CHARACTERISTICS OF PROCEDURAL EXCEPTIONS IN THE CIVIL PROCESS

Andreea Marcela PRAJA[*]

ABSTRACT: *From our point of view, in accordance with the current regulation of C. proc. civil*[1] *action, it represents the practical means, created by law and made available by law to the holder of a subjective right, for realizing this right and includes all the procedural means provided by law for the recognition or realization of that right, as well as for ensuring the defense parties in the process.*
The investigation of the trial regulates the procedure followed before the court for the preparation of the debate on the merits of the trial. During the procedural investigation, the court's obligation to resolve the exceptions invoked by the parties or which it can invoke ex officio is also found.
The article analyzes the characteristics of procedural exceptions in the civil process because, analyzing the rules of procedural law, we found that certain proposals of ferenda law are required, the introduction of articles that expressly regulate the characteristics of procedural exceptions.

KEYWORDS: *procedural exceptions; substantive exceptions; settlement; classification; the competent court.*
JEL Code: *K4.*

1. PRELIMINARY

Procedural exceptions represent the means of defense by which, as a rule, the defendant pursues, without denying the existence of the subjective right, the delay of the judgment or the rejection of the action. No civil process can be conceived without respecting the right to defense, as a fundamental right, and among the instruments for concretizing the right to defense created by positive law, the exception occupies a very important role. Judicious management by the court of the institution of procedural exceptions can undoubtedly lead to the resolution of the lawsuits in a much shorter term, saving both litigants and the judicial system from the agglomeration of pending cases (Suciu, 2012).

[*] Lawyer, Arad Bar Association, PhD student, West University of Timișoara – Faculty of Law, Timișoara, ROMANIA.

[1] Law no. 134/2010 regarding the Civil Procedure Code was published in the Official Gazette of Romania, Part I, no. 485 of July 15, 2010, republished in the Official Gazette of Romania, Part I, no. 545 of August 3, 2012 and republished in the Official Gazette of Romania, Part I no. 247 of April 10, 2015.

In Roman law, the word *exceptio* denoted any means of defense. Some reminiscences still exist in our law (for example, *exceptio non adimpleti contractus*, applicable in the case of synalagmatic contracts, is an essentially extra-procedural defense, without any tangent to the civil procedure). The phrase *procedural exception* is therefore preferable, in order to avoid from the beginning any confusion with exceptions specific to substantive law (Deleanu, 2009).

As I have shown before, the origin of the exceptions is in Roman law, however, with a different physiognomy, hence the origin of the ambiguities in their definition. Thus, in the form procedure, the exception designated any means by which, without directly combating the claim of his opponent, the defendant argued that he should not be convicted or that he should not yet be convicted.

In the magistrate's formula, *exceptio* was thus inserted immediately after *intentio*. It had to appear in the preliminary scheme of the trial because, based on a rule of praetorian law, it was intended to paralyze the application of the rule of civil law which formed the foundation of the claim expressed in the intentio. In this situation, the magistrate had the duty to examine first of all whether the rule of praetorian law was applicable in the case and, if so, to confirm the defendant's claim, removing the examination of the original claim. Hence, the expression de exceptio given to this means of defense, especially to the formal procedure (Deleanu, 2009).

It is true that, in the form in which it appeared in Rome and in relation to the difference that existed between civil law and praetorian law at that time, the exceptio had a special role and physiognomy from those in the modern civil process, because today, judges do not have to apply only one legal regime, equal and the same for all parties in the process, and the forms of judgment are completely different.

In Romania, the Code of Civil Procedure, adopted in 1865, was conceived under the influence of the French Code of Civil Procedure (1806) and the Code of Procedure of the canton of Geneva, making a correlation between them in the field of legal defenses (Florescu, 2010) .

The definition of the procedural exception was, many times, the object of a doctrinal concern, the current regulation stopping to emphasize certain elements related to the structure and function of an exception, which we will highlight below (Boroi, 2016).

The notion of procedural exception is provided for in art. 245 C. proc. civil., according to which:

„The procedural exception is the means by which, under the terms of the law, the interested party, the prosecutor or the court invokes, without questioning the substance of the right, procedural irregularities regarding the composition of the panel or the constitution of the court, the jurisdiction of the court or the procedure of judgment or deficiencies related to the right to action seeking, as the case may be, the denial of jurisdiction, the postponement of the judgment, the restoration of some documents or the cancellation, rejection or lapse of the request".

For the first time, with the appearance of the current Code of Civil Procedure, the legislator defines the procedural exception as the means by which, under the law, the interested party, the prosecutor or the court invokes, without questioning the substance of the law, procedural irregularities regarding the composition of the panel or the establishment of the court, the jurisdiction of the court or the court procedure or deficiencies related to the right to action, seeking, as the case may be, the refusal of

jurisdiction, the postponement of the trial, the restoration of some documents or the annulment, rejection or lapse of the request (Tăbârca, 2011).

