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THE ENFORCEMENT OF THE JUDGMENTS
HELD BY THE NEW ROMANIAN CIVIL
PROCEDURE IN LITIGATIONS UNDER THE OLD
CIVIL CODE AND THE OLD CIVIL PROCEDURE
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THE PRESCRIPTION OF THE LAW TO OBTAIN THE ENFORCEMENT OF THE JUDGMENTS HELD BY THE NEW ROMANIAN CIVIL PROCEDURE IN LITIGATIONS UNDER THE OLD CIVIL CODE AND THE OLD CIVIL PROCEDURE CODE

Maria DUMITRU¹

Abstract

The present legal process is woven around a legal issue arising from the timely application of the provisions on determining the “definitive” judgment which is the enforceable title and the moment when the limitation period for the right to enforce forced execution when the litigation started under the old Civil Procedure Code and the rulings in the appeal and the recourse, respectively enforcement, were pronounced, respectively started under the new Civil Code and the new Civil Procedure Code. The moments of reflection were given to us by a case concerning the contestation of execution, a dispute in which the right to enforce enforcement was invoked.

Keywords:

Prescription extinct; enforcement; prescription course; timely application of the new Romanian Civil Procedure Code; final decision;

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I. THE EVOLUTION OF THE CASE IN WHICH THE COURT ORDER HAS BEEN ENFORCED

The first court was notified in 2010 by the contestants and the intimates filed a counter-claim; the decision of the first court through which was partially allowed both the petition for legal action and the counter-claim was issued on 10.07.2012². The recourse exercised by both parties were settled on 10.06.2013 in the sense of admitting the intimate appeal and rejecting the appeal of the contestants, the ruling being communicated on 23.12.2013³. The appeal brought by the contestants was partially allowed on 16.04.2014 by the court of appeal.⁴

The application for the commencement of enforcement was registered on 17.06.2016, the enforcement having as object the eviction of the contestants and the payment of the amounts set in their charge.

Contestants - debtors filed an appeal against the enforcement claiming the limitation of the right to enforce the enforcement on the grounds that the time from which the limitation period begins to run is the date of the court's ruling on the appeal - 10.06.2013. As from this date until the date of the enforcement request - June 17, 2016 - more than 3 years have passed, the contestants have argued that the right to obtain forced execution is prescribed.

The court of first instance "finds the right of the intimate creditors to demand enforcement of the contestants - debtors in the sense of the civil sentence no. 13732 / 10.07.2012, delivered by the Iasi Court in the file no. 32302 / 245 / 2010, partly changed by the civil decision no. 333 / 2013 of 10.06.2013 of the Iasi Court, partially modified by the civil decision no.316 / 2014 of 16.04.2014 of the Iasi Court of Appeal". In order to rule on this, the court determined that the time at which the limitation period begins to run is the one indicated by art. 705 paragraph 2 of new Civil Procedure Cod and mainly the final judgment date as the application for the cessation of enforcement was formulated under the new Civil Procedure Code on

² Decision no. 13732 / 10.07.2010 delivered by the Iasi Court in file 32302/245/2010, http://portal.just.ro/245/SitePages/Dosar.aspx?id_dosar=24500000000143605&id_inst=245

³ Decision no. 333 / 10.06.2013 issued by the Iasi Court in file 32302/245/2010, http://portal.just.ro/99/SitePages/Dosar.aspx?id_dosar=24500000000143605&id_inst=99

⁴ Decision no. 316 / 16.04.2014 pronounced by the Court of Appeal Iasi in the file 32302/245/2010, http://portal.just.ro/45/SitePages/Dosar.aspx?id_dosar=24500000000143605&id_inst=45

17.06.2016. The court then went on to state that “the final judgment from which the 3-year limitation period begins to run is the Court judgment on 10.06.2013, since the dispute began in 2010 under the old Civil Procedure Code”.⁵

The solution was held in the appeal⁶.

The new Civil Procedure Code entered into force on 15.02.2013 [12] and the new Civil Code on 1.11.2011 [13].

The question of law seeks to determine the applicable law for determining the moment when the limitation period for the right to enforce forced execution and final judgment begins to run in a litigation under the old Codes when the judgment of the first instance was pronounced under the new Civil Code but under the old Civil Procedure Code, and decisions in appeal and recourse under the new Civil Procedure Code, a normative act under whose auspices enforcement began.

