THE LEGAL DIFFICULTIES GENERATED BY THE ALTERATION OF ARTICLE NO. 200 OF THE OF THE CIVIL PROCEDURAL CODE

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Abstract

After Law no. 310/2018 modified Article no. 200 of the of the Civil Procedural Code, various difficulties have arisen in practice, due to the fact that the new provisions, in paragraph no. 4 no longer state that the action can be annulled by the court for breach of fulfilling the obligations it established for the claimant during a non-public hearing. Thus, according to some legal opinions, the Court is thus obligated to cite all the parties so that they may give their conclusions on the matter. On the other hand, it has been stated that the Court has no obligation to cite any of the parties upon deciding whether or not to annul the claim. The paper aims to determine which course of action is in accordance to the new provisions and ensures the right to a fair trial for all the parties.

Keywords: *Articole no. 200 Of the Civil Procedural Code Problems Public Hearing*

1. Introduction

1.2. What matter does the paper cover?

The paper is intended to provide an accurate description of the main effects standing from the alterations of article no. 200 of the Civil procedure code in terms of analysing the legal texts themselves, the opinion of some noteworthy legal authors.

Finally it shall endeavour to establish some good practices regarding it's application, despite the fact that the modifications are relatively recent. The paper has tried to utilize the first opinions regarding the issue at hand while trying to comprehend the thinking behind the alterations themselves as they have unfolded.

Indeed, there are some positive aspects which have emerged after the decision of the legislative authority to alter these provisions which are also about to be properly analysed.

However, there are also some negative aspects which are derived from the decision to alter the procedure which require a critical eye and a proper interpretation in terms of circumventing potential legal difficulties which may arise.

1.2 Why is the studied matter important?

The studied matter is of great importance because there are a huge number of cases in which the court is about to annul the claim.

It is vital for it to proceed in this manner without any dangers of infringing upon the fundamental rights of all the parties involved in the trial.

Even at it's early stages, the keys must be handled with due diligence by the court and no effort should be spared in analysing the alterations and establishing good practices regarding the application of the sanction.

The fact of the matter is that the moment when the claim is annuled, the plaintiff may suffer some very harsh consequences but the way in which the court applies the legal provisions can have a significant impact.

The article in itself attempts to handle rather a new topic, without significant jurisprudence behind it but it shall attempt to surprise the main issues at hand in establishing a legal avenue useful and beneficial for all the participants in the trial.

1.3 How does the author intend to answer to this matter?

The author shall identify both the initial form of the article and its final form after the operation and shall attempt to identify some opinions regarding the issue at hand, despite the fact that it is rather early to do so.

However some authors have already tackled the issue early on and can provide a relevant foundation for constructing a proper analysis on the subject.

It shall also analyse potential *de lege ferenda* solutions and it shall also deal with the opportunity of addressing the Constitutional Court of Romania regarding the constitutionality of the new provisions, in how they shall affect the constitutional rights of all the parties involved.

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Finally, some relevant conclusions shall be provided so as to allow for the reader to invest his own efforts into identifying a useful legal pathway.

Indeed, there are some discussions and difficulties which are to be tackled in the paper as a direct consequence of the policy employed by the legislative authority in this particular situation, but the author shall at least attempt to clarify the issue at hand as best as possible.

1.4. What is the relation between the paper and the already existent specialized literature?

The paper shall attempt to address the few opinions already expressed in the specialised literature and shall try to reconcile the opposition in them so that the relevant legal texts may be applied in equity.

The authors which are to be analysed have dealt with the issue on some specific level but it is hoped to conduct a more complex analysis of the legal situation created after the adoption of Law no. 310 in 2018. A collective of authors has already provided a most welcomed outlook on all the alterations brought forth by the law, but the paper shall try to complete the work with new ideas regarding what it is needed to avoid the opposing case law by the courts regarding this particular issue.

2. The legal applicable texts

Firstly, our national provisions outlined in Article no. 200 of the Civil Procedural Code[3] constitute the **initial** legal framework regarding the annulement procedure in the cases when the party failed to comply to the request made by the court: " *The court to whom the case was randomly assigned shall promptly check whether the claim is within its competence and whether it meets the requirements of art. 194-197.*

(2) Where the case is not within its competence, the claim shall, by decission given without the summons of the parties, be sent to the competent specialized body or, where appropriate, the specialized section of the competent court. The provisions on noncompetence and conflicts of jurisdiction apply by analogy.

