Entry into force	22 November 2007

Main provisions

Law 112/2007 brings a series of amendments to Law No. 136/1995 on insurance and reinsurance activities in Romania, in particular as concerns the mandatory civil liability insurance for damages caused by vehicle accidents.

The main amendments are:

- the term “car vehicle” is replaced by the term “vehicle” and the definition of this new term is also included;
- the definition of the term “vignette” is included;
- the procedure of amicable accident ascertaining is provided for, and it is established that, for cases involving two vehicles, from which only material damages resulted, the endorsement by insurance companies can also be made based on a standard form, released by the insurance companies, in which the drivers of the vehicles concerned record the circumstances of the event, the personal identification data of the vehicles involved, as well as of their own insurers;
- the indemnification is determined and performed based on the valid insurance as at the date of the accident, without requiring the consent of the insured persons for whose fault the damage occurred;
- the owners of vehicles insured for cases of civil liability as a result of the damages caused by vehicle accidents have the obligation to apply the vignette on the windscreen of the vehicle or in any other exterior visible spot.

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Labour Law

Decision

Decision No. XL/07.05.2007 of the United Sections of the High Court of Cassation and Justice

Publication

Official Gazette of Romania, Part I, No. 763/12.11.2007

Connections with enactments

Labor Code

Content of the decision

The recourse in the interest of the law settled by Decision XL/07.05.2007 was promoted in the context of a non-unitary practice concerning the application of Article 169 para. (1) of the Labor Code.

The legal provision provides for the employer’s obligation to indemnify the employee, based on the contractual liability, if the latter suffered a material or moral prejudice during the fulfillment of its work obligations or in connection with the work.

Some courts considered that non-pecuniary damages can be granted only if the collective bargaining agreement or the individual employment agreement has express clauses in this respect.

Other courts considered that non-pecuniary damages can be granted regardless of the provisions of the collective bargaining agreement / the individual employment agreement, on the ground that the tort liability regulated by the Civil Code (ground for granting non-pecuniary damages) completes the special provisions of the Labor Code.

The United Sections of the High Court of Cassation and Justice established that the first courts proceeded correctly. The reason is that the liability of the employer, as regulated by the Labor Code, is a contractual one. The Court of Cassation and Justice upheld that the granting of non-pecuniary damages constitutes, for lack of relevant provisions in the collective bargaining agreement / the individual employment agreement, the result of engaging the tort liability, as well as that the two forms of liability cannot be cumulated.

Such a solution ends the requests submitted by employees/ former employees for non-pecuniary damages in an amount established without any objective criterion, in order to exercise such pressures on the employer, for the purpose of the amicable settlement of the cause.

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Public Procurement & Concessions

Name of the enactment

Government Emergency Ordinance No. 129/2007 for the amendment of Government Emergency Ordinance No. 30/2006 on the prerogative of checking the procedural matters related to the process of awarding public procurement agreements, public works concession agreements and service concession agreements (“GEO 129/2007”)

Publication

Official Gazette of Romania, Part I, No. 776/15.11.2007

Entry into force

15 November 2007

Connections with other enactments

Government Emergency Ordinance No. 30/2006 on the function of checking the procedural aspects related to the process of granting public procurement agreements, public works concession agreements and services concession agreements

Government Emergency Ordinance No. 34/2006 on granting public procurement

	<p>agreements, public works concession agreements and services concession agreements, as amended and completed, by Law No. 337/2006, as further amended and completed ("GEO 34/2006")</p>
Main provisions	<p>GEO 129/2007 was passed for the need of correlating the various enactments in the field of public procurement. Based on the recent amendments brought to GEO 34/2006, the most important enactment regulating this field, the value thresholds determining the applicability of various public procurement procedures were increased.</p> <p>According to these amendments related to the threshold, GEO 129/2007 establishes the values of the procedures of awarding public procurement agreements which form the object of checking the procedure aspects. Thus, the Ministry of Economy and Finance will have the competence to check, from a procedure point of view, the process of awarding the following agreements:</p> <ul style="list-style-type: none">• the works agreements and the public works concession agreements of an estimated value, exclusive of VAT, higher than or equal to the RON equivalent of EUR 500,000. Before the amendment, the threshold was of EUR 250,000;• the service agreements and the service concession agreements with estimated value, exclusive of VAT, higher than or equal to the RON equivalent of EUR 75,000. Before the amendment, the threshold was of EUR 40,000;• the supply agreements with an estimated value, exclusive of VAT, higher than or equal to the RON equivalent of EUR 75,000. Before the amendment, the threshold was of EUR 40,000;• the framework agreements concluded for the purpose of awarding the abovementioned agreements.

