THE EFFECTS OF THE DECISIONS OF THE CONSTITUTIONAL COURT OF ROMANIA REGARDING THE INTERRUPTION OF THE CRIMINAL LIABILITY LIMITATION PERIOD

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ABSTRACT: *The interruption of the prescription of criminal liability is regulated by the provisions of art. 155 of the Criminal Code, legal provisions that have recently been the subject of a posteriori constitutionality control, control following which the constitutional court issued Decision no. 358 of May 26, 2022. This extremely controversial decision had, in reality, the aim of clarifying by the Constitutional Court the effects of a previous decision, namely Decision no. 297 of April 26, 2018, having the same object, through which the Court admitted the exception of unconstitutionality and found that the legislative solution that provides for the interruption of the criminal liability limitation period by fulfilling "any procedural act in question", from the provisions of art. 155 paragraph (1) of the Criminal Code, is unconstitutional. This latter solution has been qualified differently by the courts and by the doctrine, which have oscillated between considering that the previously mentioned admission solution is pure and simple and the appreciation that it is an interpretive solution.*

KEY WORDS: *interruption of the prescription of criminal liability; a posteriori constitutionality control exercised by the Constitutional Court of Romania; the effects of the decisions of the Constitutional Court of Romania; the non-unitary interpretation of the decisions of the Constitutional Court of Romania; the binding nature of the decisions of the Constitutional Court of Romania*
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The prescription of criminal liability is a substantial criminal law institution with direct incidence in the sphere of individual freedom, as it is regulated by Article 23 of the Constitution and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is why ensuring the constitutional character of its regulation is of considerable importance. Thus, the Constitutional Court of Romania was

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sworn in, over time, in order to solve a large number of complaints having as object the legal provisions regulating the institution of prescription of criminal liability.

In this context, a significant issue of law that has been the object of constitutional review in recent years is the interruption of the course of prescription of criminal liability. This is because, unlike the previous legislation, which provided for the interruption of the course of prescription of criminal liability only as a result of the performance of procedural acts that were communicated, according to the law, to the accused or the defendant, the provisions of Art. 155 para. (1) of the Criminal Code in force, on the date of referral to the constitutional court, the interruption of the course of limitation of criminal liability on the occasion of the performance of any procedural act, regardless of its nature.

On this point, the Constitutional Court issued *Decision no. 297 of 26 April 2018* (Decision No. 297 of 26 April 2018 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2018) by which it admitted the exception of unconstitutionality and finds that the legislative solution that provides for the interruption of the course of the limitation period of criminal liability by fulfilling "any procedural act in question", from the provisions of Art. 155 para. (1) of the Criminal Code is unconstitutional. In order to pronounce this solution, the Court held, inter alia, that "in view of the importance of the institution of limitation of criminal liability, it is necessary to guarantee the foreseeability of the effects of the provisions of Article 155 para. (1) of the Criminal Code on the person who has committed an act provided for by the criminal law, including by ensuring his/her possibility to know the aspect of the interruption of the course of the prescription of criminal liability and of the beginning of the course of a new limitation period. Moreover, the date of performance of a procedural act which produces the aforementioned effect is also the date from which it begins to run and the new limitation period may be calculated" (Decision No. 297 of 26 April 2018 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2018). It was also noted that "to accept the contrary solution is to create - when performing procedural acts that are not communicated to the suspect or defendant and which have the effect of interrupting the course of the prescription of criminal liability,- for the person concerned, a state of perpetual uncertainty, given by the impossibility of a reasonable assessment of the period of time during which he can be held criminally liable for the acts committed, uncertainty that may last until the expiry of the special prescription period, provided for in Article 155 para. (4) of the Criminal Code" (Decision No. 297 of 26 April 2018 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2018); however, "according to the jurisprudence of the Constitutional Court, a legal provision must be precise, unequivocal and establish clear, predictable and accessible rules whose application does not allow arbitrariness or abuse" (Decision No. 297 of 26 April 2018 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2018). Last but not least, through the analyzed decision, the Court stressed that "the acts performed during the criminal trial by the judicial bodies

