

THE OBJECT OF THE FIRST APPEAL ACCORDING TO THE NEW CIVIL PROCEDURE RULES

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ABSTRACT: *According to the New Code of Civil Procedure, the first appeal represents the general common procedure for attacking a first instance judgment. The second appeal represent an extraordinary procedure for attacking a first appeal judgment but also, in some particular cases a first instance judgment. Considering the fact that according to the New Code of Civil Procedure the first appeal is an appeal on points of fact and law and the second appeal represents in all the cases an appeal on points of law only the present study represents an exhaustive enumeration of all the judgments that can be attacked by a first appeal, more precisely by an appeal on points of facts and law. Identifying these judgments represents the opportunity for an exhaustive enumeration of the first instance judgments that can be attacked only by a second appeal, meaning an appeal on points of law only. This last category is at the present only exemplified by the literature, but needs to be exhaustively revealed considering that in these cases the procedure before the first instance represents the unique opportunity to invoke at the same time factual and legal arguments. More precisely in this study the object of the first appealed, meaning the judgments that can be attacked by an appeal on points of fact and law, will be revealed considering the judgments that can be attacked by this procedure according to the New Code of Civil Procedure, the administrative rulings that can be attacked by a first appeal according to the special statutes, the judgments that cannot be attacked by a first appeal according to the New Code of Civil Procedure, the judgments that cannot be attacked by a first appeal according to the special statutes*

KEYWORDS: *New Code of Civil Procedure, first appeal, second appeal, first instance judgment, special statutes*

JEL CODE: *K 41*

1. INTRODUCTION

After the entry into force of the new Code of Civil Procedure is necessary to establish whether or not the appeal may be formulated in more cases than under the former Code of Civil Procedure. The formal rule of the Old Code of Civil Procedure remains unchanged under the New Code of Civil Procedure, more precisely the decisions of the first court can

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be appealed. The exceptions to this rule are making the difference between the two regulations and certify the different view of the legislature on judicial proceedings. This new vision is important because it confirms that a judicial procedure cannot be closed until its object is analysed under the factual and the legal side by a first court and by a superior court even by the reconsideration of the proofs presented before the first court. The second appeal recognized by the Old Code of Civil Procedure could be filed for any reason, but did not allow reconsideration of the facts, in terms of the proof, not allowing the administration of other new evidences, with a exception for the documents. The appeal under the New Code of Civil Procedure contains no such limitation. Regardless of the different views of the legislature, the effects of the new procedure rules regarding the first appeal can be established through a detailed and comprehensive study of the Romanian Laws, including special laws containing civil procedure provisions. Such a study was not done until present by the scholars.

In the following, I will analyse both the resolutions that are part of the first appeal object, with the possibility to be censored through this appeal method, and those that cannot be attacked by a first appeal, because the first appeal object is determined only if we know its limits, no matter if they are established by the new Civil Procedure Rules when announcing the court's resolutions that cannot be attacked by appeal or imposed by the civil procedure dispositions of the special laws imposing that the court's resolutions can be attacked only by a second appeal. At the same time, I paid special attention to documents issued by the jurisdiction administrative bodies, respectively outside the system of the courts of law, which can be attacked by a first appeal, representing a distinct category of the appeal object, at least from the perspective of the old Civil Procedure Rules (Clipa, 2011).

2. COURT DECISIONS THAT CAN BE ATTACKED BY A FIRST APPEAL

From the perspective of the new Civil Procedure Rules, all first instance decisions can be attacked by appeal, only if the law allows it – without interest to the possible erroneous mention of the magistrate judge in the sense that a resolution would be submitted to appeal, if the law excepts it from this attack method, because the right to appeal against a resolution can be given only by the law, not by the judge – but also the previous conclusions, if the first instance is attacked or if the law expressly allows this (Boroi, 2013).

