

**THE LIMITS OF THE DEVOLUTIVE EFFECT OF THE
APPEAL IN THE CIVIL LAWSUIT**

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ABSTRACT: *The appeal is characterized as a common, ordinary, reforming, devolutive remedy, suspending execution of the court judgment.*

The devolutive effect refers to the fact that the appeal brings about a retrial of the merits of the case. Devolution is limited by two rules expressed by the phrases: tantum devolutum quantum apelatum and tantum devolutum quantum iudicatum.

Tantum devolutum quantum apelatum means that the devolutive effect does not cover all questions of fact and law raised before the court of first instance, but only those which are expressly or implicitly criticized by the appellant.

Tantum devolutum quantum iudicatum means that the appeal, being directed against a final decision, is a means to continue the suit and not a means of widening the procedural framework in which the sides sustain new claims against each other or bring other persons before the court.

KEYWORDS: *remedies, appeal, devolutive effect, limits*

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1. GENERAL CHARACTERIZATION.

The appeal is the only ordinary remedy provided for by the Code of civil procedure, covered in chapter II of title II, art. 466-482. This remedy represents the procedural means for the side that is dissatisfied by the solution of the first instance in civil or in professional disputes, through which the higher instance is entrusted with verifying the decision of the first instance.

It is characterized as a common, ordinary, reforming devolutive remedy, suspending the execution of the court judgment.

The appeal is a common and ordinary remedy, the basic principle being that in case of a judgment of which one side is dissatisfied, based on the substance of the cause or on aspects regarding the procedure, this is the remedy that has to be used. Failure to use this remedy leads to the inadmissibility of using any other remedy (Roșu, 2014)

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2. THE LIMITS OF THE DEVOLUTIVE EFFECT OF APPEAL.

The effects of appeal refer to the legal consequences which the law acknowledges to this remedy. These are: the suspension of the contested decision and the devolution (Roşu, 2014).

The devolution is a distinctive characteristic of the appeal that does not appear in other remedies, whereas the effect of suspension is not specific for the appeal (under certain conditions the appeal suspends the execution, e.g. in case of the decision in causes regarding the destruction of buildings).

1. *The devolutive effect.* The most notable and defining characteristic feature of the appeal is, without a doubt, the devolutive effect. In a synthetic formulation, one can say that the devolutive effect of a remedy consists of a genuine renewal or re-issuing of the judgment (Leş, 2013).

The legislator has granted the devolutive effect to the appeal due to multiple reasons, among which: the necessity of re-issuing for fear of partiality of the first jurisdiction; the hope that the second jurisdiction, superior on a hierarchic level and collegial, will be more qualified in exercising a control upon the legality of the contested decision; the jurisprudential uniformity that is to be realised by a supreme court cannot be made unless the ordinary remedy of appeal has a devolutive character (Leş, 2013).

The appeal is a remedy that leads to re-judging the case in substance. The matters of fact and of law debated before the first instance are put back in the discussion of the Court of appeal, which will act in fact and in law. The devolutive effect lies in the possibility of the sides to submit the dispute in its whole to the judgment in appeal.

The devolutive effect of the appeal and its importance are pithy highlighted in the new regulation. According to article 476 Code of civil procedure, the appeal exercised within the term causes a new trial upon the substance, the Court of appeal stating both in fact and in law being the most comprehensive verification made by the Court of judicial review, due to the devolutive character of the appeal (Roşu, 2014).

The court of appeal will verify the contested solution both in terms of solidity, stating if the situation in fact retained by the judgment is concordant with the evidence given in the cause and was properly established, and in terms of legality, respectively if the first instance has correctly identified, interpreted and applied the rules of substantive law applicable to the facts that have been brought before the Court (Negrilă, 2013).

As a rule, the appeal causes a kind of *restitutio in integrum*, by setting aside the contested judgment and reverting to the *status ante* if the appellant does not limit the inclusion of the prerogatives of substantive jurisdiction of the instance of judicial review by his request for an appeal or through his final findings regarding it (Deleanu, 2013).

The devolutive effect of the appeal derives from the existence of two jurisdiction degrees and from the idea itself to assure plenitude to the second instance that is in charge of the judiciary review (Deleanu, 2013, NCPC).