can be classified into procedural acts and procedural acts. According to this classification, procedural acts are the legal instruments by which the procedural subjects exercise their rights and fulfill their obligations provided by law, and the procedural acts are the activities by which the procedural acts are carried out, or by which the performance and the content of a procedural act or measure or of another procedural act are ascertained. Therefore, procedural acts presuppose the pre-existence of appropriate procedural documents. By way of example, the search report is drawn up after the search, the recording of a witness's statements presupposes his prior hearing, and the drawing up of a minute takes place after the court hearing. Thus, the criminal process involves a succession of activities, carried out by the participants in it, through which these participants exercise their rights and fulfill their obligations, stipulated in the Code of Criminal Procedure, all the procedural and procedural acts issued by them competing for the settlement of criminal cases. Of these, the law provides for the communication of those procedural acts that directly concern the procedural rights and interests of the participants in the criminal proceedings." (Decision No. 297 of 26 April 2018 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2018)

A highly controversial issue with regard to this decision, which arose immediately after the date of publication of the corresponding press release on the constitutional court's website, was that of *the nature of the admission solution* thus pronounced.

According to the doctrine, the admission solutions rendered by the Constitutional Court, within the framework of the *a posteriori* constitutional review are simple admission solutions and intermediate admission solutions (Deleanu, Constitutional institutions and procedures, in Romanian law and in comparative law, 2006). Through the simple admission solutions, the Constitutional Court finds the unconstitutionality of a legal norm or of a normative act (law or ordinance), with the consequence of suspending the applicability of this for a period of 45 days from the date of publication of the decision in the Official Gazette of Romania, term in which the legislator has the constitutional obligation to put the unconstitutional legal provisions in accordance with the provisions of the Constitution, an effect provided for in Article 147 para. (1) of the Constitution. In the event of failure to fulfil that obligation, the legal rules in question become inapplicable. As regards intermediate admission solutions, they have been classified, by the same author, into interpretative solutions and manipulative solutions (Deleanu, Constitutional institutions and procedures, in Romanian law and in comparative law, 2006). Through the interpretative admission solutions, the Constitutional Court, in an attempt to avoid creating the legislative vacuum, shows what is the constitutional interpretation of one or more legal provisions, with the consequence of eliminating unconstitutional interpretations from the sphere of possible interpretations. In the same attempt, not to leave unregulated essential aspects of the social relations concerned, The Court proceeded, in the last decade, to find the unconstitutionality of a large number of expressions/phrases from the controlled legal norms, decisions that produced the effects provided for in Article 147 para. (1) of the

Constitution, only with regard to the expressions/phrases found to be unconstitutional. The latter were classified by the authors studied in the category of "manipulative" decisions, as decisions of partial admission.

As regards the solution rendered by the Decision no.297 of April 26, 2018, it was interpreted, by a large part of the doctrinaires and of the judicial bodies, as a solution of partial admission, with reference only to the phrase "any procedural act in question" from the content of Art.155 para. (1) of the Criminal Code. The logical consequence could only be that the meaning of the analyzed criminal norm, from which the expression declared unconstitutional was missing, was to be determined by its systematic interpretation, more precisely by its relation to the provisions of para. (2) of Article 155 of the Criminal Code, according to which "after each interruption a new limitation period begins to run" and of para. (3) of the same article, according to which 'the interruption of the course of prescription shall take effect vis-à-vis all the participants in the infringement ...' . The result of this reasoning was that, in fact, the course of the limitation of criminal liability is interrupted, but there is a legal vacuum with regard to the procedural acts that have the effect of that interruption. However, the lack of a legal specification, in that regard, could only lead to a non-unitary case-law of the prosecution and of the courts concerning the interruption of the course of limitation of criminal liability.

