ALTERNATIVE JUDICIAL PROCEDURES FOR DISPUTE SETTLEMENT IN THE REGULATION OF THE NEW CODE OF CIVIL PROCEDURE

George MĂGUREANU[*]
Florea MĂGUREANU[**]

ABSTRACT: *The celerity and efficiency crisis has been visible particularly in commercial law. The negative effects of this poor condition of commercial law are more visible in countries of the Central and Eastern Europe, where the above-mentioned aspect and the inappropriate specialization of the judicial staff, the unsatisfactory condition of logistics and especially the judicial procedures with a high degree of formalism fully affect the inefficiency of justice and prevent the population from trusting it.*
The judicial procedure of common law is extremely difficult, takes much time and has become increasingly expensive due to numerous taxes and fees, although the law giver makes efforts to reduce such drawbacks by entry into force of the new Code of civil procedure.
Consequently, the settlement of disputes where the subjects of legal relations wish a simplified procedure and the recovery of certain, liquid and payable debts as soon as possible, through a much faster and less costly procedure, has become a must which is also acknowledged by the new regulation of the Code of civil procedure.

KEY WORDS: *Creditor, debtor, celerity, payment order procedure, certain, liquid and payable debt, low value requests.*
JEL CODE: *K 4*

1. CONTENT

In order to obtain a legal decision, usually the "reasonable" term defined by the European Convention of Human Rights is exceeded. That is why the main objective of the legislative and institutional reform was to modernize the judicial system, together with the set up of extrajudicial organisms that would take over some of the disputes and certain special procedures (mediation, concordance, prior conciliation, payment order etc.).

In Romania, the recent evolution of judicial relations arising from obligations indicates a high form of blockage in favor of debtors in most cases. Particularly in the case of obligations consisting in the payment of money, debtors were protected by the long and

[*] Lecturer, Ph.D, Romanian-American University, ROMANIA.
[**] Professor, PhD, Romanian-American University, ROMANIA.

difficult procedure during which creditors could pursue them. Especially in commercial law, debtors delay for very long periods the payment of their financial obligations or even manage the "performance" of never paying them since they become insolvent or transfer their goods to another company created especially to make forced execution impossible, to the name of other persons and the amounts of money to the accounts of other companies.

The lack of celerity of the judicial activity conducted according to the regulations of the former Code of civil procedure lead to the creation of procedures which are alternatives to the common law procedure put into practice by courts of law, which proved incapable of settling disputes within a reasonable term.

The specifics of settling disputes imposes special forms and procedures, either because the conflicting interests require simplification and acceleration of judgment, or due to distinct regulations on the competence of the court to solve the dispute, the acceptability of evidence, means of appeal or other derogations from the common law procedure.

Special procedures are only used in cases when the need imposed a special regulation, distinct from the common law procedure. The court still applies legal procedures but some which, as we have already discussed, differ from those which are normally applied[1].

Containing only norms derogating from common law, these differ from one special procedure to another, which illustrates the diversity of such norms dictated by the need to create special rules with a very different object.

References to common law are necessary and compulsory when the special law does not expressly stipulates it, since, according to the provisions of art**.** 2 paragraph (1) Code of civil procedure, "The provisions of this code represent the common law procedure in civil matters", paragraph (2) of the same article emphasizing that "The provisions of this code also apply to other aspects, as long as the laws regulating them do not contain contrary provisions".

The new Code of civil procedure[2], but also other special norms stipulated, in the cases mentioned by the law, procedures which provide a more advantageous position to the creditor as to his rights, in order to considerably shorten the duration for the recovery of certain, liquid and payable debts.

The following belong to the category of alternative procedures: payment order, procedure referring to low value requests, eviction from buildings used and occupied unlawfully, mediation, preventive concordance, ad-hoc mandate etc. [3]

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[1] The doctrine revealed that when derogations refer to several aspects of the trial procedure, we deal with a special procedure. See V. Negru, D. Radu, Drept procesual civil, EDP, Bucharest, 1972, p. 363.

