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Scientific rapport for doctoral research

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THE APPEAL IN THE ROMANIAN CIVILE PROCEDURE

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SUMMARY

In time, The Code of the Civil Procedure in 1865 has undergone many additions and changes. These changes have been brought about by some of its imperfections, the difficulties encountered in its application, the increasing in the number of processes, their complexity through problems of law and of fact on which they were built, the delivery of a large number of unlawful non-substantial decisions, as well as the slow pace of processes' settlement.

The Code of the Civil Procedure enshrines the rule of uniqueness for the appeal and the order of exercising the appeal ways, proposing and structuring a coherent system of remedies, designed to ensure both a promptly conduct of the civil trial, but also the unity of the jurisprudence and the correct application of the law.

With regard to the appeal, the jurisdiction of the settlement returns to the High Court of Cassation and Justice. It will examine the decision subject to compliance with the rules of the applicable law, ensuring in this way a uniform judicial practice throughout the country. On grounds relating to the material and human base, there are numerous categories of decisions which do not end up in the Court of Appeal, but stop before the Courts of Appeal (art. 483 of the New Code of the Civil Procedure). It was entered the incident appeal, and the provoked appeal and file preparation for the judgment in recourse is made, with the necessary adaptations, as in the case of the appeal. It was reintroduced the filtering appeals procedure, improved compared to the attempt made by O.U.G. 58/2003. It was dispelled the possibility of amending the judgment in the case of the admission of the appeal and was returned to the solution in 1993, keeping only the cassation solution.

All these changes in the current legislation as well as the inherent difficulties that have arisen and will arise in judicial practice are the basis of this analysis, the project proposed to be presented as a doctoral thesis. The adoption of the new code of civil procedure must represent a major reform in the process matters, and such a prospect is still real, since it undoubtedly contains many progressive and effective regulations (PhD. prof. Ioan Le□, *Tratat de drept procesual civil. Supliment gratuit (Modificările şi completările aduse actualului Cod de procedură civilă prin legea pentru accelerarea proceselor no. 202/2010 „Mica Reformă"),* Edition 5, C.H. Beck, Bucharest, 2010, p. 4)

The provisions relating to the Code of the Civil Procedure come to settle some controversy and gaps in the legislation and bring novelty items of specific appeal rules reviewed, many of these issues, long ago, forming the subject of proposals of the *lex ferenda*.

With the adoption of the new Code of the Civil Procedure an appeal is subject to adjustments meant to bring some corrective to the drawbacks in the legislation in force. In connection with the adoption of a new Code of the Civil Procedure, PhD. prof. Ioan Le said: "*The adoption of a new Code of the Civil Procedure is a work needed, for long decades by the world juridical body in our country, representing an undeniable progress in terms of legislative*" (PhD. Prof. Ioan Leş, *Spre un mare Cod de procedură civilă?,* in „Curierul Judiciar", no. 11/2009, pp. 603-605). Also, by removing the existing restrictions currently in the object of the application for appeal was restricted the scope of the recourse, this reaching its true status of extraordinary attack path, not just by its location in the new Code of the Civil Procedure and through its features and effects, but also by its subject matter.

By carrying out a comparative analysis with other legal systems in Europe we may outline a broad perspective on the comparative law. The procedure for filtering of appeals provided for in the legislation of other European countries-France, Germany and Sweden – will complete the understanding and the analysis carried out on the basis proposed as the doctoral thesis. This comparative approach of the subject, with examples of national and international judicial practice, can thus constitute in a complete and structured way of analysing and understanding for both the civil law specialists, but also for the foreign partners in the countries mentioned.

The changes brought about by the new Code of the Civil Procedure, as well as the desire to carry out a comparative analysis on the appeal institution to other existing European legislation, determined us to try and work out a comprehensive study. We consider that the complexity and novelty of the research proposed, as evidenced from this comparative study, represent a viable argument for the development of this doctoral thesis.

Under the new Code of the Civil Procedure, the appeal has a wider-ranging. With this, the number of judgments that cannot be appealed increases. On the other hand, a novelty in the matter of the appeal as well as a settlement of some controversy from the doctrine and the judicial practice is the possibility of challenging the discharges handed down by the Court of Appeal. Thus, for example, in the matter of the suspension of the judgment appealed against, the conclusion pronounced by the Court of Appeal can be appealed separately by recourse within 5 days after the conclusion (art. 478 para. 5 of the Code of the Civil Procedure). The review in this case is going to be done by another Court of Appeal determined randomly, not later than 10 days after the registration of the appeal request, without having to go over the filter procedure (art. 478 para. 6).