Practically, from the content of the provisions of art. 245 C. proc. civ., we separate the definition and particularities of the procedural exceptions, respectively: they are means of defense used in a pending civil process (by the way, the procedural exception cannot be conceived outside the process); with the help of procedural exceptions - under the law - the interested party, the prosecutor (when participating in the trial) or the court *ex officio*, invokes lack of requirements regarding the exercise of the right to action or the lack of some components of the right to action or invokes certain procedural irregularities (regarding jurisdiction rules, judicial organization rules, procedural documents, court procedure); procedural exceptions do not call into question the substance of the formulated claim, i.e. they do not call into question the existence or non-existence of the asserted subjective right (Răducan, 2018).

2. PROCEDURAL EXCEPTIONS AND SUBSTANTIVE EXCEPTIONS

According to the criterion of their object, procedural exceptions are classified into procedural exceptions and substantive exceptions.

By means of procedural exceptions, certain procedural irregularities are invoked. This category includes those exceptions whose object is to invoke the violation of some norms of: competence (exception of lack of competence); composition or establishment of the court (the exception regarding the wrong composition of the court, the exception of incompatibility, the exception of recusal); of some legal rules regarding the conditions for the fulfillment of the procedural documents, including the terms in which they must be carried out (the exception of the lack of summons or the illegal summons, the exception of the nullity of the summons request, the lateness exception); of the court procedure (exceptions regarding stamp duties, limitation exception); or by which certain measures are requested for the proper conduct of the trial and the prevention of contradictory solutions, e.g. connectedness, lis pendens (Roșu, 2016).

Also in the doctrine it was shown that among the procedural exceptions there would be those whose object is the incompetence of the court, the composition of the court panel, the conditions for the fulfillment of the procedural acts, the court procedure, ensuring the proper conduct of the trial and avoiding contradictory solutions . They are analyzed within the various procedural institutions: incompatibility, recusal, stamp duty, forfeiture, expiration, contiguity, lis pendens (Deleanu, 2013).

As for their effects, when they are admitted, procedural exceptions have a heterogeneous character (declining jurisdiction or rejecting the request as inadmissible or closing the file; extinguishing the process; postponing the case; redoing the procedural document, etc.) (Deleanu, 2013).

Substantive exceptions are those exceptions that have as their object the invocation of deficiencies regarding the conditions for exercising the right to action, as well as those exceptions that are closely related to the right to action. The exception of lack of interest, the exception of lack of procedural capacity and the exception of lack of procedural capacity are substantive exceptions. Also substantive exceptions are the prescription and the power of res judicata, because they affect the exercise of the right to action (Roșu, 2016).

It follows that the category of substantive exceptions should include those exceptions that: have as their object the invocation of deficiencies related to the conditions for exercising the right to action: the exception of prematurity of the request, the exception of lack of interest, the exception of lack of procedural quality and the exception of lack of procedural capacity; are closely related to the right to action (its components): prescription and res judicata, because they affect the exercise of the right to action (that component of it that consists in the possibility of obtaining the conviction of the defendant); have as their object the invocation of some legal provisions that limit or limit the right to action in terms of the exercise of some of its components: the exception regarding the subsidiary character of the claim in ascertainment compared to the claim in progress, the exception regarding the lack of prior administrative complaint procedure, in the cases in that the law stipulates its obligation, the exception of inadmissibility of exercising the appeal against the final decision, the exception of inadmissibility of exercising the appeal against the expedient decision, etc. (Boroi, 2020).

In *French law*, the institution of substantive exceptions is unknown. Thus, in French legislation, it is replaced by the category of *fines of non-receipt* (*les fins de non-recevoire*) and *non-value* (*de non-valoire*). The identification of non-delivery fines is established by three propositions, as follows: 1) *the non-delivery fine* is a legal defense related to a claim; 2) *non-receipt fines* prevent the judge from ruling on the merits of the claim; 3) *non-receipt fines* are integrated into the logical structure of the process, which implies that its examination assumes that the judge is competent and is legally notified (Vasile, 2013).

Thus, according to art. 122 of the *French Civil Procedure Code*, constitutes a non-acceptance fine any means that tends to declare the opponent's request inadmissible without an examination on the merits for the lack of right to act, lack of capacity, lack of interest, prescription, force of res judicata, deadlines prefixes.

These institutions have a mixed legal nature, being considered neither exceptions nor defenses in substance, being similar, on the one hand, to the actual defense because it leads to a definitive failure of the summons request, and on the other hand , are similar to the exceptions, since without discussing the substance of the request it paralyzes it before the conflict between the parties is discussed (Vasile, 2013).

In *French doctrine*, it is appreciated that the essential difference lies in the fact that, in our procedural system, the forfeiture exception is a procedural exception and not a substantive one. The explanation could be that in the French procedural system, the legal regime of procedural exceptions is much more severe than non-admission fines, the former having to be invoked simultaneously and before any substantive defense or non-admission fines, even when invokes a public order exception, while fines of non-receipt can be at any stage of the trial.

