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Legal Bulletin

Energy

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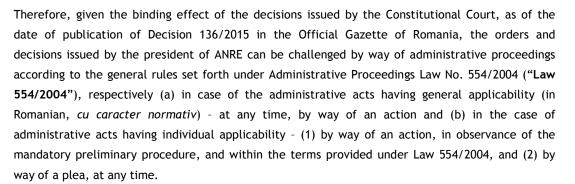
The 30-day term for challenging ANRE President's orders and decisions has been declared unconstitutional

By Decision No. 136/10 March 2015, published in Official Gazette of Romania, Part I, on 8 May 2015 ("Decision 136/2015"), the Constitutional Court granted the plea of unconstitutionality (in Romanian, *excepție de neconstituționalitate*) of the provisions of Article 5 (7) of *Government Emergency Ordinance No. 33/2007 on the organization and functioning of the National Regulatory Authority for Energy* ("GEO 33/2007"). The legal provisions at issue provided that the orders and decisions issued by the National Regulatory Authority for Energy ("ANRE") can be challenged by way of administrative legal proceedings with the Bucharest Court of Appeal within 30 days (a) following their publication date in the Official Gazette of Romania - in the case of administrative acts having general applicability (in Romanian, *cu caracter normativ*), respectively (b) following the date on which such were communicated to the interested parties - in the case of acts having individual applicability.

With a view to issuing such decision, the Court ascertained that, by limiting the judicial control of the acts issued by the ANRE President to 30 days, the legal provisions at issue breach the constitutional principles set forth under Article 21 (the free access to justice and the right to a fair trial), Article 52 (the right of a person injured by a public authority) and Article 126 (6) (the judicial control of the public authorities' administrative acts) of the Romanian Constitution.

As concerns the effects of Decision 136/2015, according to *Law No. 47/1992 on the organization and operation of the Constitutional Court*, the decision is final and binding, and the provisions of Article 5 (7) of GEO 33/2007 shall cease to produce legal effects within 45 days following the publication of the decision in the Official Gazette if, during such term, the Parliament or the Government, as applicable, fails to make the unconstitutional provisions compliant with the Constitution. During such term, the provisions ascertained to be unconstitutional are automatically suspended.





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Editors

Juca Zbârcea & Asociații's Energy Practice Group provides the full range of legal services to major electric power producers, renewable and alternative energy companies. Our lawyers advise on the regulatory components of M&A and other transactional work arising from the energy sector, including restructuring/de-regulation arising out of the wholesale and retail electricity/power market, as well as development of energy projects (such as electric, nuclear and hydro-electric plants, etc). The team also covers financing, development and regulatory issues surrounding wind generation, solar, biomass energy generation and co-operates closely with the firm's Real Estate, Finance, Environment, and Corporate practice groups in relation to multi-billion large-scale investment projects.



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