(3) Where the application does not meet the requirements of art. 194-197, the applicant shall be notified in writing of the shortcomings, stating that within maximum 10 days after receipt of the communication, he shall make the additions or modifications ordered, under the sanction of cancellation of the request. It is exempt from this sanction the obligation to designate a common representative, in which case the provisions of art. 202 par. (3).

(4) ***If the obligations for completing or modifying the application are not fulfilled within the time limit stipulated in paragraph (3), by decission, given in the council chamber, the application can be annuled.***

(5) Against the termination of the annulment, the complainant will only be able to make a request for a review to solicit the cancellation measure.

(6) The request for re-examination shall be made within 15 days from the date of communication of the rulling.

(7) The request shall be settled by a final decision given ***in the council chamber by another judge of that court,*** *designated by random assignment, who will be able to revert the annulment measure if it has been wrongly taken or the irregularities have been removed within the time allowed according to par. (3).*

(8) In the event of admission, the case shall be sent back to the initially invested judge."

In 2018, the legislative authority has sought to alter these specific provisions, by instituting certain changes regarding the specified article: " *In Article 200, paragraph 4 shall be amended and shall have the following content:*

"(4) ***If the obligations regarding the filling in or modification of the application provided in art. 194 lit. a) - c), d) only in the case of factual reasons and f), as well as art. 195 - 197, are not fulfilled within the time limit stipulated in paragraph (3), the application shall be annulled by way of a rulling.*** *"*

In Article 200, after paragraph (4), a new paragraph, para. (41), with the following wording:

"(41) The complainant may not be required to supplement or amend the request for legal action ***with data or information which he or she cannot personally obtain and for which the court is required to intervene****."*[4]

Lastly, another article of great importance to the study is article 532 of the of the Civil Procedural Code which states that: " *The request shall be judged in the council chamber, with the citation of the petitioner and the persons shown in the application, only if the law so requires. Otherwise,* ***the judgment is made with or without a citation, at the discretion of the court.***

(2) The court may order, of its own decission, any measures which are of use to the case. It has the right to listen to any person who can bring the matter in question, as well as to those whose interests may be affected by the judgment. "[5]

[3] Law no. 134 of July 1, 2010 regarding the Civil Procedure Code, republished in the Official Gazette of Romania no. 247 of April 10, 2015.

[4] Law no. 310/2018 for amending and completing the Law no. 134/2010 on the Civil Procedure Code, as well as for amending and completing other normative acts published in the Official Gazette of Romania no. 1174 of November 25, 2008

[5] Law no. 134 of July 1, 2010 regarding the Civil Procedure Code, republished in the Official Gazette of Romania no. 247 of April 10, 2015.

The general provisions[6] regarding the obligation of the court to cite the parties and to conduct all proceedings during a public hearing are: " Art. 14. - (1) The court may decide on an application only after the citation or appearance of the parties, unless the law stipulates otherwise… Article 15 - Oral proceedings shall be dealt with unless the law provides otherwise, or where the parties expressly request the court to make the case only on the basis of the documents submitted to the file... Art. 17. - Judgment sessions are public, except for cases provided by law. "

Article[7] no. 22 establishes a clear obligation for the court to determine the legal applicable texts, should the parties fail to indicate the proper ones: " The judge gives or restores the legal classification of the acts and facts inferred for the judgment, even if the parties have given them another name. In this case, the judge is obliged to bring the exact legal qualification to the parties."

Lastly, article 6 of the Civil Procedural Code[8] states that " Everyone has the right to a fair, timely and foreseeable hearing of his case by an independent, impartial and lawful court. To this end, the court is obliged to dispose of all the measures allowed by the law and to ensure the speedy conduct of the trial. (2) The provisions of paragraph (1) shall also be applied in the forced execution phase. "

3. The opinion of the legal authors

Bozeșan was very clear regarding the fact that the omission to mention that the procedure regarding the annulment of the claim for failure to fulfill the obligations established by the court is to occur in a non-public proceeding **represents an error committed by the legislative authority**. It is mandatory for the court to proceed in this fashion, in terms of analysing the fulfilment of the obligations in a non public setting, just as it has been done prior to the modifications.[9]

