RELEVANT ISSUES CONCERNING THE RELOCATION OF CIVIL PROCEEDINGS UNDER THE NEW CODE OF CIVIL PROCEDURE (NCPC)

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Abstract

The change of the new code of civil procedure and obvious the entry of the new provisions at 15th February 2013, has been thought with the hope to accelerate the procedures related to judgement with a noticeable simplification of procedures, all designed with the aim of unifying the case law and to lower the costs generated by lawsuits , costs both borne by the State as well by citizens involved the cases in court .

Thus, the implementation of the New Code of Civil Procedure, desired the compliance right to a fair trial within a optimal time and predictable by the court, by judging the trial in a speedy way , avoiding unjustified delays of the pending cases and to the new petitions introduced, by excessive and unjustified delays often.

By the noticeable changes that occurred following the entry into force of the new Code of Civil Procedure, it identify and amend the provisions regarding requests for displacement, in terms of the grounds on which it may formulate the petition of displacement and the court competent to hear such an application.

Keywords: *displacement, institution processual, contested issue.*

1. Introduction

The application field of the present study, regards the way in which, the new civil procedure code regulations of the new code of civil procedure modifies the procedure of the wording and justify of the displacement requests, in direct comparison with the old Code of Civil Procedure.

Thus, through a short study but concise, the author attempts to identify the main changes brought of the procesual institution of the displacement requests in the light of the new Code of Civil Procedure, regarding the legal fond of the displacement requests.

The importance of this study is to identify the best means procedurals of protective and to follow the impact of new legal dispositions by comparing with the old procedural rules regarding the institution of resettlement and to show their importance as clearly as possible. The author considers it is relevant the analysis based on theoretical and practical issues on the displacement cases in terms of legal standing, such evaluations are made to justify the desire of legislative intervention in national plane.

2. Analysis of displacement procedural institution of civil cases, theoretical and practical implications:

2.1. Preliminary issues concerning the nature of displacement

The resettlement of the civil litigations can be seen as an procesual institution which establishes the reasons and the rules of transfer of solving procedure of the causes from a competent court to another court of the same rank.

Resettlement should not be confused with the incompatibility, hypothesis in wich the judge either ruled the case in which he pronounced already a judgement of the issue disputed wich is likely to disinvest the court, or he is found in one of the situations explicit provided by law and regulated as such by Article 42 NCPC and that can cause the removal of the judge from the panel of judges.

One of the new regulations of NCPC consist in disappearance of the resettlement reason based on kinship and affinity, this situation being quite rare and it is unjustified a separate legal treatment. Also,the cases of kinship and affinity can always be included in the grounds of legitimate doubt on the quality of parts. Therefore, in present there is two exclusive founded grounds of resettlement of the civil processes, namely, public safety and legitimate doubt.

Analysis of the displacement of causes have certain peculiarities in terms of procesual legitimation, NCPC making a difference depending on the reason indicated, in the meaning that request for displacement on grounds of legitimate suspicion can be made by the interested party, opposed to the application on grounds of safety public, which can only be made by the General Prosecutor of prosecuting magistracy near the High Court of Cassation and Justice. The resettlement request grounded on the reason of legitimate doubt is, in reality, a procedural incident created by the legislature for the party that has doubts about the impartiality of the court before which the dispute is analysed .

Another issue that has novelty character, is the alteration regarding the jurisdiction for settling claims

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for resettlement , which in present is different, depending on the cited reason. Compared to the previous regulation, in wich the application for resettlement on grounds of legitimate doubt was in the jurisdiction of the supreme court, we believe, mainly to avoid overload of the supreme court, the legislature stated in the situation stated above, that the demand for resettlement is resolved by the court of appeal if the court from wich is required the case of displacement, is a first level court or a tribunal, both located under its jurisdiction.

2.2. The grounds of the resettlement requests

The procesual regulations occurred once the entry into force of the NCPC, are likely to ensure the impartiality climate and objectivity necessary of resolving civil cases according to law and truth.

When implementing the new rules of procedure, was taken considered the situation where a civil action exercised against a judge, or a civil action exercised by a judge to the court in which it operates, may give rise to some serious doubts regarding the conduct the process and how the case will be solved , by the colleagues judges..[1]

According to the former procedures , such suspicions could be removed through the institution trial of resettlement of the civil case to another court .

The author believes that by adopting and implementing new regulations procedural legislators, the legislator has watched , among other things , the eduction of existing cases on the role of the High Court of Cassation and Justice, sense in which it is necessary to be mentioned that prior to the new regulations, the competence in solving resettlement requests was exclusively to the High Court of Cassation and Justice, situation that at this moment it presents modificated in the sense that the solving competence of the resettlement requests , belongs to the court of appeal in whose jurisdiction lies the court from where the case resettlement is required.