A particularity from this point of view is represented by the resolutions that, according to the new Civil Procedure Rules, are submitted only to a first appeal – in which case a second appeal recourse is excluded (Boroi, 2013) as resulted from the final thesis of art. 483 par. (2) of the new Civil Procedure Code, but not only the actual contestation in cancellation or the review, if the specific admissibility conditions are met (Boroi, 2013) - these court decisions are:

1. The decision given with regard to the contestation to enforceability is usually submitted only to a first appeal (art. 717 par. (1) of the new Civil Procedure Rules)
2. The partition decision, except if it solved the partition is incidentally requested, is submitted only to a first appeal (art. 994 par. (3) of the new Civil Procedure Rules)

3. The decision of the first court and the county court regarding the presidential ordinance request is submitted only to first appeal, if it is not otherwise stipulated in special laws (art. 999 par. (1) and (3¹) of the new Civil Procedure Rules)

4. The decision given regarding the possessing request is submitted only to a first appeal (art. 1003 par. (3) of the new Civil Procedure Rules)

5. The decision given within the procedure regarding the low value requests is submitted only to a first appeal (art. 1032 par. (1) of the new Civil Procedure Rules)

6. The eviction decision can be attacked only by a first appeal (art. 1041 par. (5) of the new Civil Procedure Rules)

In the same sense, from the perspective of civil procedure provisions that are found in certain special laws, the application law provisions in the new Civil Procedure Rules are relevant, and stipulate that, outside the legal administrative and tax domain, but also outside that of the asylum domain, whenever a special law stipulates that the first instance decision is final or is submitted to recourse, it shall be submitted only to appeal at the superior hierarchical instance, the second appeal being excluded (Boroi, 2013), as resulted from the final thesis of art. 483 par. (2) of the new Civil Procedure Code. The court's resolutions that can be attacked only by appeal, according to special laws, are the following:

1. The decision of the Bucharest Appeal Court in which the contestation formulated against the resolution of the contestation commission within OSIM is solved – that solved the contestations drawn up against the trademark registration, the geographic indications and the cession or licence in the Trademark register– is submitted only to a first appeal at the Bucharest Appeal Court, the other resolutions given based on the special laws being submitted to a first appeal, but also to a second appeal, if the admissibility conditions are met (art. 88 par. (1) and (2) of Law 84/1998 regarding trademarks and geographic indications)

2. The decision of the Bucharest Appeal Court in which the contestation against the re-examination commission in the Appeal Department within OSIM is solved – that solved the contestations against the examination commission and the patent revocation requests – can be attacked only by a first appeal at the Bucharest Appeal Court, the resolution of the Bucharest Appeal Court in which the patent cancellation request is solved, being submitted to attack by a first appeal at the Bucharest Appeal Court, and after the second appeal at the High Court of Cassation and Justice, if the admissibility conditions are met (art. 54 par. (1) and (2) and art. 52 par. (1) and (2) and art. of Law 64/1991 regarding the invention patents)

3. The decision of the Bucharest Appeal Court in which the contestation against the re-examination commission in the Appeal Department within OSIM is solved – that solved the contestations against the resolutions against the cases of semi-conductive product topographies registration – can be attacked only by a first appeal at the Bucharest Appeal Court (art. 16 par. (4) of Law 16/1995 regarding the protection of semi-conductive products topographies)

4. The decision of the Court of Bucharest in which the contestations against the resolutions of the Ministry of Agriculture and Rural Development are solved – regarding the granting of mandatory licence use, as well as those regarding the remuneration stipulated in relation to its use – as well as the contestation against the resolutions of the

re-examination commission – in which the resolutions taken by ISTIS (the State Inspectorate for Testing and Registering Breeds) were solved, the revocation request, respectively the breed patent cancellation request – is submitted only to appeal at the Court of Appeal Bucharest (art. 40 par. (11) and art. 41 par. (4) of Law 255/1998 regarding the protection of new plant breeds)

5. The decision of the Bucharest Appeal Court which settles the appeal filed against applications for the European Parliament may only be contested by lodging a first appeal to the Bucharest Appeal Court (Article 20 (4) of Law 33/2007 on the organization and holding of elections for the European Parliament)

6. The decision of the executive court which settles the appeal to the enforcement filed by the debtor against the demand received in accordance with Law 58/1934 on the bill of exchange and promissory note, may only be contested by lodging a first appeal (Article 62 (3) of Law 58/1934 on bills of exchange and promissory notes)