One of the reasons why the author considers that the annulment should be decided in a non public setting is because the whole procedure in itself is of a non-contradictory nature, in relation to article 532 of the Of the Civil Procedural Code. Firstly, the plaintive has not yet received a copy of the claim, and he may not need to express his point of view regarding the fulfilment of the obligations established by the court for the claimant. Verifying whether or not the claimant has respected the obligations has nothing to do with the rights and obligations which are about to be decided before the court. The sanctions for the initial irregularities of the claim are of a purely formal nature in regards.[10]

Another important aspect is the impossibility for the court to obligate the plaintiff to provide specific information regarding the case for which the intervention of the court is ultimately necessary. However, there clearly remains the necessity for the claimant to fulfill his obligation of due diligence in terms of undertaking all the legal and possible avenues in order to complete his claim with the necessary data mentioned in article 194 of the of the Civil Procedural Code. [11]

Another prominent collective of authors[12] have stated that: " Regarding the elimination of the phrase "given in the council chamber" we appreciate that the modification is based on the correlation with the new form of art. 402 which, as we shall see, no longer requires the judgment to be delivered at a public hearing, so that the exception to that rule would no longer be justified. Unfortunately, the current legislator was mistaken because the expression "given in the council room" was meant the actual place of the judgment, not the place where the solution is to be passed. "

Despite being a most regrettable mistake it has laid the groundwork for the discussions which are to be analysed during this article in terms of interpreting the legal texts so as to ensure for all parties a fair and reasonable trial.

Gabriela Răducan and Mădălina Dinu[13] have also analysed the provisions and clearly established that the annulment procedure is to take place in the council chamber.

The collective[14] has also argued ,,that does not mean, however, that the judgment will now take place in a public hearing. The analysis procedure is, by definition, a non-contentious one, which is to be settled in the council

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[6] Law no. 134 of July 1, 2010 regarding the Civil Procedure Code, republished in the Official Gazette of Romania no. 247 of April 10, 2015.
[7] Law no. 134 of July 1, 2010 regarding the Civil Procedure Code, republished in the Official Gazette of Romania no. 247 of April 10, 2015.
[8] Law no. 134 of July 1, 2010 regarding the Civil Procedure Code, republished in the Official Gazette of Romania no. 247 of April 10, 2015.
[9] Bozeșan, V. (2019), „ *Codul de procedură civilă actualizat la 10 ianuarie 2019*", ed. Solomon, București, p. 108
[10] Bozeșan, V. (2019), „ *Codul de procedură civilă actualizat la 10 ianuarie 2019*", ed. Solomon, București, p. 108
[11] Bozeșan, V. (2019), „ *Codul de procedură civilă actualizat la 10 ianuarie 2019*", ed. Solomon, București, p. 109
[12] ***Traian Cornel BRICIU, Mirela STANCU, Claudiu Constantin DINU, Gheorghe-Liviu ZIDARU, Paul POP,,*** *Comentarii asupra modificării noului Cod de procedură civilă prin Legea nr. 310/2018. Între dorința de funcționalitate și tendința de restaurație"**, last modification 12.02.2018. https://www.juridice.ro/essentials/2901/comentarii-asupra-modificarii-noului-cod-de-procedura-civila-prin-legea-nr-310-2018-intre-dorinta-de-functionalitate-si-tendinta-de-restauratie#_ftn3***
[13] Răducanu, G., Dinu, M., „ Fișe de Procedură Civilă ", Ed. Hamangiu, București, 2016, p.154
[14] Traian Cornel BRICIU, Mirela STANCU, Claudiu Constantin DINU, Gheorghe-Liviu ZIDARU, Paul POP,„ Comentarii asupra modificării noului Cod de procedură civilă prin Legea nr. 310/2018. Între dorința de funcționalitate și tendința de restaurație", last modification

chambers, and which seeks to establish the procedural framework correctly, without presenting a litigious matter in terms of establishing any adverse right in contradiction with the defendant, especially since he does not even know that he has been sued for the simple reason that he has not yet been summoned. Therefore, we consider that by removing from the text the phrase "given in a council room" was intended only to suppress a statement that the legislator considered unnecessary to the new configuration of bringing the judgment to the attention of the public. It is obvious that by amending art. 200 par. (4) of the Civil Procedural Code, the legislator wanted only to remove the possibility to annul the application for failure on the applicant's part to fulfill the obligations stipulated in art. 194 lit. d) and e) of the Of the Civil Procedural Code, without any intention to modify the rules of the regularization procedure.".