However, the legal category we are referring to does not have a counterpart in the Romanian legislative plan, but, in the current doctrine, it is considered that the use of this terminology should not be drastically sanctioned under the conditions of the harmonization of Romanian legislation with that of the Community (Vasile, 2013).

In Romanian doctrine, an attempt has been made to specify the circumstances which, distinct from procedural exceptions, are not substantive defenses, but procedural exceptions. From this perspective, there were two trends: on the one hand, to reduce the number of substantive exceptions to the exception of lack of quality, prescription and res judicata authority, and, on the other hand, to widen their scope, including and some means

which are nevertheless substantive defenses (payment, novation, legal compensation, transaction, etc.) (Boroi, 2020).

We believe that it has been correctly shown in the doctrine that the common feature of substantive exceptions emerges from their very notion, namely that they are closely related to the claim brought to judgment, more precisely, to the exercise of the right to action (Boroi, 2020).

That being the case, it follows that, even in cases where, by some legal provisions, the right to action is restricted in terms of the exercise of some of its components, the exceptions that have as their object the invocation of these legal provisions are substantive exceptions (for example, the exception regarding the subsidiary nature of the claim in the establishment compared to the claim in progress, the exception regarding the lack of prior administrative complaint procedure, in the cases where the law stipulates its obligation, the exception of inadmissibility of exercising the appeal against final decisions, the exception of inadmissibility of exercising the appeal against the decision of expedient etc.).

Also, in jurisprudence[2], a differentiation of procedural exceptions was made according to object. According to the court entrusted with the resolution of a case whose object is a complaint against a land deed, procedural exceptions are classified into procedural exceptions and substantive exceptions, from the interpretation of the provisions of art. 248 para. (1) C. proc. civil, resulting in the rule that, being notified simultaneously with several exceptions, the court will rule first on the procedural exceptions and then on the substantive ones.

In the doctrine it was also appreciated that, according to their object, the exceptions that can be raised during the civil process would form three distinct groups: procedural exceptions, exceptions based on the lack of conditions required for the exercise of the action and substantive exceptions (Herovanu, 1932).

The first category would include those exceptions aimed at non-compliance with the rules regarding the composition or constitution of the court (the exception regarding the illegal composition or constitution of the court, the exception of incompatibility, the exception of recusal), the exceptions aimed at the non-compliance with the rules regarding the jurisdiction of the court, as well as the exceptions which refers to non-compliance with the rules related to the court procedure (lis pendens, contiguity, lack of proof of the quality of representative, statute of limitations, exception of abusive exercise of procedural rights).

In the second category would be included the situations when the defendant invokes the theoretical non-existence of the claimed right, i.e. when, without disputing the facts and data contained in the claimant's request, he claims that the claim deduced from their existence does not highlight a protected interest by law, i.e. a subjective right. Finally, the third category, substantive exceptions are those based on transaction, compromise, res judicata, acquisition, compensation, novation, etc.

In another opinion, it is appreciated that the substantive exceptions are only three (the exception of the lack of quality, the exception of the authority of res judicata and the exception of the extinguishing prescription of the right of action), while some legal institutions (such as the transaction, the legal compensation) do not they are exceptions, but fundamental defenses, our civil legislation calling them so because they appear incidentally in a pending process, just like procedural exceptions (Leş, 1998).

[2] https://sintact.ro/#/jurisprude nce/522093862/1/decizie-nr-822-2014-din-15-oct-2014-curtea-de-apel-timisoara

We consider these doctrinal interpretations questionable and we agree with the first opinions from the doctrine presented, on the classification of exceptions according to the criterion of their object, into procedural exceptions and substantive exceptions. In our opinion, procedural exceptions are those through which certain procedural irregularities are invoked, while substantive exceptions are those that are closely related to the claim brought to trial, more precisely, to the exercise of the right to action.

We also consider that procedural exceptions include those exceptions that have as their object the invocation of the violation of certain norms of competence (the exception of incompetence), of the composition or constitution of the court (the exception regarding the wrong composition of the court, the exception of incompatibility, the exception of recusal), of violation of some legal rules regarding the conditions for the fulfillment of the procedural documents, including the deadlines in which they must be carried out (exception of the lack of summons or illegal summons, the exception of the nullity of the request for summons, the exception of lateness), of the procedure of judgment (exceptions regarding stamp duties, statute of limitations exception) or by which certain measures are requested for the proper conduct of the judgment and the prevention of contradictory solutions (connection, lis pendens), and the substantive exceptions should include those exceptions that have as the object of invoking some deficiencies regarding the conditions for exercising the right to action: the exception of prematurity of the request, the exception of lack of interest, the exception of lack of procedural quality and the exception of lack of procedural capacity, those that are closely related to the right to action: the prescription and res judicata authority, because they affect the exercise of the right to action, such as and those that have as their object the invocation of legal provisions that limit or limit the right to action in terms of the exercise of some of its components: the exception regarding the subsidiary nature of the request in the establishment compared to the request in progress, the exception regarding the lack of prior administrative complaint procedure, in the cases where the law stipulates its obligation, the exception of inadmissibility of exercising the appeal against the final decision, the exception of inadmissibility of exercising the appeal against the expedient decision.