[2] Republished in the Official Gazette of Romania, Part I no. 545 of August 3rd, 2012. The Code of civil procedure was enforced through Law no. 2/2013, published in the Official Gazette, Part I no. 89 of February 12th, 2013.

[3] For further details on the special procedures regulated by the legislation existing in the period of the previous Code of civil procedure, also see: I. Leş, Proceduri civile speciale, 2nd edition, Ed. ALL BECK, Bucharest, 2003, p. 3 and the next; V.M. Ciobanu, G. Boroi, Drept procesual civil. Curs selectiv, 3rd edition, Ed. ALL BECK, Bucharest, 2005, p. 413 and the next; I. Stoenescu, S. Zilberstein, Drept procesual civil. Căile de atac şi procedurile speciale, E.D.P., Bucharest, 1981, p. 112 and the next.; Fl. Măgureanu, Drept procesual civil, 12th edition, Ed. Universul Juridic, Bucharest, 2010, p. 380 and the next; I. Sabău-Pop, E. Hurubă, O. A. Sabău-Pop, Drept procesual civil, Proceduri speciale şi executare silită, Editura Universităţii „Petru Maior", Tg. Mureş, 2008, p. 3 și urm.

We propose to analyze two of these procedures which have numerous advantages as compared to the common law procedure, in the current context of the challenges of the 21st century in law and public administration. We refer to the payment order procedure as compared to previous procedures regulated by Government Order no. 5/2001 on the procedure for the demand for payment and Government Emergency Order no. 119/2007 referring to measures for preventing delays in the execution of payment obligations resulting from contracts between professionals, both abrogated through law no. 76/2012[4] for the enforcement of Law no. 134/2010 on the Code of civil procedure and the procedure referring to low value requests.

Similar procedures are found in other states of the European Union. Examples: in France there is the injonction de payer – a procedure regulated by art.1405 – 1425 of the new French Code of civil procedure, in Germany there is Mahnverfahren, a procedure contained in the 7th Book of the German Code of civil procedure, in Italy there is Procedimento di ingiunzione, in Austria Mandatsverfahren, in Portugal Injuncao[5], but also in Brazil, Acao monitoria, in Nordic countries and in some African states.

In France, the procedure has been used since 1937, being subsequently reformed. Initially, it as a means to recover low value debts. It acquired greater significance upon the request of chambers of commerce.

The Italian doctrine treats the demand for payment as a "summary judgment", characterized by predominantly one sided nature and a summary analysis of the content, "summaria cognitio", the so-called "groping of the content" referred to in the Romanian legal literature. One of the reasons for adopting this procedure was the fact that, before, Italy was faced with what the Italian doctrine expresses through the formulation „la cantelarizzazione del proceso civile" which means attorneys' preference to resort to interim measures in order to avoid the major inconvenient of ordinary procedure, the elapse of a considerable interval between the settlement of the court and the date when the introductory request is solved.

Going back to France, the procedure mechanism is relatively simple. The creditor of an amount of money submits to the judge a request accompanied by evidence with proves the amount owed to him. The judge analyses the evidence without summoning the parties and without organizing contradicting debates.

If the judge considers the request to be justified, he issues a decision under which he calls the debtor to pay to the creditor an amount representing the capital and interest, whose value it set by the judge himself in the request. The decision is notified to the debtor. He has 30 days at his disposal to formulate an appeal. If the appeal is not formulated within this term, the decision shall be implemented upon the creditor's request, with an enforcing form, and thus the creditor has an enforceable title which allows him to proceed to the forced execution of the debtor's goods.

In case of an appeal, the registrar shall summon the creditor and the debtor for hearings, during which the court shall decide on the acceptability of the appeal and the reality of the debt, in this case the decision shall replace the initial one.