The appeal needs to be considered as having a devolutive effect only when it seeks the judgment or the re-judgment of the substance, and not when requesting cancellation for disposing or changing the decision and cancellation or rejection of the application, as an effect of admittance of a peremptory exception that was invoked in the first instance within the term, because the irregularities that form the object of the application of appeal shall constitute grounds for appeal and not procedural exceptions (Tăbârcă, 2014).

Thus the side requests the Court of appeal to review the exception of extinctive prescription, of the authority of the judged cause, of the lack of procedural quality, etc. or it asks the Court of appeal to find that the first court was not competent to hear the dispute. However, these are not the only circumstances in which the Court of appeal does not address the substance of the dispute (e.g., if there is any reason, it must find that the appeal is invalid, that the appeal is inadmissible, that the appeal has been introduced belatedly, that the appeal is void, the sides agreed on sending the case to the first instance or another instance of equal degree with it in the same constituency). Basically, the devolution is not only a simple vocation, it is an obligation for the Court of appeal (Deleanu, 2013).

The sides will have to make cautious use of the possibility of exercising an appeal, because, if the Court of appeal considers the nature of the exceptions baseless, supported by grounds of appeal, confirming the solution of the first instance, the appellant does not have the opportunity to formulate further criticism later, against the same decision, through another appeal, given the uniqueness of the remedy regulated under art. 460 Code of civil procedure. (Negrilă, 2013).

Also, the appeal is not devolutive if it contests only the considerations, according to art. 461 paragraph 2 Code of civil procedure (Tăbârcă, 2014).

Rules enshrining the rule relating to the devolutive character of the appeal are imperative, the Court of appeal having the obligation, and not the option to decide on all questions of fact and law of the case, within the limits and under the conditions determined by the application for appeal and in compliance with the other procedural provisions in this field, while the exceptions to this principle are of strict interpretation (Leș, 2013).

Through the devolutive effect of the appeal discussing the same cause again that has been judged in the first instance, the defendant side is entitled to defend itself with the reasons brought up in the first instance, even if they have been rejected and it has not made the appeal for these reasons, just as well as the side is entitled to invoke other reasons, too (Ciobanu, 2013).

2. *The limits of devolutive effects of the appeal.* The devolution is *limited(s. n.)* by two rules expressed by the adages *tantum devolutum quantum appellatum*, the appeal devolutes in relation to what was appealed and *tantum devolutum quantum iudicatum*, the appeal devolutes in relation to what was brought before court in the first instance (Deleanu, 2013).

Regarding the limits of the devolutive effect of the appeal, it was considered that, on the one hand, these limits, although imperatively provided by law, are not also of public policy, and so they may be invoked by the side concerned, but not by the Court, *ex officio*, but the Court may put them to the contradictory debate of the sides, and on the other hand, these limits, as they are evoked by their constituent elements, should be interpreted and assessed *in concreto*, flexible, nuanced in relation to the circumstances of fact and of law of the case pending in solving (Deleanu, 2013).

Tantum devolutum quantum appellatum means that the devolutive effect does not cover all issues of fact and of law that were brought in front of the first instance, but only those that are expressly or implicitly criticised by the appellant. In setting the extent of the devolution, we must relate not only to the request for appeal, but also to the objection of

the respondent, because he, too, may invoke circumstances of fact and of law, which may affect the solution of the Court. Furthermore, art. 478 paragraph (2) Code of civil procedure allows the sides to make use of the reasons, the means of defence and the evidence put forward at the first instance also in the Court of Appeal, even if they were not indicated in the request of appeal and in the objection (Roşu, 2014, p. 18.).

At the same time, in order to determine the limits of defence of the respondent that are to be examined in appeal, with which the court is vested, it will be verified whether he is not in the position to formulate incident appeal or provoked appeal or even main appeal (Negrilă, 2013).

The principle of *devolutum tantum quantum appellatum* applies not only to the main appeal, but also to the incident provoked appeal (Negrilă, 2013).