The opinion of the above cited collective was also shared by the most prominent author in the field.

Prof. Boroi[15] argued that the annulment procedure is to take place withourt the citation of the parties.

In terms of splitting the two procedures regulated by Article no. 200, the collective[16] has stated that *"Moreover, from the global interpretation of art. 200 Of the Civil Procedural Code, there is no logical argument for the whole annulement to be split between the cancellation phase of the request which would be conducted during a public hearing and, on the other hand, the re-examination procedure to be made in a council chamber, according to the provisions of art. 200 par. (7) of the Civil Procedural Code.*

In conclusion, we appreciate that, regardless of the deletion of the phrase "given in the council chamber" (4) of art. 200, the annulement shall take place in the council chamber."

Also, the new provisions after paragraph no. 4 have been the subject of a proper analysis[17]: *"The second amendment of art. 200 of the Civil Procedural Code consists of introducing a new paragraph, par. (4 dash 1), according to which: "the claimant may not be required to supplement or amend the request for legal action with data or information which he or she does not personally posess and for the procurement of which the court is required to intervene*".

We appreciate the benefit of this clarification of the duties of the claimant in the regularization procedure, in the sense that he will not be guilty of any fault in situations in which he is not in possession of data or information requested by the court and for which it is necessary to intervene…The meaning of this rule is that the applicant will be sheltered from the event of excessive or even abusive application by the court of the sanction provided in art. 200 par. (3) and (4) of the Civil Procedural Code [53]. The claimant is not relieved of the obligation to provide that date or information which, even if he does not own it, can obtain it without the intervention of the court, based on other legal provisions (e.g. land registry extract, data on registered companies in the general trade registry, other data mentioned in a public register, in relation to which there is the possibility to obtain information by any person). Obviously, we do not deny that in practice there are situations in which a particular authority or institution unduly refuses the release of information or a record, although the law compels it to do so (often invoking secondary norms such as orders, internal regulations, etc.). In those situations the plaintiff must prove that he has endeavored to obtain that information in order to be exempted for the application of the sanction.".

The collective[18] has concluded that ,, *this procedure seeks to discipline the parties in the process, with the practical application of the principle enshrined in art. 6 of the Civil Procedural Code on a fair trial and within an optimal and predictable manner, without affecting the substance of the right to adress the court, taking into account the fact that a possible annulment of the petition is subject to judicial review by means of a request with the application of art. 200 par. (5) - (7). "*

Also, we note that the Constitutional Court also found that the procedure for the regularization of the application has the role of relieving the courts of incomplete applications, so as to prepare the judgment in all its aspects. This procedure also provides protection for the defendant, who is served with all the relevant documentation so as to be able to mount his defence. Unlike art. 200 of the current Code of Civil Procedure, the old regulation of the 1865 Civil Procedure Code, stated that in order to remedy incomplete requests, it was necessary to grant new terms during the judgement, which in most cases led to the prolongation of the trial, thus affecting the optimal and predictable term. At the same time, it involved the incurring of new costs by both the

12.02.2018. https://www.juridice.ro/essentials/2901/comentarii-asupra-modificarii-noului-cod-de-procedura-civila-prin-legea-nr-310-2018-intre-dorinta-de-functionalitate-si-tendinta-de-restauratie#_ftn3

[15] Boroi, G., Stancu, M. (ed.), (2019), „ Fise de procedură civilă ", Ed. Hamangiu, p. 267

[16] Traian Cornel BRICIU, Mirela STANCU, Claudiu Constantin DINU, Gheorghe-Liviu ZIDARU, Paul POP,„ Comentarii asupra modificării noului Cod de procedură civilă prin Legea nr. 310/2018. Între dorința de funcționalitate și tendința de restaurație", last modification 12.02.2018. https://www.juridice.ro/essentials/2901/comentarii-asupra-modificarii-noului-cod-de-procedura-civila-prin-legea-nr-310-2018-intre-dorinta-de-functionalitate-si-tendinta-de-restauratie#_ftn3