Separately, there were doctrinaires and judicial bodies who considered that the admission solution rendered by Decision no.297 of April 26, 2018 is an interpretative one regarding the phrase "any procedural act in question" in the provisions of Art. 155 para. (1) of the Criminal Code, the constitutional meaning of this phrase being determined on the basis of the recitals of the analyzed decision, as being that the interruption of the course of criminal liability takes place by performing any procedural act in question, which, according to the provisions of the Code of Criminal Procedure, must be communicated to the suspect or defendant.

In the context of this non-unitary jurisprudence, the Constitutional Court was seized with a number of ten exceptions of unconstitutionality, invoked before different courts, by which it was asked to pronounce a new decision, clarifying the nature of the above-analyzed admission solution and the effects of the Decision no.297 of 26 April 2018. In motivating these complaints, the authors of the exceptions pointed out that, in practice, the courts have ruled that decision no.297 of April 26, 2018 is an interpretative decision, and not a pure and simple one of immediate application, context in which "the criticized legal provisions are not clear, predictable and predictable, because they do not allow the accused person to know under what conditions and by what acts the course of prescription of criminal liability is interrupted. Thus, the criticized legal text is not sufficiently clear and explicitly established at the legislative level, which has direct consequences both on the person in the hypothesis of the norm and for the court called upon to assess the validity and legality of the requests" (Decision No. 358 of 26 May 2022 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2022).

In order to resolve the exceptions thus invoked, the constitutional court issued Decision No. 358 of 26 May 2022, by which it found, this time, that the provisions of Article 155 para. (1) of the Criminal Code are unconstitutional. In the recitals to that decision, the Court held that, that, "under the conditions of establishing the legal nature of Decision No. 297 of 26 April 2018 as a simple/extreme decision, in the absence of active intervention of the legislator, mandatory according to Article 147 of the Constitution, for the period between the date of publication of that decision and until the entry into force of a normative act clarifying the norm, by expressly regulating the cases capable of interrupting the course of the limitation period of criminal liability, the active substance of the legislation does not contain any case that would allow the interruption of the course of the prescription of criminal liability" It was found, at the same time, that "such a consequence is the result of the non-observance by the legislator of the obligations incumbent on it, according to the Fundamental Law and its passivity, even despite the fact that the decisions of the High Court of Cassation and Justice signalled as early as 2019 the non-unitary practice resulting from the lack of legislative intervention" (Decision No. 358 of 26 May 2022 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2022). In the same vein, the Court has pointed out that it is precisely in the light of the legislature's sphere of competence that the legislature has jurisdiction, in paragraph 34 of Decision No 34. 297 of April 26, 2018, "highlighted the landmarks of the constitutional behavior that the legislator, and not the judicial bodies, had the obligation to appropriate, it, under Article 147 of the Constitution, being obliged to intervene legislatively and to establish clearly and predictably the cases of interruption of the course of prescription of criminal liability". Moreover, also by Decision no. 297 of 26 April 2018, the Court "indicated as a reference point including the case-law of the Federal Court of Justice (Bundesgerichtshof - BGH), which stated in its case-law that the provisions of criminal law governing the interruption of the limitation period are interpreted as carefully defined exceptions and, therefore, do not lend themselves to extensive interpretations; therefore, ordinary courts cannot, on their own responsibility, develop the law by analogy (according to the Decisions of the Federal Court of Justice in criminal matters, Entscheidungen des Bundesgerichtshofs in Strafsachen - BGHSt 28, 381 < 382 >; BGH, Ordinance of 29.09.2004 - 1 StR 565/03 -; Ordinance of 16.06.2008 - 3 StR 545/07 -; Ordinance of 10.08.2017 - 2 StR 227/17 -)" (Decision No. 358 of 26 May 2022 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2022). Also, the Court noted that "through the silence of the legislator, the identification of cases of interruption of the course of prescription of criminal liability remained an operation carried out by the judicial body, reaching a new situation lacking clarity and predictability, a situation that also determined the different application to similar situations of the criticized provisions (a fact confirmed by the finding by the High Court of Cassation and Justice of the existence of a non-unitary practice). Thus, the lack of intervention of the legislator has determined the responsibility of the judicial body the need to replace it by

outlining the normative framework applicable in the event of interruption of the course of prescription of criminal liability and, implicitly, the application of the criminal law by analogy" (Decision No. 358 of 26 May 2022 on the exception of unconstitutionality of the provisions of Article 155 para. (1) of the Criminal Code, 2022).