Was maintained, however, the jurisdiction of the High Court of Cassation and Justice in resolving resettlement requests based on public safety[2].

In connection with these procedural changes, we note that the legislator of the New Code of Civil Procedure preferred the attribute "determined" instead of the traditional expression "a mere presumption" acceptation that was discussed in the literature in the way that the basis of the resettlement application for reasons of legitimate doubt in the view of the new regulations, has envisaged the serious circumstances that threatens the judges objectivity and impartiality, circumstances that , although a general nature must shall be always relate either to the circumstances of the case or to the quality of the parties or to local conflicts.[3]

Thereby, the new rules require in a rigorous and clearly way the examination of the circumstances alleged in the application for resettlement formulated, for the concrete interest of the innovations implemented in the field.

It is noticed through the new regulations a clear distinction, on grounds of resettlement application in terms of competence and capacity exclusive of the initiator of a resettlement request , in this case the Attorney General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

Regarding the second ground of removal, which is based on the public safety ,ground that was not clearly defined by the legislator, since, as it was highlighted in the specialist legal literature , the term used by the legislature , is able to suggest those circumstances that could endanger the public order and tranquility right in the village.

In the literature was emphasized that, the resettlement regarding for public safety it can be required in a exceptional way, this reason it meets sometimes in criminal cases, but much rarer in the civilian cases.[4]

Another unique aspect we consider that will provoke debate among both academics and among legal practitioners,is that concerning the admissibility of an application for resettlement submitted to the High Court of Cassation and Justice regarding a case pending resettlement having as object the application for resettlement filed to the Apel Court in connection with the resettlement of a case pending before the court with lowest level or tribunal.

In other words , in the event That a request of resettlement is made regarding to a process pending before the court (Tribunal, Judecatorie) , the Jurisdiction belongs to the Court of Appeal in Whose Jurisdiction is the court. The resettlement request is Recorded to the competent Court of Appeal to resolve it , but the Interested Party ,is having serious the doubts That appeal court of appeal is impartial , and then he make an another request of resettlement with the scope to resettlement the first application for the resettlement pending case before the court.

Some authors have argued that the amendments made by NCPC in the matter of resettlement will not be able to ensure in all cases the right to a fair trial, as is enshrined in the European Convention on Human Rights. Suspicions may occur especially in those situations where a resettlement request of a case in pending, is at the court or court is in a small provincial town , and in the same city is also the headquartered competent court in solving the resettlement request.

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[1] Ioan Leș, NCPC comentat pe articole, pg.211, pct.2 Editura C.H.Beck 2013 București.

[2] Art.142 alin.2 NCPC.

[3] I. Deleanu,Tratat procedură civilă, vol.I,Ed. W.Kluwer,p.265-266; I.Leș, Tratat de drept procesual civil, p.316; I.Stoenescu,S.Zilberstein, op.cit.p.226.

[4] NCPC-comentat -Prof.univ.dr. Gabriel Boroi, Octavia Spineanu Matei, Andreia Liana Constanda, Ed. Hamangiu 2013, op.cit.p.356-Andreia Constanda.

In such cases , the ties between individuals are much closer and more obvious, inclusive between judges and the litigants will not have fully guarantee of the independence and impartiality of solving the request.

Other authors have argued that the resettlement will be decided by a court of equal degree in the same town as the appeal court , but this opinion does not remove the doubts about the impartiality of judges , knowing in fact that , between judges in the same town may from case, there is direct or indirect influence unconcerned of the courts to which they belong.

In such cases the issue is the non observance of the right to a fair trial by the existence of at least some doubts about the impartiality of courts of appeal.

We consider this interpretation as an excessive one , under the conditions that in consideration of the highest position of the court of appeal in the legal hierarchy , it offers sufficient guarantees as to the impartiality of judges.

We consider that it would be inadmissible a request for resettlement of the resettlement reached trial before a court of appeal, for the following reasons, on the one hand would violate the will of the legislator who wanted to decrease of the cases number that are less important before the supreme court, and in the other way the provisions of article 140 NCPC other hand refers to the resettlement process itself , the demand for resettlement is a procedural incident , even if the Court of Appeal shall constitute a new folder, which is not in the true sense of the word "a process " within the meaning given by Article 140 NCPC the legislator when drafting the new legislation civil procedural, wanted to remove a such an inadmissible application.