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4 Published in the Official Gazette, Part I no. 365 of May 30th, 2012

[5] For the effieicny of such procedures and for their advantages if they end in European enforceable titles, also see I. Leş, A. Stoica, Titlul executoriu european pentru creanţele necontestate, Revista română de drept privat, no.2/2008, Editura Universul Juridic, 2008, pp. 28-52; Florea Măgureanu, George Măgureanu, Titlurile executorii europene (co-author 2), in Revista Română de Executare Silită, no. 11-12/2007, p. 37 – 46

In Germany, in case of a debt whose main object is the payment of a determined amount, a summons for the debtor is issued upon the creditor's request. The summons procedure is not acceptable for claims whose annual interests exceed by 12% the interest of the German Bank, when the recovery of the debt is conditioned by a creditor's counter service and when the communication of the summons would follow the advertising path.

The competence for settlement belongs exclusively to the territorial court where the creditor lives, and the application must bear the applicant's hand signature.

No appeal can be formulated against the application to issue the summons.

The content of the summons is strictly regulated; it must contain, besides the elements of the introductory request, the observation that the court did not analyze the validity of the debt, the debtor's information on his obligation to pay the due amount and the related interest, together with any legal charges, within 2 weeks as of the summons, in case the debt is deemed valid or to communicate to the court whether he intends to challenge the debt, in full or in part, the observation that an enforceable title is to be issued if the debtor does not formulate an appeal.

After issuing the summons, the court communicates it to the debtor and informs the creditor about it, and the debtor can formulate an appeal against the debt before the same court.

After registering the appeal, the district court sends by office the file to the court designated in the summons or to the court designated through agreement of the parties, and thus the administrative procedure is initiated.

In the European Union, since May 12th, 1995, there has been the Commission recommendation referring to the shortening of terms of payment for commercial transactions[6], a recommendation referring to which the European Parliament issued a resolution[7] whereby it invited the Commission to consider the transformation of the recommendation into a directive proposal of the Council within the shortest time possible.

The Commission published an action plan for the sole market on June 4th, 1997, a plan which stressed that the delay in making payments is one of the most serious obstacles for the success of the sole market and, on July 17th, 1997, a report was drafted on the delay in making payments in the case of commercial transactions[8], which presented the results of an assessment of the effects of the Commission recommendation dated May 12th, 1995.

It was believed that the delay in making payments is a breach of the contract concluded between the parties, which became attractive from the financial perspective for debtors in most member states due to small interests applied to such delay and/or the difficult procedures to take actions against it.

The above-mentioned report revealed that ventures, especially small and medium-sized enterprises, are faced with significant administrative and financial problems as a result of long terms of payment and delays in making them, which is a major cause of insolvency that threatens the survival of companies and leads to the loss of numerous jobs.

It was also appreciated that the differences between the norms and practices of payment in the member states are an obstacle for the good operation of the internal

[6] Published in JO L 127, 10.6.1995
[7] Published in JO C 211, 22.7.1996
[8] Published in JO C 216, 17.7.1997

market, in some member states the contract terms of payment being significantly different from the community average.

This leads to considerable limitations of commercial transactions between member states and breaches the provisions of the Treaty on the European Union[9], since entrepreneurs must be able to deal on the entire internal market under conditions which guarantee that cross border operations do not have higher risks than domestic sales, denaturation of competition being possible were it to apply substantially different norms for domestic and cross border operations.

The analyses and statistics subsequent to the recommendation made by the Commission on May 12th, 1995 revealed that there were no improvements of the situation referring to delayed payments in many member states and that the objective of fighting them on the internal market cannot be achieved by member states acting individually. The Community effort is necessary and, thus, the draw up of a Directive which must comply with the principles of subsidiarity and proportionality set at article 5 of the treaty.

Consequently, Directive 2000/35/EC was drafted stipulating the implementation of the secondary legislation capable to inhibit the persistence in failure to pay commercial debts, a highly harmful phenomenon, with very negative effects on the economic growth and private capital. There was an acute need to create special, derogatory rules governed by the celerity principle, with mainly non administrative nature, in the first stage of this procedure, that of notifying the court, potentially followed by an administrative stage in case the debtor exerts the action in annulment.