[17] Traian Cornel BRICIU, Mirela STANCU, Claudiu Constantin DINU, Gheorghe-Liviu ZIDARU, Paul POP,„ Comentarii asupra modificării noului Cod de procedură civilă prin Legea nr. 310/2018. Între dorința de funcționalitate și tendința de restaurație", last modification 12.02.2018. https://www.juridice.ro/essentials/2901/comentarii-asupra-modificarii-noului-cod-de-procedura-civila-prin-legea-nr-310-2018-intre-dorinta-de-functionalitate-si-tendinta-de-restauratie#_ftn3

[18] Traian Cornel BRICIU, Mirela STANCU, Claudiu Constantin DINU, Gheorghe-Liviu ZIDARU, Paul POP,„ Comentarii asupra modificării noului Cod de procedură civilă prin Legea nr. 310/2018. Între dorința de funcționalitate și tendința de restaurație", last modification 12.02.2018. https://www.juridice.ro/essentials/2901/comentarii-asupra-modificarii-noului-cod-de-procedura-civila-prin-legea-nr-310-2018-intre-dorinta-de-functionalitate-si-tendinta-de-restauratie#_ftn3

parties and the court. Moreover, the procedural means by which justice is to be carried out imply the establishment of procedural rules regarding the process before the courts, the legislator, by virtue of its constitutional role enshrined in art. 126 para. (2) and art. 129 of the Basic Law, being able to establish by law the procedure before the court. These constitutional provisions themselves give expression to the principle enshrined in the European Court of Human Rights Case Law, which, for example, in its judgment of 16 December 1992 in Hadjianastassiou v. Greece, paragraph 33, stated that "the Contracting States enjoy great freedom in choosing the means to enable the judiciary to comply with the requirements of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.".".

4. The interpretation of the author

First of all, the initial thinking behind the initial form of article no. 200 was to leave the court a reasonable margin in terms of appreciating whether or not the minimal conditions were met in order to be able to communicate the claim to the other party so as to allow it to mount a reasonable form of defense.

Given the fact that in the past, the only possible sanction available to the court consisted in suspending the trial for failure on the claimant's part in ensuring that the basic conditions were met to move forward with the judgement.

However, in order to reach this specific point, the court needed to communicate to the other party a very informal request, which sometimes was limited to a single page, without any mention of any legal applicable texts, thus rendering the other party into a virtual impossibility of defending himself. It is clearly evident that the defendant's rights were infringed upon severely since he usually paid for legal fees even though the claim brought before him was so informal that even the court was unable to ascertain what it was required of it.

After the new Civil Procedure Code was adopted, the legislative authority instituted the new sanction of annuling the initial informal claim without the need to communicate it prior to employing this solution by the court. A very elegant solution, it exempted the other party from resorting to legal counsel or even suffering legal costs in the initial stages of the trial.

However, like any other solution, it resulted in creating problems for one of the parties which in most cases was the claimant. There were cases in which the court wrongly annuled the claim for failure to fulfill obligations such as indicating the correct social security number of the defendant, even though the claimant provided his correct address, which would have permitted the court to properly communicate the documentation and also summon him for the trial.

Despite being relatively limited, this particular tendency to annul the claim for this reason lead to the modifications of article no. 200.

Thus, in terms of the addition of paragraph 4 dash 1, it is evident that it was intended to counteract the tendency of annuling claims far too easily by some courts, so as to ensure the right to a fair trial for the claimants whose action should have been communicated to the other party and should have enjoyed a proper analysis during a normal trial.

No authors who expressed some concerns regarding the thinking behind this new addition, particularly the purpose for which it has been adopted were identified.

However, some discussions regarding the impossibility for the court to annul the claim for failure to indicate the legal applicable texts are in order.

Thus, it is rather a simple conclusion to reach that some defendants will find it very difficult to mount a proper defence in cases in which they are unable to establish which legal texts they are accused of breaching.

Indeed it is the obligation of the court to determine the legal avenue that is available to both parties in terms of reaching a clear and equitable solution in the case.

Despite this, there will always be instances in which the parties fail to determine the legal basis for the litigation.

To intervene *ex oficio* can easily be interpreted as a decission to help one of the parties and thus creating a detrimental situation for the other.

It is not the task of the court to help the claimant to such an extent, sometimes even more then his own legal counsel, just because the legislative authority has established such an obligation for the judge.

Moreover, the impossibility of annuling the claim by means of Article 200 for failure to indicate by the plaintiff what legal provision are applicable will clearly lead to situations in which the defendant is unable to counteract the claim brought before the court by the other party **at least until the judge establishes the legal applicable text**.