7. The decision of the executive judge which settles the appeal to the enforcement filed by the debtor against the demand received in accordance with Law 59/1934 on the cheque, may only be contested by lodging a first appeal (Article 54 (3) of law 59/1934 on cheques)

8. The decision of the court of first instance which settles the complaint filed against the order of the chief registrar within the territorial office where the real estate is situated - by which the request for reexamination concerning the order for the admission or rejection of the registration in the land book was settled - may only be contested by lodging a first appeal (Article 31 (5) of Law 7/1996 on Cadastre and Real Estate Publicity)

9. The decision of the court of first instance which settles the request for annulment of the decisions of the general meeting of the association members, the request for annulment of the decisions of the management board of the association or foundation and appeals to the liquidator's balance sheet (Article 23 (3), Article 25, Article 29 (4) and Article 70 (2) of the Government Order no. 26/2000 on associations and foundations)

10. The decision of the court of first instance which settles the complaint filed against the unjustifiable refusal of the legal executor (Article 56 (4) of Law 138/2000 on legal executors)

11. The decision of the court which settles the control bodies request, i.e. consumer associations demanding the professional's obligation to amend the contracts which are being performed, by removing abusive clauses, respectively to no longer use standard contracts containing abusive clauses, as well as to amend contracts which are being performed, by removing abusive clauses (Article 12 (4) and Article 13 (4) of Law 193/2000 on abusive clauses in contracts concluded between professionals and consumers)

12. The decision of the court of first instance which settled the complaint of violation as well as the decision of the court by which the sanction of providing community service was applied (Article 9 (6) and Article 34 (2) of Government Order 2/2001 on the legal regime for sanctions)

13. The decision of the Bucharest Appeal Court which settles the request for registration of the political party, including the result of the division, change of its status, its cancellation (Article 21 (2) (2), (4), Article 25 (2), Article 26 (3) to (4) and Article 41 (3) of Law 14/ 2003 on political parties)

14. The decision of the court which settles the disputes aiming to solve labor and social security conflicts may only be contested by lodging a first appeal (from the corroborated interpretation of Article 274 of the Labor Code, Article 7 of Law 76/2012 and Article 483 (2) of the New Code of Civil Procedure)

As for the orders for termination, even if generally they can only be contested once with the decision which completes the dispute, as I will show below, there are preliminary orders for termination, which may be contested separately by lodging a first appeal, before declining the court by final decision, where the law expressly provides this possibility and only if the final decision delivered for that dispute is itself subject to a first appeal, as there are also orders for termination that represent the final act of a proceeding, even if they do not settle the matter and are not preliminary, which may also be contested by lodging a first appeal:

1. The order by which the first instance rejected as inadmissible the request for voluntary intervention (Article 64 (4) of the New Civil Procedure Rules)

2. The order by which the first instance rejected as inadmissible the petition of another person (Article 69 (1) (3) of the New Civil Procedure Rules)

3. The order by which the first instance rejected as inadmissible the third-party claim (Article 74 (2) of the New Civil Procedure Rules)

4. The order by which the first instance rejected as inadmissible the request for indication of the right holder (Article 77 (2) of the New Civil Procedure Rules)

5. The order for rejection of the request for evidence insurance, even if it was filed indirectly (Article 361 (2) of the New Civil Procedure Rules)

6. The order by which the court shall decide separately on the suspension of the compulsory execution filed by request to the appeal against enforcement (Article 718 (6) of the New Civil Procedure Rules)

7. The order by which the auctioning of the good in the partition procedure by mutual consent or by the legal executor is decided (Article 990 (4) of the New Civil Procedure Rules)

8. The order by which the request for distraint is settled (Article 953 (3) of the New Civil Procedure Rules)

9. The order by which the request for garnishment is settled (Article 970 of the New Civil Procedure Rules)

10. The order by which the request for sequestration is settled (Article 974 (4) of the New Civil Procedure Rules)

11. The orders for termination which settle the request for regularization, clarification or removal of conflicting provisions or supplement to the extent that the decision in respect of which regularization, clarification or removal of conflicting provisions or supplement were requested as the case may be, is subject to a first appeal (Article 446 of the New Civil Procedure Rules)

