

CONSIDERATIONS REGARDING THE SUSPENSION OF THE ENFORCEMENT

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Abstract

The enforcement procedure is conducted from the time the enforcement body is seized by the enforcement officer, in order to comply with the provisions of the enforcement order, until the completion of the claim, with its accessories thereto, and the recovery of the costs of enforcement. The procedure involves a succession of acts, carried mostly by the enforcement officer. The continuity of the procedure may be affected by certain incidents leading to his timing. Among them, the situations of enforcement suspension are generally determined by reference to their causes, respectively to the provisions of the law (in relation to specific acts or legal facts that occurred during the enforcement), the will of the creditor or the disposal of the court, at the request of the interested party. The analysis of the causes of suspension is important, in order to establish how they operate in concrete, as well for determining the effects that they produce.

Keywords: *Enforcement, suspension, bail, opposition to enforcement.*

1. Introduction

The suspension of enforcement is one issue that concerns both practitioners, theorists of law, particularly in regard to the regulations included in the new Civil Procedure Code (CPC). Like any procedural matter, the enforcement, perceived as a branch of civil procedural law, analysis the conditions and the terms in which procedural acts must be fulfilled during a procedural activity. Defining the enforcement as an procedural activity through which are achieved the provisions of the enforcement title and transporting these features upon the scholar method which is specific to civil procedural law, we conclude that, in the research on enforcement procedure, we must focus on the formal elements of the acts executed by the parties, on the enforcement bodies, on the enforcement court and on other participants, in order to determine their specific characters and to identify the effects they produce. The suspension of enforcement is an institution with multiple valences, as it can be determined by different reasons. In other words, the suspension has different sources, which prints different characteristics: in some cases, the suspension operates *ope legis*, in others, it is the result of the will of the parties or of one party, and in other cases it has a judicious character, being pronounced by the judge at the request of the interested party or parties, as a result of a analysis involving both formal and substantial criteria. Therefore, examining the issue of suspension of enforcement is important for at least two perspectives: a practical matter, given the effects that the suspension produces in regard to performing the enforcement, being necessary to establish the conditions in which it operates and in particular the extent of the effects it produces; in terms of theory,

as an institution of procedural civil law which requires conceptualization and classifications expressed in such manner that the knowledge would be easier to achieve.

Given the foregoing facts, we aim in this study to accomplish a brief analysis, but as complete and effective as possible, of the types of enforcement suspension, based on their classification in cases of *ope legis* suspension (legal), voluntary and judicial (optional). We intend to establish, firstly, their applicability in relation to the procedural rules applicable to the procedural activity of enforcement and to determine the characteristics of each type of suspension separately. Nevertheless, we intend to evaluate a series of doctrinal and jurisprudential views in relation to the suspension of enforcement, bringing arguments in support of some of them and making, where casual, *de lege ferenda* proposals. Therefore, we shall make a brief presentation of the institutions presented and we shall seek to individualize the criteria of classification which makes possible understanding and analyzing the issues that we consider relevant in respect to each case of enforcement suspension.

The suspension of enforcement is one issue addressed consistently and carefully in the doctrine elaborated under both the previous Civil Procedure Code and the new Civil Procedure Code. Matters relating to the suspension of enforcement were analyzed and discussed both in courses or thesis, as well as in monographies dedicated, especially, to the opposition to enforcement or in articles written in regard to the issue of suspension. The authors' attention was concentrated mainly on the issue of judicial suspension of enforcement (optional suspension), taking into account the procedural characteristics of this category of suspension. Also, as we shall point out in the article,

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two currents of opinion that have been outlined concerning the extent of the effects of admitting the application of enforcement suspension, respectively if it has effects until the settlement of the suspension in first instance or until the opposition to enforcement is finally settled.

2. *Ope legis* suspension of enforcement

The law provides certain situations in which the enforcement can not continue because of the occurrence of certain impediments or incidents during the enforcement or of the need to perform acts of enforcement in compliance with the terms and conditions provided by the law. Thus, we identify two broad categories of causes for legal suspension of enforcement: those concerning the need to grant the debtor a period of time in order to achieve or willingly execute the obligation provided in the enforcement title and those which regard the occurrence of unforeseen situations which make the enforcement impossible to continue at least until other formalities would be fulfilled in this respect. Also, must be taken into consideration certain situations in which the law provides suspension cases to protect the debtor, namely to ensure his means of living or a decent living.