When drafting the Directive, it was thought that its field of application should be limited to payments as remuneration for commercial transactions, and that it does not regulate transactions with consumers, any interests for other payments, for instance payments made in compliance with the legislation on cheques and letters of exchange, payments representing compensations for damage, including payments of insurance companies and others.

The Directive was designed to regulate all the commercial transactions, regardless of whether they are conducted by private and public enterprises or public enterprises and authorities, considering that the latter make a considerable volume of payments to enterprises, to regulate commercial transactions between main contractors and suppliers and their subcontractors.

Romania had a positive and fast reaction to the Directive requests and, since 2001, has drafted an urgent procedure for the recovery of debts in the civil and commercial fields, stipulated by Order 5/2001 mentioned before. At the beginning, the procedure was fast; subsequently, through successive changes, including following decisions of the Constitutional Court, it became almost as cumbersome as the common law procedure.

After Romania's adhesion to the European Union, Emergency Order no. 119/2007 was issued to apply to contracts between professionals and which also stipulated a more urgent procedure than the one regulated by Order no. 5/2001, also bringing numerous clarifications to aspects deriving from the application of the first order.

[9] Official Journal of the European Union, C 83/13, 30.3.2010

I. Among the measures meant to speed up the judicial procedures aimed at solving with increased celerity the files which do not have a high degree of complexity and given the phenomenon of persistence in failure to pay, the new Code of civil procedure created in the 6th Book called "Special procedures", several procedures which, once known by those interested, should allow creditors to recover their debts within a reasonable term, in the meaning that this notion has been granted according to art.6 of C.E.D.O.

The payment order procedure is regulated by TITLE IX of the 6th Book of the Code of civil procedure, at art. 1013-1024 and applies to certain, liquid and payable debts which consist of obligations to pay amounts of money resulting from a civil contract, including those concluded between a professional and a contracting authority, evidenced with a written document or determined according to a statute, regulation of another document, acknowledged by the parties through execution or other means stipulated by the law (art. 1013 paragraph 1 Code of civil procedure).

The next paragraph stipulates debts which are not envisaged by the provisions of the code, namely those referring to debts written down in the statement of affairs within an insolvency procedure.

In order not to create confusion referring to the contracting authority, paragraph (3) of article 1013 set that it can be:

a) any public authority of the Romanian state or another member state of the European Union which acts centrally, regionally or locally;

b) any organism of public law, other than as mentioned above, with legal personality, which was set up in order to satisfy general needs, without any lucrative purpose and which is at least in one of the following situations: it is mostly financed by a contracting authority; it is under the suborder or control of a contracting authority; in the board of administration or, as applicable, the supervision board and the board of directors more than half of the members are appointed by a contracting authority;

c) any association made of one or several contracting authorities.

Unlike the regulation given by Order no. 5/2001 and Emergency Order no. 119/2007, where, in order to initiate the procedure, it was necessary to notify the court to solve the content of the file, the new Code of civil procedure stipulates that the procedure shall be initiated though summons addressed by the creditor to the debtor through the bailiff.

The above-mentioned summons informs the debtor that he must pay the due amount within 15 days as of receiving the summons, the terms of extinctive prescription being interrupted through the notice of default stipulated at art. 2.540 Civil code[10], if it is followed by its summons within 6 months as of the date of the notice of default.

If the debtor, although informed, fails to pay within the 15 days as of the reception of the summons, the creditor may initiate the request for the payment order before the competent court which judges the content of the file.

The creditor's request must contain, besides the elements of an application in the common law procedure, the amount which makes the object of the debt, the factual and

[10] Republished in the Official Gazette of Romania, Part I no. 505 of July 15h, 2011, amended, including through Law no. 76/2012, published in the Official Gazette, Part I no. 365 of May 30th, 2012.

the legal basis of the payment obligation, the period it refers to, the term when the payment must be made and any element necessary to determine the debt, as well as the amount representing the related interests or other compensations to which the creditor is entitled under the law. Upon request, documents are attached proving the amount due and any other documents, as well as the evidence of communicating the summons to the debtor, the lack of this evidence being sanctioned with rejection of the application as unacceptable.