The norm established by art. 477 paragraph 1 Code of civil procedure, the Court of appeal will proceed to re-judge the substance within the limits provided expressly or implicitly by the appellant, constitutes a requirement of the principle of procedural availability, which shall also apply to the courts of ordinary judicial review. It expresses the idea that the hierarchical superior court is limited to investigating the cause only with reference to the reasons given in the request for appeal (Leş 2013).

Thus, the limits of the devolutive effect caused by what has been appealed are set. The devolution may be total or partial, according to the criticism brought by the appellant.

If the decision has been attacked only partially, what has not been appealed goes under the authority of a judged thing and the court of appeal cannot modify those aspects or the sides that have not made an appeal. In this particular case, if the appellant attacks only the condemnation to pay compensation, and not also the part of the judgment of the first instance by which he has been obliged to leave the plaintiff a plot of land in whole property, he cannot bring forward the last matter in the appeal (Ciobanu, 2013).

In addition to re-judging, the substance within the limits set by the appellant, art. 477 Code of civil procedure allows the Court of appeal to rule also over the solutions that depend on that part of the decision that was contested. In this way, the possibilities are traced for the court to solve the appeal, as it arises from the request for appeal, but also by linking the main requests with the secondary requests.

Therefore, even if the appellant has not formulated criticisms through the grounds of appeal besides those in respect of some of the solutions of the operative part or in the considerations of the contested decision, pursuant to article 5. 461 paragraph 2 Code of civil procedure, according to this text the Court of appeal will have to analyse also the solutions given by the Court of first instance that is independent from that part of the decision which the appellant explicitly submits to a judicial review (Negrilă, 2013).

For example, if the court of first instance has rejected the request for summons, respectively an incidental request that contained secondary requests, as well, the Court of appeal will rule, at the re-judgment of the substance after the acceptance of the appeal, also regarding the secondary requests, even if the appellant criticises only the solution for the main request. (Tăbârcă, 2014).

The request for appeal, especially when regarding the devolutive character of the appeal, is a request in court, so that, under the principle of availability that governs the civil lawsuit, the Court vested by this request may judge only what it was requested to judge; if the devolutive character of the appeal was not limited by the appeal, the judgment before the first instance would be considerably reduced in meanings, remaining

just a preliminary and compulsory exercise of jurisdiction, in order to get to a "real" solution on the substance of the dispute by another court; without limitation, one would not be able to speak of the authority of the judged thing, which is an immanent quality of any judicial decision which solves a dispute; the reformation through the remedy of the appeal is not the initial purpose of the institutionalization of such remedies, but the virtual result of this review, the initial goal being that to ensure judicial review of the judgments; in the absence of the devolutive effect of the appeal, the principle of *non reformatio in peius* would no longer have the full significance and it would misappropriate the purpose of guaranteeing the remedies by law for the sides (Deleanu, 2013).

The devolution will operate on the entire case when the appeal is not limited to particular solutions of the operative part, or when there is a tendency to annul the decision or if the object of the dispute is indivisible.

In this respect, through the criticisms levelled, the appellant is not limited only to some of the solutions in the operative part, so that he criticises all of them explicitly or implicitly. When there is the tendency to annul the decision, this is ruled by means of an exception (a case in which the annulment of the decision would be followed by evoking the substance in the appeal, if the exception has been wrongly admitted by the first instance and if the sides have not requested in the request for appeal that the case should be re-sent for judgment to the first instance, as provided for in article 480 paragraph 3 Code of civil procedure) or it has been pronounced on the substance, but a reason is met for the annulment of the decision of the first instance, when the provisions of article 480 paragraph 3, 5 and 6 of the Code of civil procedure apply. The third hypothesis of art. 477 paragraph 2 Code of civil procedure, in which the devolution for the entire case operates, does not regard the situation of an indivisible object of the dispute, so that, regardless of the appellant's criticism, the devolution will be total, assuming that the case of the legal report inferred to judgment is an indivisible obligation. (Negrilă, 2013).

The appeal is devolutive, no matter how it is motivated or not. The motivation or the failure to state a motivation for the appeal has influence only on the limits of devolution, as an unmotivated appeal may not be cancelled out of this reason (Tăbărcă, 2014).