II. LAW APPLICABLE TO ENFORCEMENT

Enforcements started after the entry into force of the present Procedure Code [5: p. 976], [8], [4: p. 190], [3], [2: pp. 526-527], [1: p. 987], [10] ⁷ shall be carried out in accordance with the provisions of Book V “On forced execution” - art. 622 - art. 913. Civil Procedure Code, according to art. 24 from civil Procedure Code which states that “The provisions of the new law apply only to forced lawsuits and executions commenced after its entry into force”. In the same sense are the provisions of art. 3 of the Law no. 76/2012 for the implementation of the Law 134/2010 on the Civil Procedure Code⁸.

This expression shows that the legislator understood to delimit the two stages of the civil process: the actual process for obtaining the

⁵ Decision no. 12850 / 17.11.2016 pronounced by the Iasi Court in file no. 32006/245/2016,
http://portal.just.ro/245/SitePages/Dosar.aspx?id_dosar=24500000000406640&id_inst=245

⁶ Decision no. 933 / 06.06.2017 delivered by the Iasi Court in file 32006/245/2016,
http://portal.just.ro/99/SitePages/Dosar.aspx?id_dosar=24500000000406640&id_inst=99

⁷ Regarding enforcement under the provisions of the new Civil Procedure Code.

⁸ Law no. 76/2012 on the implementation of Law 134/2010 on the Civil Procedure Code, published in Official Gazette no. 365/ May 30, 2012. Thereafter, this law will be entitled “Implementation Law”. Article 3 paragraph 1 of the Implementing Law reads as follows: “The provisions of the Civil Procedure Code apply only to forced labour and enforcement proceedings which have begun after its entry into force”.

enforceable title and the forced execution stage. Lastly, all enforcement, including the moment when the prescription of the right to enforce forced execution begins, is subject to the provisions of the new Civil Procedure Code.

III. THE LAW APPLICABLE TO THE PRESCRIPTION OF THE RIGHT TO OBTAIN ENFORCEMENT

Prior to the entry into force of the new Civil Code - 1.10.2011 - the prescription - both of the material right to action and of the right to obtain the forced execution - covered by Decree 167/1958 on the extinctive prescription [9: pp. 155-170], [11: pp. 158-179]⁹ - which was abrogated at the date of entry in force of the new Civil Code. Starting with October 1, 2011, the prescription was governed by the current Civil Code. For there to be no doubt about the law applicable to the prescriptions in force at the date of entry into force of the new Civil Code - Decree 167/1958 on Extinction or the Civil Code - The Law on the Application of the Civil Code, by the provisions of Art. 201, states that: "The prescriptions started and unfulfilled at the date of entry into force of the Civil Code are and remain subject to the legal provisions that have established them".

In the analysed case, the prescription of the right to enforce forced execution was not commenced because at the date of entry into force of the Civil Code in question neither the decision of the first instance had been pronounced.

As a result, in the case under consideration, the prescription was governed by the provisions of the new Civil Code. As regards the prescription of the right to obtain forced enforcement - the new law - in the present case, the new Civil Code - has a special provision in Art. 2516 paragraph 2 of civil Code, which states that "the limitation of the right to enforce the enforcement of a judicial decision ... is subject to the provisions of the Civil Procedure Code".

Accordingly, as from October 1, 2011, the prescription of enforced enforcement is governed by the provisions of the Civil Procedure Code [6]¹⁰ in force at that time. The new Civil Procedure Code came into force on

⁹ Decree no. 167/1958 regarding the extinctive prescription, published in the Official Gazette of Romania no. 19 of April 21, 1958. With regard to the prescription of the right to request (obtain) the forced execution under this normative act see, [10] and [11].

¹⁰ With regard to forced execution and the prescription of the right to obtain forced enforcement under the old Civil Code and the old Civil Procedure Code, see [6].

15.02.2013. In other words, the limitation of the right to enforce forced execution was regulated by Decree 167/1958 on Extinctive Letter between October 1, 2011 and February 14, 2013 by the old Civil Procedure Code until October 1, 2011 and from February 15, 2013 by the new Civil Procedure Code.

In conclusion, as in the case of the appeal and the recourse judgment were passed under the new Civil Procedure Code and the forced execution started under the new normative act, the law applicable to the prescription of the right to obtain enforcement is the new Civil Procedure Code. Specifically, it is the provisions of Book V, “On Forced Enforcement”, Chapter V, “The Prescription of the Right to Enforce Forced Enforcement”.

Moreover, forced enforcement being after the entry into force of the new Civil Procedure Code, no term regarding forced execution, no matter where it was foreseen, could not be “in progress”.