12. The order for non-contentious matter (Article 534 (2) of the New Civil Procedure Rules)

13. The order that rejects the request for consent concerning the compulsory execution, exclusively by the Creditor (Article 665 (6) of the New Civil Procedure Rules)

14. The order by which the competent territorial court settles the request of the plaintiff or the Government Agent – filed after the European Court of Human Rights

communicates to the Government Agent the request of the plaintiff – on performing a judicial expertise which would constitute documentary evidence in the case of the European Court of Human Rights (Article 7 (3) of Government Order 94/1999 concerning the participation of Romania in proceedings before the European Court of Human Rights and of the Committee of Ministers of the Council of Europe and exercise of the right of regression of the state as a result of resolutions and conventions by amicable settlement)

15. The order of the court concerning acceptance or rejection of the request for registration of the association or foundation, (Article 11 (1), Article 17 (3) of Government Order no. 26/2000 on associations and foundations)

16. The order of the execution court by which the objection of the legal executor was rejected (Article 10 (4) of Law 188/2000 on legal executors)

3. DECISIONS OR RESOLUTIONS DELIVERED BY ADMINISTRATIVE JUDICIAL BODIES OR BY AUTHORITIES OUTSIDE THE COURTS OF LAW, WHICH MAY BE CONTESTED BY LODGING APPEAL IN ACCORDANCE WITH THE CIVIL PROCEDURE PROVISIONS OF THE SPECIAL LAWS.

There are special laws that provide challenge by appeal, not of a decision delivered by a court of first instance, but of a document issued by an authority outside the courts of law, this being the case for:

1. the arbitration award concerning the final form of methodologies – for the fields of activity of the collecting societies including the economic rights to be negotiated with the users for the purpose of payment of such rights, in case of those works whose operation makes impossible the individual authorization by right holders – delivered in the arbitration initiated by the Romanian Copyright Office, in the cases provided by law, between the collecting societies and users, may only be challenged by lodging appeal to the Bucharest Appeal Court, the second appeal being excluded (Article 1312 (9) of Law 8/1996 on copyright and related rights)

4. COURT ORDERS AND DECISIONS, WHICH CANNOT BE APPEALED UNDER THE NEW CODE OF CIVIL PROCEDURE

There are court decisions that, in accordance with the provisions of the New Civil Procedure Rules, cannot be subject to a first appeal for various reasons, either because they are not subject to a first appeal or second appeal, or because they cannot be appealed:

1. the decision ruled in the first instance by the Court of Appeal is not subject to first appeal, but possibly to second appeal, the High Court of Cassation and Justice not having jurisdiction for judging the first appeals

2. the decision to decline jurisdiction is not subject to any remedy at law, therefore it cannot be appealed and there is no any other extraordinary remedy at law (art. 132 paragraph (3) of the New Civil Procedure Rules)

3. the decision of the court of appeal regarding the presidential ordinance request is submitted only to the second appeal, if it is not otherwise stipulated in special laws (art. 999 par. (1) and (3¹) of the new Civil Procedure Rules)

4. the decision to accept the request regarding the payment injunction procedure may be appealed only with a request for annulment by the debtor (art. 1023 paragraph (1) of the New Civil Procedure Rules)

5. the decision to reject the request for annulment filed against the payment injunction procedure, by the creditor or by the debtor is final and it cannot be subject to a first appeal or second appeal (art. 1023 paragraph (8) of the New Civil Procedure Rules)

6. the decision to settle the conflict of jurisdiction arising between two courts is final and it cannot be subject to a first appeal or second appeal (art. 135 paragraph (4) of the New Civil Procedure Rules)

7. the decision on relocation is final and it cannot be subject to appeal or second appeal (art. 144 paragraph (2) of the New Civil Procedure Rules)

8. a divorce decision within the divorce proceedings, by mutual consent is final and it cannot be subject to a first appeal or second appeal (art. 930 paragraph (4) of the New Civil Procedure Rules)