After this moment, even though the legal text established by the court as applicable would clearly render the initial claim as inadmissible or without merits **the fact remains that up until this point the summoned defendant has been in a situation on deciding whether or not to sustain legal fees.**

For those diligent defendants who wish to participate in an active way in the trial and therefore appeal to legal consel or engage in other cost the fact that the informal claim has reached this point may be seen as an infringement into their right to a fair trial.

This conclusion is even more clear in the cases in which the court has established the applicable law, but **is unable to provide the defendant another term to organise his defence according to the actual legal situation since there are no provisions which allow this**.

Indeed the situation may not be very common but in the cases in which it occurs it is evident that the defendant may suffer clear breaches to his right to a reasonable and effective defence.

It is thus very clear that the alterations regarding the impossibility for the court to annul the claim for this particular reason is a mistake in the part of the legislative authority and should be remedied as soon as possible.

Moving on with the analysis of the modifications of articles no. 200, the removal of the phrase *„in the council chamber*" in paragraph 4 clearly stands out.

Indeed, Bozeșan[19] may be right in his opinion that it is only an oversight of the legislative authority.

However, oversight or not, the alteration is able to create a number of situations in which the judge is obligated to intervene so as to avoid any infringements in the right to a fair trial of the parties involved.

Firstly, since the legislative authority has removed the phrase *in the council chamber* one can interpret this measure as a willingness on it's part to obligate the court to annul the claim **during a public session**.

Further on, it can be interpreted in terms of a decision to move away from the initial interpretation of the legal texts regarding this procedure in terms that it is non-contradictory and governed by article 532 of the Civil procedure code.

Since the interpretation may lead to such a conclusion, namely that we are no longer dealing with a non-contradictory procedure, it should therefore take place in a public setting. It is thus evident that it is necessary to summon all the parties even to this procedure.

The interpretation in itself may seem very unreasonable, given the implicit obligation to summon the defendant to present his opinion regarding the sanction of annuling the initial claim even though no other prior documentation has been provided.

Thus, for example in cases in which the claimant has failed to provide enough copies of the initial claim and the supporting documentation, interpreting the legal tax in this manner would also imply the obligation for the court to copy all available documentation and communicate them to the defendant so as to present his opinion on the matter. This would thus render article no. 195 of the Civil Procedural Code without effects - *„ The request for legal action shall be made in the number of copies provided in art. 149 para. (1).*"

Just as problematic would be too summon the claimant for this procedure, given the fact that he has chosen a very passive stance on the case, by failing to fulfill his obligations.

Also, given this alternative interpretation which is allowed by the formulation of the text that it is no longer a council chamber procedure, the general texts provided by article 14, 15 and 17 of the Civil Procedure Code regarding the obligation for the court to summon the parties and allow for an oral proceeding during a public hearing come into play, with very binding legal consequences.

The interpretation can we developed further on, in terms of the possibility for the claimant to invoke a breach in his right to a fair trial as stated in article 6 of the Civil Procedure Code during the re-examination procedure of the sanction to annul the claim by the court. Given the fact that he wasn't summoned to the procedure when the claim was annulled, **he may invoke the argument that he was unable to provide a proper defence so as to persuade the court otherwise**.

Overall, interpreting the modifications as indicated above is not an unreasonable undertaking and **could occur in some situations in which the judge may choose to interpret the law in a very formal way.**

However, a more accurate interpretation has been made by all the above cited authors in the article for the reasons which are to be developed.

Firstly, it is indeed the case of or non-contradictory procedure, in full accordance with article 532 of the Civil Procedure Code since the scope of the analysis carried out by the court deals with ascertaining whether or not the conditions for going to court are met.

The procedure in itself does not tend to lead to a conclusion regarding the existence or non-existence of the rights which are the subject of the trial but merely tends to allow for the trial to enter into the public stage in which arguments may be presented by all the parties involved.

Simply verifying if all the paperwork is in order and all the obligations of the trial have been properly handled by the claimant does not mean that the procedure in itself is a contradictory one.

Indeed, the claimant who feels that his action has been wrongfully annuled may choose to solicit a reexamination of the sanction applied by the judge by another of his colleagues, which also constitute another procedure that has a clear non-contradictory nature. Moreover, this last one is expressly mentioned as to occur in the council chamber and there are no objective reasons for which the regime for the two should be separated.