Thus, a first case of legal suspension of enforcement could be considered the one which regards the fulfillment of enforcement acts until the date set by the law in which the ordered debtor must execute its obligation (art. 668 CPC). The term prescribed by the law in this respect is prohibitive (delaying) for the creditor and for the enforcement officer, meaning that until its fulfillment, acts of enforcement on the debtor's assets could not be carried out. However, proceeding formalities can be brought out [e.g., in the procedure for enforcement of real estate, the enforcement officer may issue situation -minutes according to art. 829 par. (1) CPC and before the expiry of the 15 days term provided by art. 820 C.proc.civ, because it only determines the initiation of the sale, according to art. 835 CPC, not the pre-sale formalities]. The violation of the prohibition of carrying out enforcement activities within the period set by the law and which starts to run from the notification to the debtor, attracts their unconditional nullity (art. 176 point 6 CPC), which does not intervene *ope legis*, but only at the request of interested party [art. 185 par. (2) CPC], the procedural means provided by the law in this respect being the opposition to enforcement.

A similar situation is that of suspension of enforcement, for a period of six months, if the debtor is a public institution or authority and the enforcement can not start or continue due to the lack of funds (art. 2 and art. 3 of Ordinance no. 22/2002

on the payment obligations of public institutions, established by enforcement titles). The 6-month period begins on the date that the debtor has received notice to pay which is submitted by the competent body of enforcement, at the request of the creditor [art. 2, second sentence of O.G. no. 22/2002]. In case the public institutions do not fulfill their obligation to pay within this period, the creditor may request an enforcement under the Code of Civil Procedure and / or under other applicable legal provisions. The 6-month is a legal term and has prohibitive (delaying) nature [art. 185 par. (2) CPC], meaning that until its expiry it is forbidden to carry out acts of enforcement on the assets of the debtor – public institution or authority. However, the creditor and the debtor may agree on another period than the 6 months term, as well as on some other obligations set by the enforcement title (art. 5 of O.G. no. 22/2002). The 6-month term has effects only if the obligation can not be accomplished due to lack of funds. Where, for good reasons, the debtor institution can not fulfill its obligation within the six months required by law, it may request the court to grant, under the law, a period of grace and / or to set deadlines for payment by installments of this obligation [art. 6 para. (1) O.G. no. 22/2002]. In cases where the payment obligation is determined by final judgment, the debtor institution can apply for an additional grace period or for a payment by installment to the court which has pronounced the judgment [art. 6 para. (2) O.G. no. 22/2002]. If the payment obligation is determined by an enforcement title, other than a judgment, the application shall be settled by the competent enforcement court [art. 6 para. (3) O.G. no. 22/2002]¹.

Another case of legal suspension regards the enforcement procedures of money provided by court judgments covering the grant of rights of salary nature set for the public sector employees, which became effective until December 31, 2011 [art. 1 para. (2) O.U.G. no. 71/2009 on the payment of money provided in enforcement titles regarding rights of salary nature of public sector employees], until the terms of para. (1) art. 1 of the same law are fulfilled.

The Code of Civil Procedure regulates the following situations of legal suspension of enforcement occurred as a result of incidents during enforcement: the suspension of enforcement until the appointment of representatives or legal guardian of the debtor's heirs, if among them there are minors or persons under interdiction, or, where appropriate, until is appointed a special guardian under art. 688 par. (3) CPC; the suspension of enforcement for a period of 10 days from the date the debtor's successors accepting the succession were informed on the continuation of enforcement, where the death

¹ N.-H. Țiț, *Executarea silită, partea generală*, București: Hamangiu, 2016, pp. 260-261.

occurred after the commencement of the enforcement (art. 689 CPC); the suspension of issuing/distributing the price of the sale of the debtor's pursued assets, if the debtor or a third party guarantor submitted the money with special destination and proves that filed, within the legal term, an opposition to enforcement and it is opposing to the issue/distribution of money [art. 721 par. (4) CPC]; suspension of pursued movable goods, if the debtor is filing with special destination and makes opposition to enforcement [art. 751 par. (1) pt. 2 CPC]; suspension of the pursued mortgaged real estate which is subsequently alienated, if the acquirer, which is personally obliged for the mortgage, opposes to the sale of the mortgaged property if other assets remained mortgaged in the possession of the principal debtor [art. 817 par. (2) CPC]; suspension of pursued real estate property regarding which the seller has, under the law, legal mortgage and the right to request or declare rescission for failure to pay the price, if he has declared action in rescission during the enforcement or declares unilateral rescission or when the action in rescission for nonpayment of the price was brought prior the commencement of the forced pursuit, provided that it was noted in the land evidences [art. 841 par. (4) and (5) CPC]; suspension of payment of the claim or part of the contested claim, in case of an opposition against the proposed distribution [art. 876 par. (3) CPC]. Additional to these situations governed by the Code of Civil Procedure, we mention the case of suspension of enforcement against the professional debtor's estate in case of opening of insolvency proceedings [art. 75 para. (1) of Law no. 85/2014 on prevention procedures of insolvency and insolvency]².