9. the decision rejecting the request as inadmissible, because it is under the jurisdiction of an authority without judicial activity or it is not under the jurisdiction of the Romanian courts, is subject only to second appeal in a higher court (art. 132 paragraph (4) of the New Civil Procedure Rules)

10. the decision based on acknowledging the claims is subject to second appeal in a higher court (art. 437 paragraph (1) of the New Civil Procedure Rules)

11. the decision confirming the transaction between the parties is subject only to second appeal in a higher court (art. 440 of the New Civil Procedure Rules)

12. the decision determining a waiver of trial is subject only to second appeal in a higher court and the decision of the High Court of Cassation and Justice determining the waiver of trial is final and it cannot be subject to a first appeal or second appeal (art. 406 paragraph (6) of the New Civil Procedure Rules)

13. the decision taken after dropping the claimed right is subject only to a second appeal in a higher court than the one determining the waiver of the claimed right or the Panel of 5 judges when the waiver of the claimed right took place before a section of the High Court of Cassation and Justice (art. 410 of the New Civil Procedure Rules)

14. the decision determining the expiration is subject only to second appeal in a higher court or to the Panel of 5 judges when the expiration is determined by a section of the High Court of Cassation and Justice (art. 421 paragraph (2) of the New Code of Civil Procedure)

15. the decision on the revision requested for adverse decisions is subject to second appeal in a higher court or to the Panel of 5 judges when the revision has been settled by a section of the High Court of Cassation and Justice (art. 513 paragraph (6) of the New Civil Procedure Rules)

Regarding the court conclusions, normally they cannot be subject to a first appeal due to the fact that in art. 466 paragraph (4) of the New Civil Procedure Rules it is established that the preliminary conclusions - whether they are preparatory or interlocutory - can be subject to appeal only at the same time with the case merits, except when otherwise stipulated by the law, helping to prevent an excessive extension of the duration of the trial and contributing to its settlement within a reasonable time frame (Leş, 2013).

There are court decisions that, in accordance with the provisions of the New Code of Civil Procedure, cannot be subject to appeal due to different reasons, either because they can never be subject to appeal or due to the court that ruled them, or because the regulating body has replaced the appeal with another remedy at law:

1. the order to approve the request to preserve evidences, even if made through incidental methods, is not subject to any remedy at law, it cannot be subject to a first appeal or to any other extraordinary remedy at law (Boroi, 2013) (art. 361 paragraph (1) of the New Civil Procedure Rules)

2. the order approving or rejecting the abstention and the one approving the objection shall not be subject to any appeal, but not being able to be challenged by means of an appeal nor by any extraordinary remedy (art. 53 paragraph (2) of the New Civil Procedure Rules)

3. the order upon the relocation suspension demand shall not be subject to any appeal, not being able to be challenged by means of an appeal nor by any extraordinary remedy (art. 143 paragraph (2) of the new Civil Procedure Rules)

4. the ruling by means of which the court grants the demand for accepting a forced execution shall not be subject to any appeal, not being able to be challenged by means of an appeal nor by any extraordinary remedy, and can be analyse only during a forced execution contestation (art. 665 paragraph (6) of the new Civil Procedure Rules)

5. the ruling by means of which the court rejects the demand for accepting a forced execution shall be subject only to a administrative procedure before the execution court (art. 665 (6) of the New Civil Procedure Rules)

6. the order given for contentious matters by a panel of the High Court of Cassation and Justice or by the Chairman of a division of the High Court of Cassation and Justice is final, not being able to be challenged by means of a first appeal nor by any second appeal (art. 534 paragraph (2) and art. 537 paragraph (4) of the New Civil Procedure Rules)

7. the ruling by means of which the court decided upon the suspension of trial may be challenged distinctly only by a second appeal, whether the suspension demand is accepted or rejected (Ciobanu, Nicolae, 2013) (art. 414 of the new Civil Procedure Rules)

8. the order by means of which the High Court rejected as inadmissible the application for voluntary action may be appealed against, separately from the court's decision, by means of a second appeal (art. 64 paragraph (4) of the new Civil Procedure Rules)