III. THE MOMENT WHEN THE LIMITATION PERIOD BEGINS TO RUN ON THE RIGHT TO ENFORCE FORCED EXECUTION

According to art. 705, par. 2, sentence 2 of the new Civil Procedure Code “in the case of judgments and arbitral awards, the limitation period shall begin to run from the date of final death”. The current legislature establishes that the limitation period begins to run from the date on which the judgment is final, unlike the old legislator who shows that the prescription period begins to run from the date of the birth of the right to demand forced execution. By virtue of this provision, we are basically relying on the tradition existing in our law prior to 2000 [7]¹¹.

In the case of judicial titles, the prescription begins to run on the date of their final stay and not on the date on which they are enforceable, namely when they are likely to be enforced (of course, to the extent that this date is earlier than the date when they are or become definitive). In this way, the creditor-holder of a court order with provisional enforcement is no longer at risk of prescribing the right to enforce forced execution if he expects the enforceable title to be finalized [4: p. 19].

¹¹ Prior to introducing art. 405 par. 2 in the old Civil Procedure Code by U.G.D. no. 138/2000 the same rule was already enshrined in the old Civil Code of 1864, as well as in art. 17 par. 3 of Decree no. 167/1958 on the extinctive prescription

In fact, the court of law correctly held that the time from which the right to demand forced execution began to run was set by the new Procedure Code - art. 705 of Civil Procedure Code, paragraph 2, sentence 2: "In the case of judgments (...), the limitation period begins to run from the date of the final stay".

IV. DEFINITIVE JUDGMENT - ENFORCEMENT TITLE

Enforcement may be performed only on the basis of an enforceable title, according to art. 632 of Civil Procedure Code. The regulation of the enforceable title is a component part of the provisions on enforcement. The enforceable title is governed by Chapter II, "*Enforcement Title*", in Title I, "*General Provisions*", of Book V, "*On Forced Enforcement*".

As a result, the rules that apply to the enforceable title are those included in the regulation after which forced execution will be performed on its basis. It is not possible for the enforceable title to be enshrined in a law and forced enforcement under it to be governed by another law.

The decisive factor in this respect is the provisions of art. 5 of the Implementing Law. For there to be no doubt about the law applicable to enforceable titles, the art. 5 of the Law no. 76/2012 for the implementation of Law 134/2010 on the Civil Procedure Code expressly states that "The provisions regarding the enforceable titles also apply to the court decisions or other documents issued or, as the case may be, drawn up prior to the entry into force of the Civil Procedure Code".

Article 5 expressly states that the law determining the character of enforceable judgments given under the old Civil Procedure Code is the new Civil Procedure Code (in accordance with the law applicable to enforcement in its entirety).

By this provision it was avoided that judgments handed down under the old Civil Procedure Code to be enforced under the new Code would be qualified as enforceable titles using the criteria of the old Procedure Code, even though they are enforced under the new law.

In other words, everything related to the notion of "enforceable title" is determined by the new law: the provisions of the new Civil Procedure Code determine which decisions are or not enforceable titles, what is a "final judgment", the moment at which decision becomes definite.

It is an enforceable title, according to art. 632 paragraph 2, "It shall be enforceable the enforceable judgments, the final judgments, as well as any

other judgments or inscriptions which, according to the law, may be enforced”.

Under art. 5 of the Implementing Law expressly states that the provisions of the new law relating to enforceable titles also apply to judgments handed down in proceedings initiated under the old law, it is wrong to consider that the old Civil Procedure Code is applicable to determining the final character of the judgment, in this case the provisions of art. 377 of the former civil Procedure Code, on the ground that the trial started under the old Civil Procedure Code. We further appreciate that it is incorrect to establish in this respect in the analysed case in which the appeals and recourse were handed down under the new law, the recourse being admitted in part.¹²

The definition of “final judgment” is contained in Chapter II – “Enforcement title”, in Title I, “General Provisions”, of Book 5, “On forced execution”, also contained in the new Procedure Code and not in the old Civil Procedure Code, as we have shown before.

It is natural that the legislator, who set as the time of prescription in the new law, the “final judgment”, to explain the notion of “final judgment”, to indicate the criteria for determining the “final judgment” also after the new law. Otherwise a *lex tertia* would be created by enforcing two law enforcement - the old one for determining the final and the new ruling to determine the moment when the limitation period and the rules for the enforcement of the enforcement order and the enforceable title begin to run, which is not allowed as pronounced.

If it were considered that the provisions of the old law on the determination of the “final judgment” also apply to forced execution started after the enactment of the new law and, moreover, to judgments handed down under the new law would create a case of ultraactivity of the old law. Cases of ultraactivity are set by the legislator, and being an exception to the rule of law enforcement, the strict interpretation cannot be extended to other situations. In the matter of prescription, only the case of prescriptions started and unfulfilled at the date of entry into force of the new Civil Code are indicated as causes of ultraactivity.