Also because of the devolutive character of the appeal, the situation is permitted in which, even in the absence of motivation, the appeal will be solved based on those put forward in the first instance. Thus, if the appeal is not motivated or the motivation of the appeal or the objection does not contain the reasons, the means of defence or new evidence, the Court of appeal will rule, in substance, solely based on those put forward at first instance.

Therefore, if the motivation of the appeal does not contain any indication of the limits of the devolutive effect, or if this limitation does not result from the request for appeal, the devolution operates on all matters of fact and of law inferred the judgment of first instance.

The limits of the devolution of the unmotivated appeal are the ones provided by art. 461 paragraph 1, Code of civil procedure, (the remedy is proceeding against the solution contained in the operative part of the decision), in conjunction with article 477 paragraph 1 Code of civil procedure, (the Court of appeal will proceed to review the substance within the limits that have been set expressly or implicitly by the appellant, as well as with regard to the solutions that are dependent on that part of the judgment that was contested),

so that the Court of appeal will analyse the legality and solidity of the solutions reflected in the operative part, but, implicitly, the decisive and decisional reasons that support the solution delivered and which contain solutions of contentious issues, in conjunction with the solution given in the operative part (Negrilă 2013).

Tantum devolutum quantum iudicatum means that the appeal that was directed against a decision that is not definitive represents a means to continue the process, and not a means of widening the procedural framework, through which new claims between the sides should be formulated or other people should be drawn to judgment. The devolutive effect of the appeal targets only what the Court of first instance has judged. The rule is set in art. 478 Code of civil procedure, which indicates that through the appeal the procedural frame set in front of the first instance cannot be changed. (Roşu, 2014).

The sides will not be able to use different reasons, means of defence and evidence before the Court of appeal, than those put forward at the first instance or shown in the motivation of the appeal or the objection.

“The reasons” as a means for a juridical foundation of the claim evoke the entirety of juridical considerations on the facts put to judgment. They can be new and evoked for the first time in the court of appeal, if the side has not given up on them in the first judgement (Deleanu, 2013, NCPC).

“The means of defence” are usually the procedural exceptions the side reiterates in the appeal or, if admitted, that he evokes in the appeal for the first time (Deleanu, 2013, NCPC).

In case of a motivated appeal, through the formulated criticism, the appellant may add to the reasons, the means of defence and to the evidence put forward at first instance also other reasons, means of defence and pieces of evidence, provided that they do not contradict the prohibition provided by article. 478 paragraph 3 Code of civil procedure, that is they should not lead to changing the quality of the sides, the case or the object of the request that has been inferred to judgment or it should not constitute a new claim in the appeal (Negrilă, 2013).

The disposition of 478 paragraph 3 Code of civil procedure is considered of great procedural resonance in matters of devolution, the wording of the text is very suggestive in determining the limits of the devolutive effect of the appeal (Leş, 2013).

The text relates to the essential elements of civil action and of the judgment at first instance, and the law establishes exactly the principle of inadmissibility of changing the respective elements (Leş, 2013).

Firstly, the text takes into account the inadmissibility of changing the quality of the sides in the appeal. The concept of "quality" is not used in a strictly procedural sense, but also with important substantive connotations. For example, an applicant who has claimed the property in his quality as an heir will not be able to change this quality arguing in the appeal that he has acquired the property as a buyer (Leş 2013).

The object of the request evokes the claim inferred in court. Also under this aspect, the law does not allow any change in any way of the claims inferred at first instance. In case of increase or decrease of the claims directly before the court of appeal, the solution must be different. Specifically, if claims increase, such an attitude is not compatible with the aim of judgment on appeal. Indeed, an increase in claims directly before the court of appeal is likely to catch the opponent's defence unaware and on the other hand, the law admits such an additional demand in the first instance only. The situation is different in

case of reducing the claims directly in the court of appeal, as the exigencies of this remedy are not ignored, but such an attitude is rather favourable to the defendant, as well (Leș, 2013).

From the fact that the plaintiff claims the sent good or for its value in the first instance, and in the appeal he asks only for the value, as the commodity is used already, and the instance grants him the value, and not the alternative that has been claimed at the first judges, we cannot talk about changing the object of the claim. (Ciobanu, 2013).

