

LEGAL UPDATE - DECEMBER 21ST - 27TH, 2015

Decision no. 694/2015 of Constitutional Court on the admission of unconstitutionality of the provisions of art. 124 (1) relative to those of art. 70 of the Government Ordinance no. 92/2003 regarding the norms of the Fiscal Procedure Code entered into force on December 22nd, 2015. We mention below several regulated issues:

- The object of the exception of unconstitutionality is constituted by the provisions of art. 124 (1) of the Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code.
- A taxpayer who attacks an administrative - fiscal act with an action for annulment and who paid the tax obligations imposed by that administrative and fiscal act (or was foreclosed) cannot ask for reimbursement or damages relating to deprivation of this amount together with the application for annulment, since there is a specific procedure for refund of the amount levied unlawfully.
- The Constitutional Court admits the unconstitutionality exception and finds that the provisions of art. 124 (1) relative to those of art. 70 of the Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code are unconstitutional.

Decision no. 814/2015 of the Constitutional Court on the admission of unconstitutionality of art. 60 (1) g) of Law no . 53/2003 - Labour Code entered into force on December 22nd, 2015. We mention below several regulated issues:

- The object of the exception of unconstitutionality is represented by the provisions of art. 60 (1) g) of Law no. 53/2003 - Labour Code.
- It was argued that the criticized laws regulate an absolute prohibition of dismissal of the employees occupying eligible positions in a union, regardless of the reason for the dismissal, which constitutes an unjustified privilege for the employee union leader against other employees and thus violating art. 16 of the Constitution.
- The Court finds that the provisions criticized for prohibiting to dismiss people who occupy eligible positions in trade union body, in cases where dismissal is unrelated to union activity, are contrary to the constitutional provisions of art. 16 regarding equality before the law, of art. 44 on the right to private property and of art. 45 on economic activity.

Decision ANAF no. 694/2015 approving the procedure for issuing advance tax rulings solution, as well as the content of the application solution for issuing advance tax rulings entered into force on January 01st, 2016. We mention below several regulated issues:

- Content of the application solution for issuing tax rulings, documentation, and how to submit them are set out in Annex. 2.

- The provisions of Order shall apply to applications for issuing tax rulings solution submitted after 1 January 2016.
- For applications for issuing tax rulings submitted prior to 01.01.2016 shall be applied the legal provisions in force at the time of their submission.