The Code of the Civil Procedure reverts to our legislation the procedure of filtering the appeals from the Supreme Court. Moreover, the Government Emergency Ordinance no. 58/2003 regulated a genuine procedure of filtering the appeals, that is an innovative solution which

required completion of a procedure concerning the admissibility of the appeal in principle, an institution which, if it had been kept in the processual, our legislation could help to relieve the Supreme Court of a series of appeals that did not correspond to certain requirements, in particular, by the formal order.

In this procedure are established and detailed some older provisions (subsequently repealed – fact regretted by the doctrine) relating to the preparation of a report on the appeal. This report will verify that the appeal meets the requirements of form set out under the penalty of nullity, if the reasons fall into those provided for by article 482 of the Code of the Civil Procedure, if there are reasons of public policy or if the Appeal is manifestly unfounded. The report shall also contain, where appropriate, references to the jurisprudence of the Constitutional Court, the High Court of Cassation and Justice, the European Court of Human Rights and the Court of Justice of the European Union, as well as the position of the doctrine of law aimed at absolution given by the contested decision.

We shall follow up the filtration on appeals under the Romanian laws, but also the filtering of the appeals provided for in other European countries' legislation, namely filtration procedure of the appeal in France, the procedure for the appeal filtration in Germany, the filtration of the appeal procedure in Sweden, we even tried a comparative approach to the subject, with examples from judicial practice.

In this ground-breaking approach we have used the following research methods: *the analytical and judicial method* (to which the subject will be tackled and analysed systematically), *the historical method* (based on chronological analysis) *the observation method* (by which we shall access the public documents and we shall collect information of interest), *the comparative method* (by which we shall identify and differentiate the researched aspects), *the logical method of research* (which allows the structuring of the information obtained in logic order to prepare relevant conclusions and possibly even the proposal of appropriate solutions).

For this study we used published monographs in Romania and abroad, articles in specialised magazines, studies and research carried out and published, with visible impact. We also browsed the various existing virtual libraries at this time on the Internet, as some journals and magazines that have provided valuable information on the appeal institution in Civil Procedural Law and in various European legal systems.

In this study we used the following papers prepared by experts in the study of Romanian Civil Procedural Law: Ion Leș, Ion Deleanu, Viorel Ciobanu, Sebastian Spinei, Niculae Măniguțiu, Ioan Bălan, Mihail Lohănel, Gheorghe Dobrican, Gabriel Boroi, Gheorghe Liviu Zidaru, Mircea Duțu, etc. The comparative analysis on the old and the new Code of the Civil Procedure has given me the opportunity to observe the evolution of the Romanian Civil

Procedural Law, on the one hand, and to realize a study trying to complete what has been done up to the present time, on the appeal, *the Appeal in Civil Procedural Law.*

Also, studying some scientific papers in foreign judicial literature, particularly from France and Spain, as well as: E. Garsonnet, Ch. Cézar-Bru, Charles-Eugéne Camuzet, R. Morel, J. Vincent, S. Guinchard, A. Boudahrain, etc., helped to outline a comparative and interesting study.

In this study we did not try to present all these issues, but to capture the settlement of the appeal, as an extraordinary legal remedy, in the new Code, compared to the old regulatory body in Romania, but also with other international legal systems. All the aspects presented throughout the paper showed the civil appeal, appreciating at its true value for the importance of such extraordinary law remedies, practice and jurisprudence.

The civil appeal is one of the procedural institutions, which over time has seen transformations and changes. If in the old Code of the Civil Procedure, the appeal was considered to be an extraordinary remedy, of reformation, non-devolution and non-suspensive, along with the appeal - in the new Code of the Civil Procedure, the appeal remains the only extraordinary remedy, which may be exercised by the parties or by the Public Ministry, under the conditions and for the reasons determined by law limiting illegality for "*dismantling a judicial decision handed down in appeal, without recourse and other decisions in the cases provided for by law*".