Jurisprudence is rich in determining the cases when we are in the presence of the changes regarding the object of the request. Thus, as a principle, it was noted that the court of appeal is not able to change the object of the lawsuit and its legal classification *ex officio*, as such a change would violate the principle of availability and procedural freedom (Leș 2013).

For example it has been considered as a change of object if in the first instance the payment of the price has been claimed and in the appeal the nullity of the sale, or if in the first instance a building has been claimed, and in the appeal the respecting of the usage.

On appeal, the interested side cannot change the cause that is the legal ground, as it was formulated in the request for summons; such an attitude constitutes an unacceptable modification of an essential element of judgment. For example, a change in the case appears then when before the first instance, the plaintiff requested the cancellation of an agreement for vices of consent, and in the appeal he has requested the resolution of that agreement (Leș 2013).

The ban regarding the inadmissibility of new claims is considering those requests seeking exploiting new claims directly before the court of appeal, which is unacceptable. The new claim does not relate only to the request for summons, respectively only to the one invoked by the plaintiff by the act of initiating proceedings, but also to those required by equivalent acts, such as the counter-claim, a claim for principal intervention, a claim under warranty, etc. (Leș, 2013).

The formulation “new claims” used in the art. 478 paragraph 3 code of civil procedure regards, among others, also the claims that differ from the ones brought before the first instance through their object, through the extent of the formulated claims. The solution derives from the function of the court of appeal for the examination of the regularity of the decision of the first instance regarding the claims that have been brought before this court (Frențiu, Băldean, 2013).

In the judicial practice it has been decided that the claim of the successor of the defendant, deceased after the first instance has pronounced the decision, to state in the appeal that he is entitled to the entire estate of the defendant, without bringing any criticism to the substance of the attacked sentence is equivalent to a new claim that cannot be formulated in the appeal (Ciobanu, 2013).

Even more, in case that, although through the lawsuit from the first instance the advance payment from a sale and its cancellation have been requested, this instance still does not pronounce upon the cancellation, but admits only the claim of restitution, the reason for the appeal to cancel also the sale does not constitute a new claim in the appeal, but a reason for reformation of the sentence of the first instance, which is perfectly admissible (Ciobanu, 2013).

The rule stated in art. 478 paragraph 3 code of civil procedure is imperative so that the sides can neither derogate expressly or tacitly from it and therefore cannot agree on changing their procedural quality, the cause or the object of the summons, nor formulate new claims. Prohibition works on all requests inferred to judgment in the first instance, and not only regarding the request for summons, being operative also regarding the counterclaim or the requests of voluntary or forced intervention (Negrilă, 2013).

The grounds for such limitations are obvious: the immutability of the dispute also concerns the court of appeal; by definition, judicial review may concern only what has been discussed and settled; widening the judiciary framework and the object of the dispute would overturn the sense and purpose of judicial hierarchy, the right of the part to the first instance, the characterization of the appeal as a remedy of reformation (Deleanu, 2013). Changing the procedural framework can take place not only by changing the object, the cause, the quality of the sides, but also by introducing new sides in the means of attack or by widening the object of the cause (Frențiu, Băldean, 2013).

However, according to art. 478 paragraph 4, Code of civil procedure, the possibility of the sides is acknowledged to explain the claims that have been included implicitly in the requests or defences of the first instance. This regards mostly the claims resulting from the main request, but which have not been specifically requested, while their existence results implicitly, and the first instance has not given them efficiency.

For example, implied claims were considered to be obtaining alternative property value when restitution in kind is not possible; alternative claim of a bona fide holder for reimbursement of expenses related to property as a result of his defence to the action for recovery; integration of the secondary good in the legal status of the primary asset etc. (Deleanu, 2013).

This ensures, on the one hand, the full resolution of the dispute and the possibility of effective valorisation of rights acquired by judgment, and on the other hand, the plenitude of the devolution, without ignoring its limitations (Deleanu, 2013).

Implicit requests are not "new claims", so they are admissible on appeal. The court has the obligation and the power to appreciate if a certain request was contained in the claim of the plaintiff or in the defence of the defendant, ex officio or at the request of the side, when the law itself does not provide the incidence or subsidiarity of a request (Deleanu 2013).