In *Italian doctrine*, a distinction is made between exceptions and this classification is correlated with the one according to which exceptions are divided into dilatory and peremptory, as follows: peremptory substantive exceptions, respectively dilatory (which tend to permanently or temporarily remove the existence of the substantive right) and legal exceptions procedurally peremptory, respectively dilatory (which tend to remove or suspend the existence, respectively the exercise of the right to action) (Rocco, 1957-1964).

But, in our opinion, the classification of exceptions in peremptory and dilatory represents a distinct subdivision of procedural exceptions, which requires to be studied and regulated separately.

An additional mention we feel is required regarding this classification. According to the provisions of art. 248 para. (1) C. proc. civil.:

„The court will first rule on the procedural exceptions, as well as on the substantive ones that render unnecessary, in whole or in part, the administration of evidence or, as the case may be, the substantive investigation of the case".

Indeed, the provision in art. 248 para. (1) C. proc. civil law distinguishes between procedural exceptions and substantive exceptions, but there is no legal provision that provides a criterion for their delimitation (Roșu, 2016).

However, this criterion for delimiting the exceptions within the procedural or substantive ones is the result of the interpretations of the doctrine or of the courts during the resolution of specific cases, interpretation deduced from the provisions of art. 248 C. proc. civil and is not a delimitation expressly established by the legislator.

3. DILATORY EXCEPTIONS AND PEREMPTORY EXCEPTIONS

According to the effect they tend to achieve, procedural exceptions are classified into dilatory and peremptory exceptions (dirimantes).

In the doctrine it was shown that, according to the effect they tend to achieve, procedural exceptions are classified into dilatory exceptions and peremptory exceptions, dilatory exceptions being those that tend to delay the judgment on the merits (postponement of the judgment, redoing of some procedural documents, denial of jurisdiction , sending the file to another court, transferring the file from one court panel to another, etc.), while peremptory exceptions tend to prevent the judgment on the merits (cancellation of the request, rejection of the request as inadmissible, termination of the process, rejection of the request as premature, as lacking interest, as being introduced by a person without procedural standing or against a person without standing) (Boroi, 2020).

The dilatory exceptions tend to delay the judgment on the merits (postponement of the judgment, redoing of procedural documents, refusal of jurisdiction, sending the file to another court) (Roșu, 2016). For example, the illegal subpoena exception, the lis pendens exception, the connection exception, etc. fall into this category. (Boroi, 2020).

For example, in jurisprudence[3] it was noted that according to the provisions of art. 129 para. (2) point 3 C. proc. civ. the exception is of public order in the case of violation of exclusive territorial jurisdiction, when the process is under the jurisdiction of another court of the same degree and the parties cannot remove it, in the case deduced from the judgment the jurisdiction given by the provisions of art. 32 para. (1) from Government Ordinance no. 2/2001[4] being exclusive. The invoked exception is a dilatory and absolute public order exception.

On the other hand, peremptory exceptions tend to prevent the judgment on the merits (cancellation of the request, rejection of the request as inadmissible, rejection of the request as premature, as lacking interest, as being introduced by a person without procedural standing or against a person without procedural standing) (Red, 2016).

They have this character: the exception of res judicata authority, the exception of the limitation of the right to action, the exception of lateness, the exception of limitation, etc. (Boroi, 2020)

The admission of substantive exceptions leads to the cancellation or rejection of the request as premature, uninteresting, inadmissible, which also leads to the conclusion that these exceptions are peremptory (Roșu, 2016).

Regarding the effects they produce, if they are admitted, substantive exceptions have a more homogeneous character than procedural exceptions. Thus, the admission of substantive exceptions usually leads to the cancellation or rejection of the request (as

[3] https://sintact.ro/#/jurispru dence/521594487/1/sentinta-nr-84-2015-din-09-feb-2015-judecatoria-pogoanele
[4] Ordonanța nr. 2/2001 privind regimul juridic al contravențiilor, republicată în Monitorul Oficial al României, Partea I, nr. 410 din 25 iulie 2001

premature, uninteresting, inadmissible, etc.), which means that, as a rule, these exceptions are peremptory in nature (Boroi, 2020).

We note that the law does not distinguish between decisions admitting or rejecting exceptions. Thus, regarding the interlocutory conclusions by which exceptions are admitted, and the court continues the trial, according to art. 248 para. (5) C. proc. civil, they can only be ruled on dilatory or peremptory exceptions, but which do not concern the entire process (but, for example, only one end of the request).