According to art.147 para. (1) of the Constitution, this admission solution was to have the effect of suspending the application of the provisions of Article 155 para. (1) of the Criminal Code, for a period of 45 days from the date of publication of Decision no. 358 of 26 May 2022 in the Official Gazette of Romania.

From the perspective of the substantial criminal law, taking into account the provisions of art.5 para. (2) of the Criminal Code, the simple publication of Decision no. No 358 of 26 May 2022 was to be tantamount to the creation of a more favourable criminal law providing for the non-interruption of the course of the limitation of criminal liability, the essence of which would have been its application and with regard to the acts provided for by the criminal law committed before the date of its publication. Moreover, the more favourable criminal law thus created would have applied not only to acts committed after the date of entry into force of the new Criminal Code (1 February 2014), but also to those committed under the Criminal Code of 1969, in cases where, following the comparison of the two codes by the courts, it would have resulted that the current Criminal Code constitutes the more favourable criminal law. The consequence of this reasoning was to consist in pronouncing a considerable number of solutions for classification, according to art.316 para. (1) letter b) of the Code of Criminal Procedure, or the termination of the criminal proceedings, according to art. 396 para. (6) of the Code of Criminal Procedure.

However, in order to prevent this effect from occurring, on 30 May 2022, only 4 days after the date of pronouncement of Decision no. 358 of May 26, 2022 and prior to its publication in the Official Gazette of Romania, the Government issued *Emergency Ordinance no. 71/2022 for the amendment of art. 155 para. (1) of Law no. 286/2009 on the Criminal Code*, which was published, on the same day, in the Official Gazette of Romania, Part I, no. 531 dated May 30, 2022. The sole article of this ordinance provides for the amendment of para. (1) of Article 155 of the Criminal Code, thus "the course of the limitation period of criminal liability shall be interrupted by the performance of any procedural act in question which, according to the law, must be communicated to the suspect or the defendant". A first effect of this legailstive intervention of the Government is that, Decision no. 358 of 26 May 2022, which was published in the Official Gazette of Romania, Part I, no. 565 of June 9, 2022 will no longer produce any legal effect on the acts provided by the criminal law committed after the date of entry into force of emergency ordinance no. 71/2022, these being practically annihilated by the will of the secondary legislator who, through the adopted normative act, seems to have confirmed the meaning of the provisions of art.155 para. (1) of the Criminal Code. Emergency Ordinance no. 71/2022 has not yet been approved by parliament. It is currently in the course of the legislative procedure, at the Chamber of Deputies, as a decision-making Chamber, being

sent for opinion, on September 8, 2022, to the Committee on Human Rights, Cults and National Minorities Issues within this Chamber (Parliament, 2022). It is important, however, to note that the Senate, as the first notified Chamber, adopted the law on the approval of Emergency Ordinance no. 71/2022 without making any changes to it.

In this legislative context, we consider that, from the perspective of the interpretation and application of the legal provisions on the prescription of criminal liability, it is necessary to analyze *two distinct hypotheses*, namely that of the acts provided for by the criminal law committed before the date of entry into force of the Emergency Ordinance no. No 71/2022 and that of acts committed after that date.