Applying the rule in art. 478 paragraph 4, code of civil procedure, implies that either side of the remedy may make use of the right to state a claim, a demand or defence by the acts of procedure formulated in appeal (grounds of appeal, objection, response to objection) out of their own initiative, as, under the same text, the court of appeal may request such clarifications ex officio, based on art. 22 paragraph 2 code of civil procedure, a rule setting the role of the judge seeking the truth (Negrilă 2013).

Regarding the evidence, the law does not impose the requirement that the court of first instance they should have managed it effectively. The situation is similar regarding the consideration of all the reasons and means of defence by the court of first instance. Also in these situations, it is sufficient that the side has invoked those reasons or means, even if the court of first instance has not examined them (Leș 2013).

According to art. 478 paragraph 2 code of civil procedure, the side not only could invoke new claims in the appeal, by motivating the appeal or by objection, but the court of appeal itself may approve and give the evidence, the necessity of which must result from

the debate. However, the provisions on evidence limit the principle of devolution also (Deleanu, 2013).

The court of appeal can support the solution: only on the evidence given by the first instance; on the evidence given by the first instance, but restored or supplemented on appeal; on the evidence given by the first instance, completed with new evidence on appeal; only on the evidence on appeal (Deleanu, 2013).

The evidence cannot be requested also through the response to objection, as art. 478 paragraph 2 code of civil procedure does not mention it, the list being exhaustive (Negrilă 2013).

According to their nature and to the procedural legal rules deriving from it, the absolute exceptions can be raised for the first time only before the court of appeal, the related ones can be raised only if they have been evoked in time at the first instance and the first instance has rejected them or failed to rule over them, except for those exceptions that cannot be invoked elsewhere but before the court of appeal, even if they had a relative character (e.g. the irregularities regarding the pronounced decision, failure to meet the conditions regarding the exercise of the appeal) (Deleanu, 2013, p. 211.)

3. *Derogations from the limits of the devolutive effect of the appeal.* As an exception to the rule of devolution, which only operates within the limits of what has been judged, we mention art. 916 paragraph (3) code of civil procedure, which provides that the defendant may file a counterclaim directly on the appeal if the grounds for divorce have arisen after the start of the debate on the substance in the first instance and while the first request is on appeal.

Also as an exception, we show that in the appeal one can formulate a secondary voluntary intervention, and by consent of the sides, even a main voluntary intervention.

The latter ones represent derogations from the rule of not changing the procedural frame in the appeal under a subjective report. The assumption that the legal or testamentary (universal or with the title of universal) heirs are introduced into the lawsuit based on art. 22 paragraph 3 code of civil procedure, as an effect of transmitting the procedural qualities after the death of one of the sides during the judging of the appeal, according to art. 38 code of civil procedure, does not represent a widening of the procedural framework; similarly, it is possible to apply in the appeal also art. 39 paragraph 2 code of civil procedure, related to art. 22 paragraph 3 code of civil procedure, regarding the transmission of the procedural quality to a successor by deeds between the living with particular title or by deeds with particular title for the cause of death (Negrilă, 2013).

The Code of Civil Procedure provides exemptions also in respect of the objective frame of the judgment on appeal (Negrilă, 2013). Thus, interest rates, income that has reached the deadline and any other compensations arising after delivery of the judgment at first instance are not considered new claims and can be requested, and the legal compensation can be evoked, as provided by art. 478 last paragraph code of civil procedure.

It is a text, which has its reason in the evolution of the dispute and in the requirement to fully satisfy claims by a final judgment, thus avoiding subsequent litigations (Deleanu, 2013).

The claim that in the appeal the inflation coefficient for the amounts that are owed to the plaintiff with the title of material and moral prejudice should be granted, as it has been decided in the judicial practice, does not represent a new claim (Ciobanu, 2013).

The border of the claims covering interest rates, revenue and any other compensations is the decision of the first instance. They can be requested in appeal, in the form of means of defence (Deleanu, 2013).

In the judicial practice it has been decided that the plaintiff has not formulated a new claim in the appeal by altering the object of the lawsuit, but requested that the penalties for the delay should be granted further on regarding the lateness of the debtor in paying the price (Ciobanu, 2013).