This solution offered by the doctrine takes into account the fact that, if exceptions are admitted that have the effect of extinguishing the litigation (so peremptory exceptions, invoked with regard to the entire litigation), they will, in fact, be resolved by sentence or decision. In the above context, it is interesting to note that dilatory exceptions are, in general, procedural exceptions, so they do not advance the substance of the case, which is why we consider that the interlocutory decisions by which dilatory exceptions are admitted do not enjoy working authority judged.

Procedural exceptions tend either to delay the judgment or to prevent it, sometimes the same exception being, as the case may be, dilatory or peremptory (the exception of lack of jurisdiction leads to the refusal of jurisdiction when the request is within the competence of another court or another jurisdictional body, but and the rejection of the request as inadmissible, when the request is under the competence of a state body without jurisdictional activity) (Roșu, 2016).

In *Spanish doctrine*, peremptory exceptions are classified into complex and simple peremptory exceptions. In this regard, complex peremptory challenges, like simple ones, have been shown to end the process. However, unlike the simple peremptory exceptions, in which case the plaintiff has the possibility of formulating a new action with the same object against the same defendant, as is the case of admitting the exception of the lack of passive procedural capacity, in the case of complex peremptory exceptions, the party no longer has this possibility because they additionally establish the legal impossibility that the plaintiff can try to claim the same claim against the same defendant in another process, as is the case of the res judicata exception. In our opinion, this classification would not have any practical benefit in the Romanian doctrine and would not be applicable in the practice of the courts (Galvez, 1994).

On the other hand, in the doctrine it has been shown that there are procedural exceptions that start with a dilatory effect and tend towards a peremptory effect (the exception of the lack of capacity to exercise, the exception of the lack of evidence of the quality of representative, the exception of not stamping/insufficient stamping, the exception of the lack of signature , if the party is not present at the time when this exception is invoked) and the situation of the exception of incompetence was analyzed, specifying that this exception can be dilatory or, as the case may be, peremptory, since the exception of incompetence leads to the refusal of jurisdiction, when the request is under the competence of another court or another body with jurisdictional activity, but also when the request is rejected as inadmissible, if the request is under the competence of a body without jurisdictional activity, or when the request is rejected as not being within the competence of the Romanian courts (Necula , 2018).

Indeed, there are procedural exceptions that begin with a dilatory effect and tend to a peremptory effect. Thus, it falls into this category: the exception of the lack of exercise capacity; except for the lack of evidence of representative quality; non-

stamping/insufficient stamping exception; except for the lack of signature (if the party is not present at the deadline when this exception is invoked) (Boroi, 2020).

Thus, in this situation, after invoking the exception, the party against whom the exception is invoked can comply with the irregularity notified by the exception, thus benefiting from a postponement of the case, producing the dilatory effect of the exception. In case of compliance with the irregularity, the exception will be rejected, only its dilatory effect being produced. If the irregularity remains uncovered, then the exception will be admitted and its peremptory effect will be fully produced, the court ending the process.

It is also possible for the same exception to produce different effects. Thus, the exception of lack of jurisdiction can lead to the rejection of the judgment of the case, if it is about another competent court or about the competence of a body with jurisdictional activity, or the rejection of the request as inadmissible, if it is about the competence of a body without jurisdictional activity, or the rejection of the request as not being within the competence the Romanian courts, if the jurisdiction of a court from another country is invoked.

In the specialized literature developed under the rule of the Code of Civil Procedure from 1865, the point of view was also supported according to which, depending on the effect they tend to have, the exceptions can be divided into dilatory, peremptory and declinatory, the latter being the exceptions whose admission has as a result, the case is sent to another court for trial. The exception of lack of competence, the exception of lis pendens and the exception of connection would fall into this category (Boroi, 2020).

Regarding this matter, related to the system C. proc. civil law in force, we appreciate that the so-called declinatory exceptions tend to delay the judgment regarding the merits of the claim, so they should be included in the category of dilatory exceptions. In addition, the exception of contiguity, the exception of lis pendens do not necessarily assume that the causes are before different courts, so it is possible that a referral of the file from one court to another does not take place, but only from a panel of trial at another trial panel of the same court, and, as regards the exception of incompetence, this can sometimes also have a peremptory effect (Boroi, 2020).

Unlike Romanian legislation, *French legislation* expressly defines and regulates the dilatory exceptions to articles 108-111 of the French Code of Civil Procedure, however, the dilatory exception, which is among the procedural exceptions, is defined as a means by which a party requests the judge to suspend the trial of the case. Practically, the dilatory exceptions in French legislation are, in fact, the causes of suspension of the judgment and not the dilatory exceptions recognized by the Romanian doctrine, an interpretation that we consider wrong because the suspension of the judgment is not an exception in the civil process.

In Romanian law, the criteria for delimiting exceptions within the dilatory or peremptory ones is the result of interpretations of the doctrine, because a delimitation expressly established by the legislator is not regulated (Boroi, 2020).