In the first hypothesis, of the acts provided by the criminal law committed after the date of entry into force of the aforementioned emergency ordinance, in the most probable version of the approval by the Parliament of the Emergency Ordinance no. 71/2022 as it was adopted by the Government, Decision No. 358 of 26 May 2022 will no longer produce legal effects, and will be irrelevant from the perspective of applying Article 155 para. (1) of the Criminal Code, with the exceptions that we will mention below. In case of approval by the Parliament with amendments and/or additions to the Emergency Ordinance no. 71/2022, the latter will produce the effects envisaged by the Government, from the date of its publication in the Official Gazette of Romania (May 30, 2022) and until the date of entry into force of the law amending and/ or supplementing it adopted by the Parliament. After that date, the provisions of Article 155 para. (1) of the Criminal Code shall have the content resulting from the possible amendment and/or additions made by the Parliament, this last form being to produce legal effects from the date of entry into force of the law thus adopted, which, according to Article 78 of the Constitution, enters into force 3 days after the date of its publication or at a later date stipulated in its text. In the less likely situation of rejection by the Parliament, by law, of the Emergency Ordinance no. 71/2022, from the date of entry into force of the law of rejection, Emergency Ordinance no. No 71/2022 will be ineffective. In those circumstances, Decision No. 358 of 26 May 2022, which, according to art.147 para. (1) of the Constitution, shall generate a legislative vacuum regarding the interruption of the course of prescription of criminal liability, a legal effect which, in the absence of a new legislative intervention, will give rise to a period of time during which the limitation period of criminal liability will not be interrupted.

However, considering that the Government Emergency Ordinance no. 71/2022 regulates in the field of prescription of criminal liability, directly producing effects on individual freedom, it seems to be unconstitutional, taking into account the provisions of art.115 para. (6) of the Constitution, as well as the recent jurisprudence of the Constitutional Court, which, by Decision no. 55 of 16 February 2022, found that the Law for the approval of the Government Emergency Ordinance no. 6/2016 on certain measures for the execution of technical surveillance warrants ordered in criminal proceedings, as well as the provisions of Art. I point 1, second sentence, of Art. II point 1, of Art. IV point 1, third sentence and of Art. IV point 2 the second sentence of Emergency Ordinance No.

6/2016 on some measures for the execution of the technical surveillance mandates ordered in the criminal proceedings are unconstitutional. In the recitals of the aforementioned decision, the Court specified that the reason for finding the unconstitutionality is that the legal provisions under consideration "affect in a negative sense" the fundamental rights in the field in which it regulates. In the light of this case-law, it is necessary to determine whether Emergency Ordinance No. Regulation (EC) No 71/2022 affects the manner in which individual freedom is guaranteed or, on the contrary, confers more protection on that freedom by removing the existing legal vacuum. For my part, I consider that, although on a first analysis, the single article of the emergency ordinance appears to create a more restrictive legislative framework with regard to individual freedom, by establishing a mechanism for interrupting the course of limitation of criminal liability, in the existing legislative context, characterised by the existence of non-unitary case-law of the judicial bodies in the field of the limitation of criminal liability, jurisprudence that generates a discriminatory treatment of defendants in similar situations in terms of finding the intervention of the prescription of criminal liability and, consequently, a non-unitary manner of guaranteeing individual freedom, Government Emergency Ordinance no. 71/2022, by creating a uniform framework for the application of the provisions of Article 155 para. (1) of the Criminal Code, brings a plus of protection to the freedom provided for in Article 23 of the Constitution, guaranteeing its assurance, equally, to all persons who commit acts provided for by the criminal law. However, the mere regulation by emergency ordinance, and not by law, of the interruption of the course of prescription of criminal liability could be considered by the Constitutional Court as contrary to the provisions of Art.115 para. (6) of the Constitution. A solution to find the unconstitutionality of Government Emergency Ordinance no. 71/2022 could be pronounced by the Constitutional Court on the following two "ways": by means of *a posteriori* constitutional review and by means of *a priori* constitutional review. Regarding the hypothesis of exercising the a posteriori control, it should be noted that there are already a considerable number of complaints pending before the Constitutional Court with exceptions of unconstitutionality that call into question the constitutionality of the Emergency Ordinance no. 71/2022, as a whole, more precisely, its extrinsic unconstitutionality, having regard to the above-mentioned reason, namely that the Government has regulated through it in the field of individual freedom, which is a fundamental right. Regarding the a priori constitutionality review, it may be initiated, at this stage of the legislative process, according to the provisions of Art.15 para. (1) of the Law no. 47/1992 on the organization and functioning of the Constitutional Court, by a number of 50 deputies, by the President of the High Court of Cassation and Justice and by the Advocate of the People. At the same time, the right of the President of Romania, provided for in Article 77 para. (3) of the Constitution and article 15 para. (1) of Law no. 47/1992, to refer the matter (once) to the Constitutional Court, in order to exercise the a priori review of constitutionality, prior to the promulgation of the law.