If the parties did not set the interest rate of delay penalties, the reference interest rate shall apply as set by the National Bank of Romania (art. 1017 paragraph 1 of the Code), the law giver making precisions on the starting moment of the interests. The convention or clause which sets an obligation for notice of default to operate the starting point of interests or a term as of which the debt bears interest longer than as stipulated at paragraph (2) of art. 1017 Code of civil procedure is null and void.

Besides interests, the creditor can also claim additional damages for all the costs incurred to recover amounts following the timely execution of obligations by the debtor.

In order to settle the request, to obtain explanations and clarifications and to insist on the payment of the amount due by the debtor or to assist the parties in reaching an agreement on means of payment, the judge shall decide to summon the parties 10 days prior to the term of judgment, according to the provisions referring to urgent matters (art.1018 Code of civil procedure), and the summons shall be handed over to the parties.

The debtor must submit the statement of defence at least 3 days prior to the term of judgment. In case of failure to submit the statement, the court, considering the circumstances of the case, may deem this to be an acknowledgment of the creditor's claims and the plaintiff shall be informed on the content of the statement from the case file.

The law giver stipulated several opportunities to solve the request:

- the judge shall accept the creditor's claim if the court, following the analysis of the request based on the submitted documents, as well as the parties' statements, notes that the creditor's claims are grounded. In this case, he shall issue a payment order which specifies the amount and the term of payment. If only a part of the creditor's claims is grounded, the court shall issue the payment order only for that part, also setting the term of payment.

- to close the case, if the creditor declares that he received the amount that was due to him, in which case the court shall issue a final decision;

- to issue a consent judgment when the creditor and the debtor reach an agreement on the payment. The consent judgment is final and is an enforceable title;

- to reject the creditor's request in which case the debtor challenges the debt and the court after checking whether the contestation is grounded, establishes that the debtor's defence is grounded. The creditor's request shall also be rejected when the defense of substance formulated by the debtor involves the administration of other evidence than written documents, and they are acceptable, under the law, in the common law procedure.

In case the creditor's request is rejected as regards the payment order, regardless of reason, he can introduce a writ of summons according to common law.

The creditor can initiate a writ of summons invoking common law and in order to make sure that the debtor is forced to pay the remaining debt, when the court, after

checking the case evidence, notes that only a part of the creditor's claims is grounded and issues the payment order only for that part, also setting the term of payment.

As regards the term of payment, if the debtor does not challenge the debt through the statement, the payment order shall be issued within 45 days at the most after the request has been initiated. The calculation of the specified term does not consider the period necessary to communicate the procedure acts and the delay caused by the creditor, including as a result of changing or completing the request.

The term of payment shall not be shorter than 10 days or longer than 30 days as of the communication of the order. The judge cannot set another term of payment unless the parties agree to it.

As regards the debts representing payment obligations of quotas from common costs to the associations of landlords or tenants as well as the maintenance costs corresponding to natural persons for the areas they use as dwellings, the law giver preserves the regulation at art. 6^1 of Order no. 5/2001, taken over from art. 1021 paragraph (4) Code of civil procedure. In such cases, the court, upon the debtor's request, may decide to set a longer term of payment, considering the grounded reasons invoked by the debtor referring to his actual means of payment.

With reference to the delivery of the payment order, the law giver makes the same mistake as in the case of the two orders mentioned above, setting that it "is delivered to the party that is present or to each party immediately, under the law". It is impossible to deliver it to the party that is present when the decision is issued since the order is not drafted. Therefore, in a future regulation, it would be necessary to amend paragraph (5) of art. 1021 as follows "After being drafted, the order shall be communicated to the parties immediately, under the law".