4. ABSOLUTE EXCEPTIONS AND RELATIVE EXCEPTIONS

According to the provisions of art. 246 C. proc. civil law, according to the character of public order or private order of the violated norm, procedural exceptions are classified into absolute exceptions and relative exceptions.

The relative exceptions are the ones that invoke the violation of some rules that mainly protect the interests of the parties, and the absolute exceptions concern the violation of some public order rules (Roșu, 2016).

For example, in an action[5] whose object is to establish the absolute nullity of a rejection provision issued by a public institution, the court held that the res judicata authority exception concerns the right to action, being an absolute exception (which is based on the imperative nature of the norm from art. 1201 Civil Code). Therefore, if the existence of the triple identity of parties, object and cause is proven, imposed by the provisions of art. 1201 Civil Code, the right to action is considered to be definitively extinguished, and the judgment of the last action exercised can no longer be continued.

Also, in another action, the court showed the fact that the exception of the illegal composition of the court that pronounced the decision subject to the appeal is an exception of public order (C.A. Bucharest, Third Civil Section, dec. no. 522/2003, Ciobanu, 2016).

Also in jurisprudence, regarding the procedural capacity of use, the court held that it consists of a person's ability to have procedural rights and obligations. The exception of the lack of procedural capacity to use is a substantive, absolute and peremptory exception, and the procedural documents - including the request to be summoned to court - made by a person without legal capacity are absolutely null and void, not being able to be confirmed (C. A. Constanța, dec. no. 378/C/2003, Ciobanu, 2016).

We believe that this classification of procedural exceptions into absolute exceptions and relative exceptions is important from the perspective of how they can be invoked during the civil process, as was also shown in the doctrine (Boroi, 2020).

In general, absolute exceptions can be invoked by the party or the court in any state of the process, unless the law provides otherwise (Roșu, 2016). It was stated, under this aspect, that in accordance with the provisions of art. 247 para. (1) thesis I C. proc. civil law, absolute exceptions can be invoked by the party or the court in any state of the process, unless the law provides otherwise (Boroi, 2020).

Therefore, absolute exceptions can be invoked by the interested party, the prosecutor or the court ex officio, at any time during the trial at first instance, but also directly on appeal or appeal.

For example, the exception to res judicata may be invoked by the court or by the parties, at any stage of the trial, even before the appellate court. The parties may omit, out of ignorance or negligence, to invoke the exception, but the court is obliged to do so, if, of course, the conditions of the authority of the res judicata are met and they are known to it (Deleanu, 2009). We consider that such a conclusion is consistent with the nature of this exception and the purpose pursued by its admission, so that the word may, in the context, must be related only to the subjects entitled to invoke the exception. The foundation of this conclusion is also strengthened by the fact that the exception can be invoked in any state of the process, even before the court of appeal, thus validating itself as a substantive, peremptory exception.

However, in our opinion, according to art. 247 para. (1) thesis II C. proc. civil, the procedural exceptions, even if they are absolute, can be raised before the court of appeal, with certain limitations, due to the specifics of this extraordinary appeal. Thus, new evidence is not admitted in the appeal, except for documents. That is why absolute

[5] https://sintact.ro/#/jurisprudence/520620311/1/decizie-nr-2693-2012-din-29-feb-2012-curtea-de-apel-craiova.

exceptions can be invoked in an appeal only if, for the settlement, it is not necessary to provide other evidence, apart from new documents (Roșu, 2016).

It should be noted that, in the case of certain absolute exceptions, the law limits the possibility of invoking them until a certain stage of the process or until a certain procedural moment.

So:

– the exception of material incompetence and that of absolute territorial incompetence (including the exception of procedural material incompetence of the specialized section/specialized panel), although they can be invoked by any interested party, by the prosecutor or by the court ex officio, being public order exceptions [suitable Art. 129 para. (2), points 2 and 3 C. proc. civil], however, according to art. 130 para. (2) C. proc. civ., they can only be invoked until the first court term at which the parties are legally summoned before the first court and can present conclusions, under the penalty of losing the right to invoke them later;

- the exception of lis pendens (exception of procedure, absolute and dilatory), can only be invoked before the substantive courts: in the first instance and on appeal, not on appeal, according to the provisions of art. 138 para. (2) C. proc. civ.;

- the exception of the lack of proof of the quality of representative before the first instance, although it is an absolute procedural exception, which starts with a dilatory effect and tends towards a peremptory effect, according to art. 82 para. (2) C. proc. civil., cannot be invoked for the first time in the appeal;

- the exception to the limitation of the summons request (procedural, absolute and peremptory exception) cannot be invoked for the first time in the court of appeal, if the incident occurred at the first instance, according to art. 420 para. (3) C. proc. (Boroi, 2020).