A potential decision finding the unconstitutionality of Emergency Ordinance no. 71/2022, as a whole, by way of *a posteriori* control, will produce the effects provided for in Article 147 para. (1) and (4) of the Constitution. As a result, from the date of publication of this decision in the Official Gazette of Romania, the effects of Decision no. 358 of 26 May 2022. And, an eventual decision to find the unconstitutionality of the law approving this emergency ordinance, by means of *a priori* control, will produce the effect provided for in art.147 para. (2) of the Constitution, obliging the Parliament to re-examine the law and to bring it in line with the provisions of the Constitution, by resuming the legislative process, only under the aspects signalled by the Constitutional Court through the admission decision rendered (Decision no. 412 of 20 June 2019 on the objection of unconstitutionality of the Law for the approval of Government Emergency Ordinance no. 4/2016 amending and supplementing the Law on National Education no. 1/2011, 2019).

In the alternative, the possibility of finding the unconstitutionality of the law of approval or of the law rejecting the Emergency Ordinance no. 71/2022, as a whole, by way of *a posteriori* review of constitutionality, a solution that, theoretically, would have the legal effect of applying the provisions of Emergency Ordinance no. 71/2022 as adopted by the Government, from the date of publication of the decision on the admission of the Constitutional Court in the Official Gazette of Romania. There is, however, a period of time between the date of entry into force of that law and the date of publication of that decision, during which the law approving or rejecting the emergency ordinance would take effect.

However, it remains difficult to *solve the hypothesis of the transitional situations, respectively of the acts provided by the criminal law committed before the date of entry into force of the Emergency Ordinance no. No 71/2022*, in respect of which no final court decisions have been delivered by the aforementioned date. In their regard, both in the case-law of the judicial bodies and in the legal literature, different opinions have emerged which lead to the pronouncement of contrary case-law solutions.

According to a first approach, Decision No. 358 of May 26, 2022 qualifies, by its recitals, the solution rendered by decision no.297 of April 26, 2018, as one of simple admission, which allows the interpretation that the provisions of Art.155 para. (1) of the Criminal Code have become inapplicable from the date of publication of decision no.297 of April 26, 2018 in the Official Gazette of Romania, either because it is considered that the provisions of Art.155 para. (1) of the Criminal Code were declared unconstitutional in their entirety, either because it is considered that the phrase "any procedural act in question" in their content was found to be unconstitutional. This is tantamount to the lack of regulation, from the aforementioned date, of the interruption of the course of limitation of criminal liability, which implicitly leads to a long series of solutions for closing or terminating the criminal proceedings. In this respect, it is the recent jurisprudence of the Oradea Court of Appeal, which, by the Criminal Decision nr. 350/A/2022 rendered on 22 June 2022 in File no. 2440/177/2018, ordered the termination of the criminal trial against