Unlike the previous regulation referring to the demand for payment[11], as concerns the means of appeal for this procedure, the new Code of civil procedure stipulated for the creditor as well the opportunity to benefit from the said means of appeal, exerted within 10 days as of the date he was handed over the statements through which:

- the court rejected the creditor's request, when the debtor, challenging the debt following the verifications conducted by the court based in the documents included in the file and the parties' statements and clarifications, notes that the debtor's defense is grounded (art. 1020 paragraph 1 Code of civil procedure);

- the court rejected the creditor's request since the defense of substance formulated by the debtor involves the administration of other evidence than the documents and they would be acceptable under the law in the common law procedure (art. 1020 paragraph 2 Code of civil procedure);

[11] For further details on the procedure set by Order no. 5/2001, also see: FL. Măgureanu, G. Măgureanu, Drept procesual civil. Curs pentru masterat. Dreptul afacerilor, 2nd edition, Ed. Universul juridic, Bucharest, 2009, p. 193 and the next; M. Voicu, Procedura somaţiei de plată în materie comercială, in „Revista de drept comercial", no.12/2001, p. 45 and the next; B. Papadopol, Aspecte noi în legătură cu procedura somaţiei de plată, din perspectiva modificărilor survenite cu privire la această cale de satisfacere a creanţelor, in „Dreptul" no. 3/2003, p. 90 and the next; G. Boroi, D. Boroi, Consideraţii referitoare la procedura somaţiei de plată, in „Curierul judiciar" no. 4/2002, pag. 1 and the next; M. Stancu, Procedura somaţiei de plată, in „Pandectele Române" no.3/2002, p.261; Fl. Măgureanu, V. Tudor, Somaţia de plată, mijloc de realizare a creanţelor, in „Revista de drept comercial" no. 7-8/2002, p.120; Ş. Nicolae, Procedura somaţiei de plată în lumina Ordonanţei Guvernului nr.5/2001 şi a modificărilor aduse acesteia prin Legea nr.295/2002, in „Dreptul" no. 9/2002, p. 3 and the next.

- the court, after checking the case evidence, notes that a part of the creditor's claims is grounded and issued a payment order only for that part (art. 1021 paragraph 2).

We believe that this regulation eliminated some form of injustice to the creditor from the previous procedure, where he did not have at his disposal any means of appeal, although at the beginning of the regulations issued by Order no. 5/2001 the debtor benefited from two means of appeal, namely the action in annulment and the appeal against the decisions given in the said case and, subsequently, after the modification of the order, he could exert the demand in annulment.

We have mentioned on several other occasions that the decisions of the Constitutional Court[12] erroneously set that the regulations given by Order no. 5/2001 and Emergency Order no. 119/2007 according to which the creditor was devoid of the opportunity to use the means of appeal were constitutional, the creditor having at his disposal the common law action if the Order issued by the court was deemed unlawful or ungrounded. Through the said Decision, the Constitutional Court acquiesced the differentiated treatment applying to the parties in the same case, claiming that "given that the creditor, if his request is rejected, has the opportunity to formulate, according to common law, an action for claims whereby he can exert his right, based on the equality of arms which governs the civil trial, it is fair and correct to make available to the debtor the request to cancel the payment order". The fact that the plaintiff had at his disposal the common law action does not justify the Decision of the Constitutional Court, since it is another procedure, judged through the common law procedure, in which the decision adopted by the court in this new file is subject to other means of appeal, the common law procedure having no relation whatsoever with the action initiated through the procedure of demand for payment, even if they refer to the same debt and are exerted by the same parties.

Through the cancellation request, the party can only invoke the failure to comply with the requirements on the issuance of the payment order, and, if applicable, the causes for the write off of the obligation subsequent to the issuance of the payment order.

Through the amendments brought to the new Code of civil procedure, the action in annulment has become a means of appeal specific to this procedure to be settled by the court which adopted it, being a means of appeal of withdrawal, but this time the court shall consist of 2 judges.

The court settling the *action in annulment***,** if accepting it, can cancel the order in full or in part, as applicable, issuing a final decision, and the creditor has at his disposal the common law action.

Considering that the creditor as well can exert the means of appeal of the action in annulment, if the court, after checking the case evidence, notes that only a part of the creditor's claims is grounded, shall issue the payment order only for that part, also specifying the term of payment, the creditor being able to formulate the writ of summons according to the common law in order to make the debtor pay for the remaining debt.