Unlike our law, French law provides that procedural exceptions can only be made before the preliminary judge competent to rule on them. Therefore, the parties are no longer entitled to raise these objections at a later stage. Thus, although it limits the invocation of absolute exceptions to certain procedural phases, the Romanian legislation is much clearer and extends the term for the invocation of each procedural exception.

Even in *French jurisprudence*[6] it was held that the preliminary judge is notified of requests and exceptions within his competence only through the conclusions that were specifically addressed to him.

With regard to the relative exceptions, they can be invoked by the party justifying an interest, at the latest at the first term of court after the procedural irregularity has been committed, during the investigation stage of the trial and before conclusions are made on the merits (Roșu, 2016).

But, in our opinion, regarding the procedural moment up to which the relative exceptions can be invoked, the provisions of art. 178 para. (3) C. proc. civ., according to which, unless the law provides otherwise, the relative nullity must be invoked, for irregularities committed before the start of the trial, by way of objection or, if the objection is not mandatory, at the first court term, and for irregularities committed during the trial, at the term at which the irregularity was committed or, if the party is not present, at the immediately following court term and before making conclusions on the merits, as well as the provisions of para. (5) of the same article, which stipulates that all causes of nullity

[6] https://www.labase-lextenso.fr/jurisprudence/JURITEXT000032530663.

(relative or absolute) of the procedural acts already carried out must be invoked at once, under the penalty of forfeiture of the party's right to invoke them.

We underline the fact that not invoking the relative exceptions within the terms provided by the law incurs the sanction of forfeiting the right of the interested party to invoke them, according to the provisions of art. 185 para. (1) C. proc. civil

For example, in one case it was established that disregarding the provisions of art. 208 C. proc. civil represents a procedural defect sanctioned with relative nullity, the party being deprived of the right to invoke the nullity of the expertise directly in the appeal (High Court of Cassation and Justice, Civil Section, decree no. 2267/2003, Ciobanu, 2016).

In another case, also regarding the relative exceptions, the provisions of art. 107, related to those of art. 112 para. (2) C. proc. civ., which establish the alternative jurisdiction in the settlement of requests to sue several defendants and give the possibility to the plaintiff to bring the action to the competent court for any of them, the rules being, in this case, devices, which is why the plaintiff had the possibility to choose between the court at the domicile of one of the two defendants, the territorial competence being relative, and the rules that regulate it, of a private order, having, in principle, a dispositive character (High Court of Cassation and Justice, Civil Section II, Dec. no. 500/2018, Romanian Journal of Jurisprudence, no. 1/2018).

The court correctly pointed out the fact that it is a rule of relative territorial competence, its disregard could be invoked by way of the exception of lack of competence only by the defendant by counterclaim, according to art. 130 para. (3) C. proc. civ., otherwise the court referred to remains competent to judge the dispute as a result of the defendant's forfeiture of the right to invoke a relative exception.

Therefore, according to the previously mentioned regulations, the court is not entitled to decline its jurisdiction, but only if such an exception has been invoked by the defendant through a response or, if the response is not mandatory, at the latest at the first court term at which the parties are legally subpoenaed before the first court. Or, in that case, the exception of territorial incompetence was invoked in the case itself by the court ex officio and without being invoked by the defendant through a possible objection, so it was invoked with non-compliance with the imperative rule provided by the text of art. 130 para. (3) C. proc. civ. Therefore, the exception of territorial incompetence, being a private one, and as such an exception was not only invoked by the defendant in response, but by the court, ex officio, it was not competent to analyze the territorial jurisdiction and to considered incompetent.

Also, regarding the invocation of procedural exceptions, it should be noted that, according to the provisions of art. 247 para. (3) C. proc. civil., the parties are obliged to invoke all means of defense as soon as they are known to them (Boroi, 2020).

We believe that these provisions were established to prevent a litigant from engaging in delaying tactics in order to prolong the procedure by invoking procedural exceptions, and we appreciate that this regulation results in a number of aspects of vigilance for litigants, both in the field of written procedure , as well as in matters of oral procedure and were inspired by Article 74 of the *French Code of Civil Procedure* which expressly states that, in order to be admissible, procedural objections must be invoked simultaneously.

We believe that the rationale of this text is to impose a discipline in the procedural conduct of the parties, in order to avoid procrastination of the process as a result of the exercise of procedural rights in bad faith.

In this sense, it was correctly shown in the doctrine that this text of the law constitutes an application of the principle of exercising procedural rights in good faith, enshrined in the provisions of art. 12 of C. proc. (Boroi, 2020).

We emphasize that the text of the law considers the situations in which the invocation of the procedural exception denotes the intention of the party to delay the process. In that situation, if the party does not comply with the obligation to invoke the procedural exceptions as soon as they are known to him, but still invokes them within the term provided by law, the sanction is not that of forfeiture, but consists in the possibility of that party being obliged to pay compensation to the opposite party, under the conditions of art. 189-190 C. proc. civil

5. CONCLUSIONS

Finally, we must understand that exceptions are means of defense that concern the violation of some rules of organization, procedure or regarding the exercise of the right to action, and in terms of their effects, they tend either to postpone the case or to reject the claims - but, in this case, without a substantive analysis.