9. the order by means of which the High Court rejected as inadmissible the sue petition against a third party may be appealed against, separately from the court's decision, by means of a second appeal (art. 69 paragraph (3) of the new Civil Procedure Rules)

10. the order by means of which the High Court rejected as inadmissible the application for making a claim against a third party may be appealed against, separately from the court's decision, by means of a second appeal (art. 74 paragraph (2) of the new Civil Procedure Rules)

11. the order by means of which the High Court rejected as inadmissible the demand for disclosing the right holder may be appealed against, separately from the court's decision, by means of a second appeal (art. 77 paragraph (2) of the new Civil Procedure Rules)

12. the order by means of which the Appeal Court shall settle in first instance the request for a distraint upon property may be appealed against by means of a recourse (art. 958 of the new Civil Procedure Rules)

13. the order by means of which The Court of Appeal shall settle in the first instance the application for insurance garnishment may be appealed against by means of a second appeal (art. 970 of the new Civil Procedure Rules)

14. the orders by means of which the request for correction, clarification or removal of the contradictory provisions or the supplement thereof shall be settled to the extent that the court resolution in relation to which the correction, clarification or removal of the contradictory provisions or the supplement thereof, was requested, as appropriate shall not be subject to the first appeal (art. 446 of the new Civil Procedure Rules)

15. the order by means of which a new judicial fine or compensations were determined may be appealed against only by a request for review (art. 191 paragraph (1) of the new Civil Procedure Rules)

16. the order by means of which the appeal related to the delay of the trial may be appealed against only by means of a complaint (art. 524 paragraph (5) of the new Civil Procedure Rules)

17. the order by means of which the request regarding the payment ordinance was rejected may be appealed against only by means of a request for invalidation filed by the creditor (art. 1023 paragraph (2) of the new Civil Procedure Rules)

5. DECISIONS AND COURT ORDERS THAT MAY NOT BE APPEALED AGAINST ACCORDING TO THE CIVIL PROCEDURAL PROVISIONS SET FORTH IN THE SPECIAL LAWS

There are court rulings that, according to the civil procedural provisions set forth in the special laws, may not be subject to an appeal for various reasons, either because they may not be subject to an appeal or a recourse or any other means of appeal (Leș, 2013), or because they may be appealed against by means of a second appeal:

1. court decisions given in the first instance on the grounds of art. 6 paragraph (6), art. 12 paragraph (12), art. 25 paragraph (2), art. Art. 31 paragraph (2) and art. 47 paragraph (11) of Law 370/2004 on the election of the President of Romania are not subject to any means of appeal, being qualified by the law as final (art. 68 paragraph (2) of Law 370/2004 on the election of the President of Romania)

2. court decisions given in the first instance on the grounds of art. 7 paragraph (6), art. 32 paragraph (4), art. 43 paragraph (7) and art. 73 paragraph (12) and (13) of Law 33/2007 on the organization and development of European Parliament elections are not subject to any means of appeal, being qualified by the law as final (art. 69 paragraph (2) of Law 33/2007 on the organization and development of European Parliament elections)

3. the decision of the contentious administrative and fiscal division of the court settling the appeal against the decision of the commission set up within every county pension house for the establishment and payment of the rights due to the persons persecuted by the political regimes in Romania starting with September 6th, 1940 and until March 6th, 1945 for ethnical reasons, shall not be subject to any appeal, being qualified by the law as final (art. 7 paragraph (4) of Government Ordinance no 105/1999)

on granting rights to the persons persecuted by the political regimes in Romania starting with September 6th, 1940 and until March 6th, 1945 for ethnical reasons)

4. the court decisions settling the appeals filed against the requirements given by the public authorities that prepared the permanent voting lists for the organisation of the referendum by means of which such authorities pronounced themselves on the statements of defence filed against the omissions, wrong recordings and any other errors in the permanent voting lists for the organisation of the referendum – shall not be subject to any appeal, being qualified by the law as final (art. 19 paragraph (2) of Law 3/2000 on the organization and development of the referendum)