The third category of situations is represented by cases of suspension which are based on the protection of the debtor, in order to grant his income for ensuring his and his family's needs, namely to ensure a home during the winter months. Thus, the Code of Civil Procedure provides the suspension of enforcement throughout garnishment, if it is imposed on amounts related to future salary rights, suspension operating for a period of three months from the establishment of garnishment [art. 781 par. (5) c) CPC]. If upon the same account are set up more garnishments, the period of three months in which payments of future salary rights are made is calculated only once, from the time of establishing the first garnishment [art. 781 par. (5) c) the second sentence CPC]. Regarding the other case, the law provides that direct real estate enforcement

(evacuation) is suspended on buildings used as home, between December 1st to March 1st [art. 896 par. (1) first sentence CPC]. However, evacuation could be carried out during this period if the creditor proves that, according to the housing legal provisions, he and his family have not an adequate home or that the debtor and his family have another suitable home where they could move immediately [art. 896 par. (1) second sentence], as well as the case in which the evacuees occupied abusively, *de facto*, without any title, the real estate in regard to whom the evacuation has been ordered because they endanger the relations of coexistence or disturb seriously the public peace.

3. The voluntary suspension of enforcement

The voluntary suspension of enforcement intervenes at the request of the creditor [art. 701 par. (2) CPC]. As an expression of the principle of availability, the creditor may require suspension at any time, this measure being ordered by the enforcement officer through dismissal. The enforcement officer could not refuse to take note of the suspension, as the text of the law does not confer him a right to assessment of the opportunity of the suspension, reported to the time that it occurred in the stage of enforcement or on other facts³. However, the suspension of the creditor's request can not affect the rights of others in the enforcement proceedings in relation to the provisions of art. 625 par. 1 C.proc. civ., on the principle of legality of enforcement. According to it, the enforcement is fulfilled in compliance with the law, the rights of other parties and other interested persons. For example, in the tender procedure regarding real estate, once the auction has been opened, the creditor can no longer require the suspension because it would affect the rights of tenderers who have paid the participation guarantee and submitted tenders in this regard (art. 844 par. 1 final sentence CPC). The suspension after this point would appear as an abuse of the right to dispose of enforcement activities (art. 12 par. 1 C. proc. civ.), for which, under his active role, the enforcement officer shall proceed with the auction and the creditor may file an opposition to enforcement⁴.

Even if the provisions of art. 701 par. 2 Civil Procedural Code refer to the creditor's request, it is not a request that he must motivate and upon which the enforcement officer must decide, analyzing the reasons given, but a manifestation of the will of the creditor, in regard to which the enforcement officer

² For details, see A. Tabacu, *Scurte considerații asupra actelor de executare silită în contextul insolvenței debitorului*, în *Romanian Review of Compulsory Execution*, no. 2/2014, pp. 79-89.

³ E. Hurubă, în I. Leș (coord.), *Tratat de drept procesual civil. Vol. II, Căile de atac, procedurile speciale, executarea silită, procesul civil internațional*, București, Universul Juridic, București, 2012, p. 568.

⁴ V. Bozeșan, *Suspendarea executării silite la cererea creditorului. Probleme și ipoteze practice*, disponibil la adresa <http://www.juridice.ro/432511/suspendarea-executarii-silite-la-cererea-creditorului-probleme-si-ipoteze-practice.html> (visited at 12.03.2016).

is obliged to take act thorough dismissal. By the dismissal of suspension, the enforcement officer will point out to the creditor, that if he do not request the resumption of enforcement within six months, obsolescence would operate. During voluntary suspension of enforcement, the obsolescence term runs, so that at the expiry of 6 months from the date of the dismissal's communication to the creditor, the obsolescence operates *ope legis*⁵. The term of obsolescence does not run if the creditor was not notified, in writing, that in order to continue the enforcement, it is necessary to file a request in this regard.