We consider the definition given in C. proc. civil, which, in addition to the *French legislation*, details the notion of procedural exception, expressly showing the procedural irregularities that may fall within the scope of exceptions, as I have shown previously.

Indeed, the provision in art. 248 para. (1) C. proc. civil distinguishes between procedural exceptions and substantive exceptions, but there is no legal provision that provides a criterion for their delimitation.

However, this criterion for delimiting the exceptions within the procedural or substantive ones is the result of the interpretations of the doctrine or of the courts given on the occasion of the resolution of specific cases, interpretation deduced from the provisions of art. 248 C. proc. civil and is not a delimitation expressly established by the legislator.

By way of consequence, as a proposal of *ferenda law*, we appreciate that according to art. 245 C. proc. civil which defines the notion of exception and previously art. 246 C. proc. civ., which classifies the exceptions according to their nature of public order, a new article could be introduced to be formulated in the following way:

Procedural and substantive exceptions:

„(1) Procedural exceptions are those that invoke certain procedural irregularities.

(2) Substantive exceptions are those that have as their object the invocation of some deficiencies regarding the conditions for exercising the right to action, those that are closely related to the right to action, as well as those that have as their object the invocation of legal provisions that limit or restrict the right to action".

Also, indeed, the doctrine classifies procedural exceptions according to the effect they tend to achieve, into dilatory and peremptory (dirimante) exceptions.

But, considering the fact that this delimitation is not expressly regulated by the legislator, as a proposal for a *ferenda law*, we appreciate that, also according to art. 245 C. proc. civ., which defines the notion of exception and according to the article proposed in order to achieve a delimitation between procedural and substantive exceptions and previously art. 246 C. proc. civil, which classifies the exceptions according to their nature of public order, a new article could be introduced to be formulated in the following manner:

Peremptory and dilatory exceptions:

„(1) Peremptory exceptions are those that tend to prevent judgment on the merits.

(2) The dilatory exceptions are those exceptions that tend to delay the judgment on the merits".

REFERENCES

Boroi, G., Spineanu-Matei, O., Constanda, A., 2016. *Noul Cod de procedură civilă – comentariu pe articole*. București, Hamangiu.

Boroi, G., Stancu, M., 2020. *Drept procesual civil*. București, Hamangiu.

Ciobanu, V. M., Nicolae, M., 2016. *Noul Cod de procedură civilă. Comentat și adnotat.* București, Universul Juridic.

Deleanu, I., Mitea, V., Deleanu, S., 2013. *Tratat de procedură civilă.* București, Universul Juridic.

Florescu, D., A., P., 2010. *Excepțiile în procesul civil.* București, Universul Juridic.

Leș, I., 1998. *Principii și instituții de drept procesual civil*. București, Lumina Lex.

Necula, R., M., 2018. *Posibilitatea de a se critica, în apel, nerespectarea ordinii de soluționare a excepțiilor procesuale susceptibile de a determina anularea, respingerea sau perimarea cererii de chemare în judecată, invocate de pârât în fața primei instanțe.* Revista Română de Jurisprudență, 1, 222-231.

Pârvu, A., M., R., 2014. *Autoritatea de lucru judecat în statornicirea Noului Cod de procedură civilă.* Revista Dreptul, 7, 38-49.

Răducan, G., 2018. *Deosebiri între excepțiile procesuale și apărările de fond privind ordinea, modalitatea de soluționare și efectele admiterii acestora, în fața primei instanțe de fond.* Revista Pandectele Române, 5, 22.

Rocco, U., 1957-1964. *Trattato di diritto processuale civile*. Torino, Utet.

Roșu, C., 2016. *Drept procesual civil. Partea generală*. București, C.H. Beck.

Suciu, A., 2019. *Excepțiile procesuale în noul Cod de procedură civilă*. București, Universul Juridic.

Tăbârcă, M., 2011. *Câteva aspecte privind excepțiile procesuale în lumina noului Cod de procedură civilă.* Revista Româna de Jurisprudență, 4, 13-19.

Vasile, A., 2013. *Exceptiile procesuale in noul Cod de procedura civila*. București, Hamangiu.

Vincent, J., Guinchard, S., 1994. *Procédure civile*. Paris, Dalloz.

Legislation

Law no. 134/2010 regarding the Code of Civil Procedure, published in the Official Gazette of Romania, Part I, no. 485 of July 15, 2010, republished in the Official Gazette of Romania, Part I, no. 545 of August 3, 2012 and republished in the Official Gazette of Romania, Part I no. 247 of April 10, 2015.

Ordinance no. 2/2001 regarding the legal regime of contraventions, published in the Official Gazette of Romania, Part I, no. 410 of July 25, 2001.

Internet resurces

www.sintact.ro.

www.labase-lextenso.fr.