a person sent to trial for committing the offences of threat, disturbing the public order and tranquility and violating the professional premises, finding the fact that the limitation of criminal liability intervened, as a result of the constitutional court's pronouncement of decisions no. 297 of 26 April 2018 and 358 of 26 May 2022. In the grounds of that decision, the statement of reasons considered to be like a ”schoolar texbook” (Dumitrache, luju.ro, 2022), it was considered "as erroneous the analysis made in the Note of the General Prosecutor's Office no. 1470 /C/1364/III-13/2022 of 10.06.2022 on uniform criteria for the application of the Constitutional Court Decision no. 358/2022 and government emergency ordinance no. 71/2022, which concludes that the examination of the effects of unconstitutionality art. 155 para. (1) The Criminal Code shall not entail the principle of a more favourable criminal law" (Dumitrache, luju.ro, 2022). Also, the Timișoara Court of Appeal, in a decision of the case, held that between the date of publication in the Official Gazette of Romania of Decision no. 297 of April 26, 2018 and the date of publication in the Official Gazette of Romania of Emergency Ordinance no. 71/2022, which amended art. 155 para. (1) of the Criminal Code, "The Criminal Code presented a form that did not contain any case that would allow the interruption of the course of prescription of criminal liability, being applicable only the general limitation periods provided by art. 154 para. (1) of the Criminal Code" (Tarata G. , luju.ro, 2022). A similar solution was pronounced by the Bacau Court of Appeal, by decision nr. 590 of 15 June 2022, in File no. 15081/180/2015, decision by which solutions were ordered to terminate the criminal trial, according to art.16 para. (1) lit.f) of the Code of Criminal Procedure, the court holding that ”the application of the more favorable criminal law during the trial is made, according to art.5 al.2 of the Code of Civil Procedure and in the case of normative acts declared unconstitutional", which is why "the provisions of art.155 al.1 of the Code of Civil Procedure in force during this period, which did not include any cause of interruption of the course of the prescription term, represent a more favorable criminal law. As a result, the special prescription does not operate, and the prescription of criminal liability occurs at the end of the general limitation period provided for by art.154 of the Code of Civil Procedure." (Dumitrache, luju.ro, 2022).

According to other opinions, which seem to give priority to the will of the legislator, it has been held, whether the interruption of the course of prescription of criminal liability is an institution of criminal procedural law, which is why the provisions of the Emergency Ordinance no. 71/2022 are of immediate application, whether the will of the legislator, expressed by Emergency Ordinance no. 71/2022, takes precedence over the solutions resulting from the decisions of the Constitutional Court. These interpretations exclude the finding of the plano intervention of the prescription of criminal liability as a result of the failure to interrupt its course from the date of publication of the Decision no.297 of April 26, 2018 in the Official Gazette of Romania, which determines the settlement of the merits of the criminal cases in the analyzed hypothesis (MinisterulPublic, mpublic.ro, 2022).

The fact is that in the preamble of the Emergency Ordinance no. No 71/2022, it is stated that it was adopted, inter alia 'taking into account the fact that from the date of publication of the reasons for the decision of 26 May 2022 in the Official Gazette of Romania, Part I, the institution of interruption of the prescription of criminal liability may be questioned, a discussion which would be likely to have implications on a large number of cases and which could determine the non-unitary application of the institution of interruption of the prescription of criminal liability as a result of the suspension of the provisions of Article 155 para. (1) of the Criminal Code". However, these statements indicate, unequivocally, the intention of the legislator to standardise the interpretation and application of the provisions of Article 155 para. (1) of the Criminal Code, in the sense of interrupting the course of prescription of criminal liability by acts that must be communicated to the suspect or defendant.