Regarding the legal compensation, the possibility to invoke it is beyond any question. Under the terms of art. 1617 paragraph 1 code of civil procedure, the compensation operates as of right as soon as the debts are certain, liquid and demandable (Deleanu, 2013).

Unlike interest rates, revenue that has reached the deadline and any other compensations, for which the moment related to which the character of new claim in the appeal is assessed is the one of pronouncing the decision, in case of the legal compensation this can be invoked directly in the appeal, regardless of the time from which it is said that it has operated, either before or after the first instance has pronounced the decision. The legal compensation can have a dual aspect: a new means of defence that can be raised on the grounds for the appeal, in the meaning provided by art. 478 paragraph 2 code of civil procedure, but also a new request formulated directly in the appeal, pursuant to art. 478 paragraph 5 code of civil procedure (Negrilă 2013).

The possibility acknowledged to the court of appeal to invoke grounds of public policy *ex officio* was considered as an implied derogation to one of the limits of the devolutive effect of the appeal, *tantum devolutim quantum appellatum*, by the provisions of art. 479 paragraph 1 second sentence of the code of civil procedure (Deleanu, 2013).

The common law of civil procedure evokes, through some of its texts, the concept of "public policy", without however providing any clue as to the rules that are indicated in the structure of this concept or on the actual content of the concept (Deleanu, 2013).

Regarding the invocation in the judicial review of a matter of public policy, it was considered that the distinction should be made between the following assumptions (Deleanu, 2013):

a) the reason was invoked by one side in the process, before the court that delivered the contested judgment, but it was not examined or being examined, it was either rejected or accepted, in which case, at the request of the interested side, the court of judicial review will verify it in order to recognize it or not as a matter of public policy, with the consequences that will arise from this decision;

b) the reason of public order was not raised by the side, but it was raised *ex officio* by the court which rendered the contested judgment, a situation in which, at the request of either side, the court of judicial review shall proceed to its verification to confirm it or not;

c) the reason of public policy is invoked by the side for the first time on appeal, excepting the situation in which law expressly prohibits such a possibility (e.g. art. 130 paragraph 2 code of civil procedure, which provides that lack of material and territorial competence of public policy must be invoked by the sides or by the judge at the first hearing at which the sides are legally summoned at first instance), in which case the court

of judicial review should verify that the grounds on which, among other things, the appeal itself alleges;

d) the reason of public policy is invoked during the settlement of the remedy that is exercised for other reasons, by the court of judicial review.

Since the conventional norms and the European norm, either primary or derived, are super ordinate rules of "public policy", which are part of national law, they are characterized by immediacy and primacy, when, under the circumstances of the cause, the application of such rules is imposed, the court "must" invoke them ex officio, bringing them into the discussion of the sides, even if they ignore them. Some reasons of public policy, targeting failure of compliance to some fundamental or essential norms and with priority to constitutional principles, "must" be invoked ex officio by the court (Deleanu, 2013).

Procedural public policy is interesting in different aspects: the right of access to justice; the organization and operation of the courts; trial procedure; judgment and remedies; enforcement (Deleanu, 2013).

3. CONCLUSIONS.

The devolutive effect of the appeal is very important and encourages the promotion of this remedy for those who are dissatisfied with the judgment at first instance. The generalization of the appeal in the new Code of Civil Procedure makes the free access to justice efficient, which is guaranteed by art. 21 of the Romanian Constitution, art. 6 of the European Convention of Human Rights and art. 5 of the Code of Civil Procedure.

But it is necessary to limit the devolutive effect of the appeal in order for this remedy not to become abusive. The limitations are also necessary because the appeal represents a remedy, a continuation of the process that usually does not allow the expansion of the procedural framework established at first instance. Also in principle, the court verifies the appeal within the criticism of illegality and groundlessness raised by the appellant.

However, the appeal remains the most generous remedy, through the invoked grounds of illegality and groundlessness, but also of the proposal and of evidence, which are aspects that determine a complete verification of the contested judgments and set the legal framework so that the decision pronounced in the appeal establishes a greater certainty regarding the solution adopted.

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