If such a situation would be admissible , it would be like a bypassed way , a relocation request made in respect of a case before the courts or tribunal to be tried all the High Court of Cassation and Justice , which the legislature wanted to overthrow the drafting of new legislation civil procedural.

If such a situation would be admissible , it means that would be like an devious way , for a resettlement request made in respect of a case before the courts or tribunal, arrive to be solved by the High Court of Cassation and Justice , situation in wich the legislator wanted to remove and to overthrow legislator wants to remove and to overthrow by drafting of new legislation civil procedural.

2.3. Exercise of the application of resettlement procedure and its solving.

The request for resettlement , shall be in writing, in accordance with Article 141 para. 1 C.proc.civ at any stage of the process. Paragraph 2 of the same Article states that the resettlement for legitimate grounds for suspicion can only be claimed by the claimant , and that on grounds of public security only by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

The request for resettlement based on Article 140 paragraph 1 and paragraph 2 of the NCPC provisions , shall be submitted to the competent court to resolve it, namely, the Court of Appeal.

If The request for resettlement based on Article 140 paragraph 3 of the NCPC provisions , shall be submitted to the competent court to resolve it, namely, the High Court of Cassation and Justice.

The competent court to settle the claim must immediately notify the court from which was asked the resettlement.

The one who is interested may request suspension of judgment , and the court panel may order the suspension by paying bail in the amount of 1,000 lei.

If the court is competent to settle the claim must immediately notify the court from which was asked the resettlement.

If considered that there are reasonable grounds and good reasons, the suspension may be willing under the same conditions ithout summoning the parties even before the first hearing.

The conclusion on suspension no motivates and is not subject to appeal.

The solution of the suspension of the process is communicated to emergency to the court from where has been requested the resettlement.

The demand for resettlement is judged in emergency way in the council chamber , summoning the parties to the process.

During the resettlement can be formulated only accessory intervention for action due to their simple defense, regarding the resettlement. However, no principal intervention is not allowed.

Decision on resettlement, according to art. 144, paragraph 2, is given without motivation and is final, it is in fact a conclusion.

In fact the solution of the resettlement application for admission or rejection of resettlement is not motivated.

Because it is a final and only solution the decision on relocation can not be appealed in any way.

However the solution may be the subject of the analysis under art. 503 alin 1. for illegal citation regarding the term when the final solution is given.

On the other hand the final solution can't be analized under art. 503 alin 2 pct 1.

Court from where has been requested relocation will be notified immediately the solution regarding the demand for resettlement.

If it accepts the application for removal, the litigation will be sent by the Court of Appeal for judgment of another court of the same grade in his constituency.

High Court of Cassation and Justice will move the proceedings in one of the courts of the same level under the jurisdiction of the courts of appeal to any court of appeal neighboring in which the court is required to displacement.

Judgment will show to what extent the acts performed by the court before resettlement is to be kept.

If in the meantime, the court that ordered the relocation proceeded to the trial, the judgment is abolished by law in effect admitted the transfer application.

Under art. 146 displacement process may be required again, unless the application is based on circumstances known at the date of settlement of the previous application or arising after its settlement, otherwise the rejected as inadmissible if the cause is the role of the same court.

Certainly, remain on the issues related to establishing clearly that the grounds of legitimate doubt on the impartiality remain before all courts in the jurisdiction of the Court of Appeal which will be sent the case for trial, given the fact that the person whose quality is the reason for the transfer application can have on judges ascending fund, because of the position of the superior court of which it forms part.

3. Conclusions

Challenge, problem analysis as is presented in this paper consists in interpretation efficiently and correctly the provisions of the new code of civil procedure , regarding the possibility of promoting a new resettlement requests motivated by the impartiality felt of the court invested with a case of resettlement of a legal dispute. Literature specialized has extensively discussed the issue of promoting such an application, but certainly, it is concluded clearly as inadmissible the request for resettlement of a litigation concerning the resettlement request, because, the amendments and supplements to the new civil procedure code, were meant to relieve the High Court of Cassation and Justice.

Considering the legal issues commented , analyzed and presented by the author in this material, some times we could say that the ideas included in this material would violate the Constitution, respectively art. 21 para. (1) and (3) on access to justice and the right to a fair trial, art. 124 para. (2) the uniqueness, fairness and equal justice, as they are interpreted according to art. 20 para. (1) of the Constitution and the provisions of art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, however this can not determine the admissibility of such a request.

Therefore in the case that we accept as admissible the resettlement of a case having as object resettlement, is resulting unquestionably that the reason for which it was thought the new code of civil procedure would no longer have practical efficiency.

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