At the same time, it should be noted that the prescription of criminal liability and, implicitly, the interruption of its course is a matter that belongs to the sphere of the state's criminal policy, which is why the Parliament, in its capacity as the sole legislating authority, provided for in Article 61 para. (1) of the Constitution, and, in the alternative, the Government, according to the provisions of Article 115 of the Constitution, are the institutions called upon to transpose this criminal policy through the regulatory acts that are specific to them. In relation to these, the Constitutional Court appears as a "negative legislator" or "quasi-egative" (Decision No. 651 of 25 October 2018 on the exception of unconstitutionality of the provisions of art. 595 para. (1) of the Code of Criminal Procedure and art. 4 of the Criminal Code, 2018), referred to in the doctrine and the 'auxiliary' legislature (Mateut, Speech by Mr. Gheorghiță Mateuț at the 2019 Gala of the Romanian Union of Lawyers Awards, 2020), which has the constitutional role, provided for in Articles 146 and 147 of the Constitution, to oblige the Parliament and, respectively, the Government, to put the normative acts and legal provisions found to be unconstitutional in accordance with the provisions of the Fundamental Law. It cannot, however, express the intention of the legislature in carrying out state criminal policy and cannot create, in a direct manner, positive law in criminal matters. Moreover, the provisions of Art.2 para. (3) of law no. 47/1992 expressly provide that the constitutional court "shall pronounce only on the constitutionality of the acts on which it was seized, without being able to modify or supplement the provisions subject to review", and, in order to pronounce Decision No. No. 651 of 25 October 2018, the Constitutional Court took into account the hypothesis of the finding of unconstitutionality of the criminal norms of incrimination (Decision No. 651 of 25 October 2018 on the exception of unconstitutionality of the provisions of art. 595 para. (1) of the Code of Criminal Procedure and art. 4 of the Criminal Code, 2018). For these reasons, I consider that the interpretation and application of the solutions for admission of the Constitutional Court must be made in accordance with the considerations on which they are based, but also with the will of the legislator expressed in the legislative acts drawn up as a result of the pronouncement of those solutions.

We can also say with certainty that all the decisions of the Constitutional Court produce effects only for the future, according to art.147 para. (4) of the Constitution - therefore also Decision no. 358 of 26 May 2022 produces the same effects,- there being no distinct category of interpretative decisions of the Constitutional Court, which would produce effects for the past with regard to the decisions interpreted. That being the case, such an interpretation given to Decision No. 358 of 26 May 2022 would be equivalent to the creation of a new mechanism in the sphere of constitutional litigation, unregulated neither in Title V of the Constitution, regarding the Constitutional Court, nor in the content of the Law no.47/1992, which would allow the constitutional court to reinterpret, with retroactive effect, its own decisions, a solution that would be contrary to the provisions of Art.147 para. (4) of the Constitution.

In this extremely complicated context, of interpretation and application of the provisions of art.155 para. (1) of the Criminal Code, several courts of appeal, including the Bucharest Court of Appeal and the Oradea Court of Appeal, *have appealed to the High Court of Cassation and Justice - the Panel for the unravelling of some questions of law in criminal matters in order to pronounce a judgment by which to give a solution in principle to this issue regarding the interpretation and application of the provisions of Art.155 para. (1) of the Criminal Code*, the deadline for its pronouncement being set for October 25, 2022 (HCCJ, 2022). For this reason, many courts choose to suspend the settlement of criminal cases in which the exception of limitation of criminal liability is invoked following the pronouncement by the Constitutional Court of Decision no. 297 of 26 April 2018 and Decision no. No 358 from 26 May 2022 to the aforementioned date (Tarata, 2022). In view of these complaints, the Prosecutor's Office attached to the High Court of Cassation and Justice has published on its own portal the written conclusions submitted to the High Court of Cassation and Justice - the Panel for the unravelling of legal issues in criminal matters, by which he argues that in the period between the publication of the two decisions of the Constitutional Court regarding the interruption of the course of prescription of criminal liability in the Official Gazette of Romania, there was no legislative vacuum to be invoked by the defendants as a more favorable criminal law (MinisterulPublic, mpublic.ro, 2022).

Pending the pronouncement by the High Court of Cassation and Justice - The panel for the unravelling of certain questions of law in criminal matters of this judgment, which will decide the manner in which the decisions of the constitutional court on the interruption of the course of prescription of criminal liability will be interpreted and applied by the judicial bodies, it remains to reflect on the role of the Constitutional Court as guarantor of the supremacy of the Constitution, provided for in Article 142 para. (1) and in Article 1 para. (1) of the Law no.47/1992, which implies that it ensures legal certainty, a principle deriving from the provisions of Article 1 para. (3) and (5) of the Constitution, which regulates the Romanian State.

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