The decision which rejects the action in annulment is final (art. 1023 paragraph 8 Code of civil procedure).

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[12] To this end, also see Decision no. 582/2009, published in the Official Gazette, part I no. 426 of June 23rd, 2009.

The payment order is enforceable and has the authority of interim decision until the settlement of the action in annulment. If the action in annulment is not submitted or is rejected, the payment order becomes final as a result of failure to submit or rejection of the action in annulment.

If the payment order was executed, the interested party can challenge the forced execution according to common law, but he can only invoke irregularities referring to the execution procedure[13] and possibly the causes for the write off of the obligation which appeared after the payment order remains final (art. 1024 paragraph 2 Code of civil procedure).

II. Another procedure which is also meant to support the settlement with celerity of disputes resulting from the dynamics of legal relations referring to obligations, which amplifies financial blockages and which is increasingly popular in Europe is the *"Procedure on low value requests"***,** regulated by art. 1025-1032 of Title X of the 6th Book of the new Code of civil procedure.

Even if through the amendments brought to the new Code of civil procedure we hope that trials shall acquire speed, particularly in commercial cases, through the removal of certain means of appeal, the reduction of excessive formalisms, the regulations on acceleration of trials, the common law procedure on the settlement of disputes shall be still difficult enough also due to the large number of conflicts arising in the society, the still big number of opportunities that the debtor can use to postpone the payment of the debt he owes.

The simplified procedure in the case of low value requests was also adopted due to the fact that in civil and commercial matters, many of the trials pending to the courts of law and which envisage the payment of debts follow the common law procedure although not all its stages and steps are necessary.

Simplifying and speeding up procedures through the application of the regulations of the above-mentioned title imprint new dynamics to the relations creditor-debtor as regards the obligations whose object is the payment of amounts of money.

The procedure referring to low value requests has a limited field of application, being used alternatively with the common law procedure in the case of debts whose object does not exceed RON 10,000 on the date the court is notified, without considering the interests, the legal fees and other accessory incomes (art. 1025 paragraph 1 Code of civil procedure).

The procedure does not apply:

- to fiscal, administrative or customs matters;
- to the liability of the state for acts or omissions when exerting public authority;
- to requests referring to:

a) the marital status or capacity of natural persons;

b) patrimony rights deriving from family relations;

c) inheritance;

d) insolvency, composition with creditors, procedures on the wind up of insolvent companies and other legal entities or other similar procedures;

[13] In the meaning of removing the possible irrgularities during forced execution, also see: A.Stoica, Etica şi deontologia executorului judecătoresc, in Revista de Executare Silită, no.9-10/2007; Contestaţia la executare în materie civilă, Editura Universul Juridic, Bucharest, 2011.

e) social insurance;

f) labor law;

g) the rental of real estate except for actions on debts whose object is the payment of amounts of money;

h) arbitration;

i) adverse impact on the right to private life or other rights referring to personality (art. 1025 paragraph 3 Code of civil procedure).

Having an alternative nature, the plaintiff who notifies the court with a writ of summons through the common law procedure can expressly ask for the application of the special procedure on the first term of judgment at the latest.

The material competence for the settlement of these requests belongs to the district court, the territorial competence being set according to the common law.

The procedure referring to low value requests shall be initiated through the "Request form" which is submitted to the competent court or is sent by mail or by any other means which ensure the transmission of the form and the acknowledgement of receipt.