5. the resolution of the contentious administrative division of the court settling the complaint filed by the person whose rights provided for by the law regarding the free access to the public information have been affected, shall be subject to recourse (art. 22 paragraph (3) of Law 544/2011 on the free access to the public information)

6. the resolution of the contentious administrative and fiscal division of the Bucharest Court of Appeal settling the appeal against individual documents issued by N.S.C. – by means of which it carries out the official interpretation of all regulations issued thereat, applicable to the entities regulated and supervised – it shall not be subject to any appeal, being qualified by the law as final (art. 22 paragraph (7) of the Government Emergency Ordinance no. 25/2002 approving the Statute of the National Securities Commission)

7. court decisions settling the appeal filed against the decision of the commission operating within the territorial pension houses and the Bucharest pension houses, for the enforcement of the provisions Government Ordinance no. 105/1999 granting to the persons persecuted by the political regimes in Romania starting with September 6th, 1940 and until March 6th, 1945 for ethnical reasons, of which a representative of the territorial military centre is also a part, may be challenged by means of a second appeal (art. 6 paragraph (5) of Law nr. 309/2002 on the recognition and granting of right to the persons who have performed military service within the General Directorate of the Labour Service during 1950-1961)

8. the ruling of the Court of Appeal settling the competence related conflict between the bailiffs offices shall not be subject to any appeal, being qualified by the law as final (art. 11 paragraph (4) of Law 188/2000 on the bailiffs)

6. CONCLUSIONS

Both in the system of the Old Civil Procedure Rules and in the New Civil Procedure Rules, the object of the first appeal is determined by reference to the object of the second appeal. Apparently, the rule in the old regulation, according to which all court decisions in first instance can be appealed, remains unchanged in the current regulation. There is an essential difference, if according to the Old Civil Procedure Rules, this rule is practically forgotten due to multiple exceptions, leading to the fact that most disputes are solved by a judgment submitted exclusively to a second appeal, currently, according to the New Civil Procedure Rules, most court decision given in first instance are submitted to a first appeal. Considering that multiples appeals risk extending the definite resolution of the dispute beyond a reasonable term, the legislator preferred to eliminate the second appeal, stipulating that several court decisions can be attacked exclusively by appeal.

The delimitation of the spheres of the two appeals, first appeal versus second appeal, is important especially out of practical reasons. The first appeal allows the court to analyse the case under all aspects, being able to criticize the reliability and the justifiability of the first court, while the second appeal can be promoted exclusively for legality reasons stipulated by the new Civil Procedure Rules, even when the first instance decision is submitted exclusively to a second appeal. Actually, in a recent study (Rosu, 2014) the conclusion is that the new provisions regarding the civil second appeal do not allow the interpretation that, if the legislator eliminates the first appeal, the second appeal remaining the only way of attack against the decision of the first instance, it might be promoted for other reasons than the limited grounds established by the new Civil Procedure Rules, the old devolutive second appeal under the legal grounds and non-devolutive under the aspect of probation not being found in the new regulation of the appeal methods in the civil process. The reintroduction of this disposition is however useless and dangerous. Useless, because if the legislator wished to allow the formulation of an appeal method he chose it to be the first appeal, allowing a true analysis of a cause under all aspects, including from the point of view of the probation, which the old recourse regulated by art. 304¹ in the old Civil Procedure Rules did not allow. Dangerous, because the legislator, wishing to comply with the exigency of the civil process speed, can decide that the only appeal method that can be formulated against the first instance court resolution is this devolutive second appeal under the aspect of reasons for which it can be formulated, but non-devolutive under the aspect of evidence that can be invoked, emptying the appeal method of content, but also the procedural rights of the parties. Moreover, as you can see below, the legislator chose to eliminate the first appeal, creating the second appeal as the only appeal method, in very few cases, which do not impose to the courts of law an analysis of the current state for which a resolution must be given, the legal control instance having that less reasons to check the actual reasons of the cause.

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ACKNOWLEDGEMENT

This work was supported by the strategic grant POSDRU/159/1.5/S/133255, Project ID 133255 (2014), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007 – 2013.