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Real Estate

Decision	Decision No. XX/19.03.2007 of the United Sections of the High Court of Cassation and Justice
Publication	Official Gazette of Romania No. 764/12.11.2007
Connections with enactments	Law No. 10/2001, republished, on the legal regime of certain real estates abusively taken into possession by the State during the period 6 March 1945 – 22 December 1989

Content of the decision

The United Sections of the High Court of Cassation and Justice established that the courts of law are competent to order the restitution of the real estates if the holder of the same or the entity vested with the settlement of the notification does not respond to the entitled person within the legal term of 60 days. Also, the courts of law are competent to order, directly, the restitution of the real estates if a decision/order for rejecting the request of restitution in kind was issued.

The intervention of the supreme court is grounded on the non-unitary practice in the interpretation and application of Article 26 para. (3) of Law 10/2001. Thus, some courts censured the lack of an answer of the holder/entity vested with the settlement of the notification or cancelled the order/decision whereby the restitution is refused. Therefore, when they found that the plaintiff's request was grounded, they ordered the defendants (the holder/entity vested with the settlement of the notification) upon the issuance of a decision/order in the sense of restitution in kind.

Other courts rejected the restitution requests as inadmissible or prematurely introduced, in case the holder did not pronounce on the notification within the 60 days' term.

Finally, there is also a case law in the sense that the courts of law can directly order the restitution in kind in situations where they ascertain the illegality of lack of grounds of the decision/order whereby the restitution is refused, as well as in the case the holder/the entity vested with the settlement of the notification does not answer within the legal term. The supreme court found that such latter courts interpreted and applied the provisions of the law fairly.

The Decision of the High Court of Cassation and Justice is binding on the courts as of its publication in the Official Gazette (12 November 2007).

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Shipping

Name of the enactment

Law No. 290/2007 on the approval of Government Emergency Ordinance No. 74/2006 for the amendment and completion of Government Ordinance No. 42/1997 on naval transport ("Law 290/2007")

Publication

Official Gazette of Romania, Part I, No. 780/16.11.2007

Entry into force

16 November 2007

Connections with other enactments		International deeds <ul style="list-style-type: none">• The international convention for the security of containers, concluded in Geneva on 2 December 1972;• The international convention for measuring the weight of ships, concluded in London on 23 June 1969. Domestic deeds <ul style="list-style-type: none">• Government Emergency Ordinance No. 74/2006;• Government Ordinance No. 42/1997;• The Regulation for the application of Government Ordinance No. 42/1997 on naval transport, approved by Government Decision. 245/2003;• Government Decision No. 1.133/2002 on the organization and operation of the Romanian Naval Authority;• Government Decision No. 367/2007 on the organization and operation of the Ministry of Transport.
Connections with the Community laws		Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)
Main provisions		Law 290/2007 brings the following main amendments and additional details to the previous regime (established in the Government Emergency Ordinance No. 74/2006 and Government Ordinance No. 42/1997): <ul style="list-style-type: none">• newly built Romanian ships which will be registered in another state can navigate based on registration documents or based on a provisional permit for displaying the flag, issued by the competent authorities of the respective state.• chartered ships displaying the Romanian flag will lose the right to display it as of the termination of the bare-boat lease agreement or upon the written request of the owner or of the operator, with the consent of the owner, as the case may be.• for the navigation in war zones, the crew of the ship will have either the right to request the repatriation or the right to request compensation in addition to the existing rights, established in the collective bargaining agreement negotiated with the employer or at branch level.• the representatives of the Romanian Naval Authority and of the harbor authorities, empowered by the general manager of the

Romanian Naval Authority, will have a right of inspection and control, at any time of day or night, on board of ships in the navigable national waters or in the Romanian harbors, regardless of the flag they display.

- if the ship in danger is in the navigable national waters and the commander/leader of the ship, the owner or operator thereof unreasonably delays concluding an assistance or rescue agreement, the harbor authority in the jurisdiction whereof the ship in danger is located will have the right to order to the institutions or specialized business entities or other available ships to execute of the rescue intervention.

The mandatory professional development in the field will be carried out through the Romanian Center for the Training and Development of the Personnel in the Naval Transports (CERONAV), a public institution governed by the Ministry of Transports. The education activities concerning the professional training and the development of the navigating personnel can also be carried out through duly authorized education suppliers.

Repealed enactments

Government Ordinance No. 42/1997 (with its final amendments approved by Law 290/2007) repealed:

- Article 3 of Decree No. 92/1995 for the ratification of the international Convention for the security of containers, concluded in Geneva on 2 December 1972;
- Article 3 of Decree No. 23/1976 for the accession of the Socialist Republic of Romania to the International Convention on the measurement of the weight of ships, concluded in London on 23 June 1969;
- Article 2 of Government Ordinance No. 95/1998 on the set-up of public institutions under the authority of the Ministry of Transport;
- Decree No. 443/1972 on civil navigation, except for chapter VI – “Misdemeanors”;
- Council of Ministers Decision No. 40/1973 for the approval of the Regulation containing norms on the civil navigation;
- any other contrary provisions.

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