The form is standard and is designed according to the provisions of the Order of the Minister of Justice no. 359/2013[14] and must contain data referring to:

- name of the court;
- identification of the parties;
- information on the introductory request such as the value of the main obligation, without indicating the interests, the summons and other accessory incomes. If contract interests are claimed, the form must also specify the interest rate and the periods when each interest should be paid for. The court may as well approve legal evidence after the favourable settlement of the request. If the request cannot be assessed in money, the form shall specify its estimative amount although in this case we do not know how the condition referring to the acceptability of this procedure stipulated at art. 1025 paragraph 1 Code of civil procedure can be complied with, which also sets that the procedure is acceptable in the case of debts where the amount of the object of the request does not exceed RON 10,000 on the date when the court was notified.
- the evidence that the plaintiff shall use. The form shall be accompanied by copies of the documents, certified by the plaintiff for conformity with the original, in a number of copies equal to the number of the parties and one copy for the court. The court may also agree on other evidence, applying the regulations from the common law procedure referring to indication of the name and address of witnesses etc. It cannot accept evidence whose administration requires costs which are disproportionate with the amount of the introductory request or the counterclaim;
- the request for the organization of verbal debates, if the plaintiff considers that such are necessary besides the written procedure, the court may reject them if it does not deem them useful and necessary. The court may decide, by office, to summon the parties, if it deems it necessary.
- the date and the plaintiff's signature.

[14] Order of the Minister of Justice no. 359/2013 for the approval of the forms used in the procedure on low value requests stipulated at art. 1.025-1.032 of Law no. 134/2010 on the Code of civil procedure, was published in the Official Gazette, Part I no. 69 of February 1st, 2013.

In the situations where the information provided by the plaintiff is not sufficiently clear or is inadequate or the form was not filled in correctly, the plaintiff has the opportunity to fill in or modify the form or to provide further information or documents. To this end, the court shall send to the plaintiff a standard form stipulated in the Order of the Minister of Justice no. 359/2013 to Appendix no. 2. If the plaintiff fails to fill in or modify the form on the term set by the court, the request shall be cancelled.

Together with the request form filled in correctly, the court shall send to the defendant the reply form, accompanied by one copy of the request form and by copies of the documents submitted by the plaintiff. If the defendant wishes to defend himself, he shall fill in the second part of the reply form and shall send or submit it to the court within 30 days as of the communication of the reply form. If not, the court shall issue a decision considering the documents existing in the file. The defendant can reply through any other appropriate means, without using the reply form and the court shall communicate to the plaintiff copies of the defendant's reply, the counterclaim, if applicable, as well as copies of the documents submitted by the defendant.

If the defendant wishes to submit the counterclaim, he shall fill in the "request form" which is the same as the form filled in by the plaintiff when initiating the procedure and which is stipulated in the Appendix no. 1 to the order of the Minister of Justice no. 359/C/2013.

The counterclaim can be judged according to common law unless it meets the conditions for this special procedure.

The procedure referring to low value requests is written and is conducted in the meeting room. The court may decide on summoning the parties either by office or upon the parties' request, if it considers that their presence is useful and necessary in order to settle the request. The court may refuse to ask the parties to be present if it considers that no verbal debates are necessary, but it must motivate its refusal in writing. The decision cannot be challenged separately.

In order to solve the request, the court may ask to receive further information within the term it shall set to this end, but it cannot accept evidence whose administration requires costs disproportionate with the amount of the writ of summons or the counterclaim.

The term for issuing and drafting the decision is 30 days as of the reception of any information necessary or, as applicable, the verbal debate.

The decision of the first court is rightfully enforceable. Forced execution can be suspended with the payment of a bail of 10% from the challenged amount.

The decision of the district court is only subject to appeals in court, within 30 days as of the communication.

The decision of the court of appeal is communicated to the parties and is final.

In conclusion, we believe that the consequences of delays in making payments can be removed and the actions of ill-willed debtors can be discouraged only if they are accompanied by fast, efficient procedures for the creditor which ensure the recovery of debts within the shortest interval possible since the court has been notified and until actual recovery, without the debtor having the opportunity to delay the trial of the creditor's request and the execution of the decision.

We are also of the opinion that the new code of civil procedure brings consistent changes on the matter of special procedure for the settlement of conflicts with celerity.

They were absolutely necessary in order to harmonize the law with current reality, with the wishes of persons resorting to justice to have their disputes settled rapidly and safely but in compliance with the principles of an objective judgment, which leads to increased trust in the act of justice.

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