[19] Bozeşan, V. (2019), „ *Codul de procedură civilă actualizat la 10 ianuarie 2019*", ed. Solomon, Bucureşti, p. 108

Thus, paragraph no. 7 of article no. 200 clearly states that the re-examination procedure shall occur in a council chamber, being no reason to separate the verification procedure into two different stages, one in a public hearing and another in a non-public one.

Also, there is no reason to involve the defendant into the trial at this point since for the arguments presented above it is not in his best interests to intervene at this point in the trial.

Legals fees, which may stem from participating in a hearing at this stage of the trial may not be requested in this particular setting, merely via a new and separate trial, since there are no legal provisions which may deal with this type of situation.

Thus, the judge, despite the alterations to the legal text, is to proceed according to the previous procedure in terms of applying the sanction in a non-public setting, namely during a council chamber procedure.

It is evident that proceeding in a different way, by means of interpreting the new alterations in terms that a public hearing should be conducted is a grave error, which should be avoided at all costs since it is not in the interests of any of the parties involved for the court to act in such a manner.

Moving on to the alterations in paragraph 4 dash 1, regarding the impossibility for the court to annul the claim should the plaintiff not have personal access to the information needed for the trial to move forward, they are of great importance. Situations in which the court has annulled the claim without any fault by the plaintiff will be avoided. This alteration in itself is very protective for the plaintiff, however, in order for it to work, it requires that he may prove he has previously addressed the competent authorities regarding to identify the relevant information.

Again, it is mandatory for the court to respect the plaintiff's right to a fair trial and the solution provided by the alteration of this article is equitable and most welcomed.

5. Conclusions

5.1. Summary of the main outcomes

Indeed, whatever the reasons why the legislative authority has chosen to adopt the solutions previously analysed it is imperative for practitioners to employ all possible methods in order to ensure that the legal text is applied in a manner which does not infringe upon the constitutional rights of either party.

Both the plaintiff and even the defendant can and should always indicate the legal text they consider as applicable, so as not to render the defence of the other party a mere guessing game, to be decided by the court.

The court itself should be willing to grant another term for the opposing party after establishing the legal provisions which are to be applied to solve the case **whenever it has been expressly requested.** This is to ensure that the opinion of all the participants is taken into consideration and their point of view is properly grasped by the judge.

Some other ideas which might help the situation would be to address the Constitutional Court of Romania *ex oficio* by the judge who is in a situation in which the impossibility to annul the claim may cause serious problems for the other party, who may be left to guess the legal articles it is accused of breaching. The request to the Constitutional Court should raise the issue of the potential unconstitutionality of the provisions regarding the impossibility for the court to annul the claim for failure to indicate the legal applicable texts.

The decision to remove the phrase *in the council chamber* should not be interpreted as the establishment of a new obligation for the court to annul the claim in a public setting, after all the parties have been summoned to the procedure.

This interpretation is erroneous and may tend to create burdensome situations for the defendant, would could suffer legal fees to mount a proper defence.

Also, summoning the plaintive after already indicating to him what obligations require his attention would mean that he is given two opportunities to complete his claim, situation which can never be considered as acceptable and which would render paragraph 4 of Article 200 as inapplicable.

Finally, the paragraph added after paragraph 4 should be interpreted in the sense that the plaintiff is obligated to prove before the court that he has fulfilled all of his obligations **prior to soliciting the judge to intervene in order to obtain the needed information necessary** for the continuation of the trial. Otherwise, there would be situations in which the role of the judge would be extended far too much and would also raise questions such as what sanction can be applied to the court for not fulfilling it's newly established obligation.

5.2. The expected impact of the research outcomes

The aim of the article is to endeavour to shed light on the subject, in order to present for the reader all the consequences which may stem from applying the altered provisions.

It is thus hoped to provide him or she with a useful interpretation, in full accordance with the necessity to ensure the right to a fair trial for all the parties involved in the trial.

5.3. Suggestions for further research work.

Given the previously presented idea of addressing the Constitutional Court of Romania regarding the constitutionality of the new provisions, future research could focus on the answer it gives to the dilemma presented before it. It could also focus on *de lege ferenda* proposals, upon applying the provisions by practitioners after some time and analysing the effects of the alterations on more cases.

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