It should also be taken into account that procedural law is immediately applicable.

¹² In the sense that the “definitive” decision is determined according to the new Civil Procedure Code since the date of the judgment is after the entry into force of the new Civil Procedure Code, see, dec. 997 / 2.09.2015 of the Gorj Court, having as object the appeal of the enforcement, <https://www.jurisprudenta.com/jurisprudenta/speta-vbpw032/>

After in art. 632 of Civil Procedure Code indicates that the final judgments are enforceable, in art. 634 par. of Civil Procedure Code explains that “They are final ... 4. The decisions given in the recourse, without the right of appeal, as well as those not settled with appeal, 5. The sentences given in the appeal, even though they have solved the fund”, and in paragraph 2 that “The judgments shall become final on the date of expiry of the term of the appeal or the recourse or, as the case may be, at the date of pronouncement”, - if they have no appeal.

In this case, the final decision is the one given by the recourse court and not the appeal, the determination of the final character of the decision, according to the new Civil Procedure Code, applicable to the entire enforcement - the procedure, the prescription, the enforceable title, as we have shown up. Considering the provisions of art. 5 of the Implementing Law and, moreover, that the judgment in the appeal and the decision in the recourse were pronounced under the new Procedure Code, the determination of the definitive character will be made after the new law. In other words, in the case which gave rise to the writing of that article, the date from which the limitation period began to run is the date of delivery of the last judgment, - in its recourse - that is, the “definitive” decision.

V. CONCLUSIONS

Our aim was to propose a solution to determine the applicable law for determining when the limitation period for the right to enforce forced execution and the final judgment in a dispute initiated under the old Codes began to run when the judgment the first instance was pronounced under the new Civil Code but under the old Civil Procedure Code, and the decisions in appeal and recourse under the new Civil Procedure Code, a normative act under whose auspices the forced execution began.

For the working hypothesis from which we started, we agreed that the time from which the limitation period begins to run is the date of the final judgment remaining to be enforced and this - the final judgment - will be determined according to the provisions of the new Civil Procedure Code.

The solution we am arguing is not the only one proposed in our doctrine and jurisprudence in the country and it is intended to be an invitation to constructive discussions on this issue.

REFERENCES

- [1] Boroi, G., Stancu, M. (2015). *Drept procesual civil*. Bucharest: Hamangiu Publishing House.
- [2] Ciobanu, V.M., Briciu, T.C, Dinu, C.C. (2013). *Drept procesual civil. Drept execuțional civil. Arbitraj. Drept notarial*. Bucharest: Național Publishing House.
- [3] Deleanu, I., Mitea, V., Deleanu S. (2013). *Tratat de procedură civilă*, vol. III. Bucharest: Universul Juridic Publishing House.
- [4] Gavriș, D.M. (2013). Comentarii. In *Noul Cod de procedură civilă. Comentarii pe articole* (coord. G. Boroî), vol. II, Publishing House Hamangiu, Bucharest.
- [5] Leș, I. (2013). *Noul Cod de procedură civilă. Comentariu pe articole (art. 1-1133)*. Bucharest: C.H. Beck Publishing House.
- [6] Nicolae, M. (2004). *Prescripția extinctivă*. Bucharest: Rosetti Publishing House.
- [7] Nicolae, M. (2015). Prescripția dreptului de a obține executarea silită în dreptul civil roman. *Romanian Private Law Magazine*, 2 / 2015
- [8] Oprina, E., Gârbuleț, I. (2013). *Tratat teoretic și practic de executare silită*, vol. I. Bucharest: Publishing House Universul Juridic.
- [9] Stoenescu, I., Hilsenrad, A., Zilberstein, S. (1966). *Tratat teoretic și practic de procedură a executării silite*. Bucharest: Publishing House Academiei.
- [10] Țit, H.-N. (2016). *Executarea silită. Partea generală*. Bucharest: Hamangiu: Publishing House.
- [11] Zilberstein, S., Ciobanu, V.-M. (1996). *Drept procesual civil. Executarea silită*, vol. I. Bucharest: Lumina Lex Publishing House.
- [12] Law no. 134/2010 on the Civil Procedure Code, published in the Official Gazette of Romania Part I, no. 485 of July 15, 2010
- [13] Law no. 287/2009 on the Civil Code published in the Official Gazette of Romania, Part I, no. 505 of July 15, 2011