In regard to the formulation of the legal text analyzed (art. 701 par. 2 CPC), the declaration of intent in the sense of suspending the enforcement must be express and expressed in writing, through a request addressed to the enforcement officer, without being required, as noted above, that the request is motivated. Occurring at the creditor's request, voluntary suspension could not have tacit nature, meaning that it could not be deduced from certain acts of the creditor or from his failure to perform them⁶. If the creditor does not bring out an act or a necessary enforcement proceeding, which has been requested in writing by the enforcement officer, the obsolescence term starts to run, but it does not equate to a tacit manifestation of willingness of the creditor in the sense of suspending the trial.

In case there are several creditors pursuing the assets (whether as a result of procedural co-participation, whether as a result of the joinder of multiple enforcements), but only one or some of these request the suspension, the enforcement will continue in terms of the other creditors' enforcement titles. Nevertheless, if multiple requests of intervention were made by other creditors who hold an enforcement title, and the creditor pursuing the assets requests the suspension, the enforcement will continue under the title of interveners, based on the provisions of art. 695 par. 1 C. proc. civ.⁷

4. Optional (judicial) suspension of enforcement

The optional (judicial) suspension of enforcement may be requested by the debtor or by the interested person until de opposition of enforcement is settled, of another application of enforcement (including an action of common law

which would tend to abolish the enforcement title), until the settlement of an appeal against the judgment which it to be enforceable, respectively until the recusal request of the enforcement officer is resolved. Also, the optional suspension of pursuing real estate may be requested by the debtor under the terms that the enforcement court grants him with the possibility of fully paying the debt, including interest and costs of enforcement from the net income of his real estate, even unpursued, or from other income, for 6 months [art. 824 par. (1) CPC].

According to art. 719 par. (1) CPC, the competent court, at the request of the interested party, may suspend the enforcement, for good reasons, until the settlement of the opposition to enforcement or of other application on enforcement⁸. The suspension may be ordered, therefore, in a variety of procedural situations, not only within the settlement of the opposition on enforcement [for example in the event of a request for intervention under art. 692 par. (3) or art. 692 par. (6) CPC or if an action of common law is brought and if it tends to abolish the title of enforcement, according to art. 638 par. (2) CPC], the provisions of art. 719 representing the common law, where applicable, either for establishing the bail which the person requesting the must pay, or to establish procedural rules for handling the application for suspension.

The request for suspension of enforcement may be filed along with the opposition to enforcement or as a separate application [art. 719 par. (1) C.proc.civ final thesis], but, in all cases, it has the character of an incidental application [art. 30 para. (6) CPC], meaning that it can never be formulated as a main application⁹. If the request for suspension is filed as a main application, no pending before the competent court an opposition to enforcement, the application must be dismissed as inadmissible¹⁰, because, in all cases, the effects of the request for suspension are temporary, producing effects until the settlement of the opposition to enforcement, as we shall point out later. The request for suspension must be motivated, not being enough the simple reference to the grounds of the enforcement's opposition because the suspension measure is based on reasons regarding the harm of the applicant's right if the enforcement would continue until the settlement of the opposition. Moreover, if in the request for suspension would be invoked the same reasons as those underlying the opposition, the judge would be incompatible with settling the suspension, according to art. 42 para. (1)

⁵ G. Boroï, M. Stancu, *Drept procesual civil*, ediția a 2-a, revizuită și adăugită, București: Hamangiu, 2015, p. 1007.

⁶ For the opposite opinion, see E. Oprina, I. Gârbuleț, *Tratat teoretic și practic de executare silită, Vol. I, teoria generală și procedurile execuționale*, București: Universul Juridic, 2013, p. 467.

⁷ V. Bozeșan, *Suspendarea executării silite la cererea creditorului. Probleme și ipoteze practice*, loc. cit.

⁸ Regarding this type of optional suspension, see O. Popescu, C. Dobre, *Suspendarea executării silite în condițiile art. 718 C. pr. civ.*, in *Romanian Review of Compulsory Execution*, no. 1/2014, pp. 94-108.

⁹ N.-H. Țiț, *op. cit.*, p. 263.

¹⁰ E. Oprina, I. Gârbuleț, *Tratat...*, p. 500-501.

pt. 1 CPC Or, as we shall point out later, the request for suspension shall be settled by the same panel that settles the enforcement opposition, aspect considered by the legislator also in regard the fact that the judgment which the court would pronounce concerning the suspension is different from the one which implies settling the substantive enforcement opposition: in the suspension, the judge will only make an analysis of the appearance of law and it may take into account facts regarding the effects that the continuation of challenged enforcement would have on the heritage or even on the personal situation of the applicant, but also the interests of the creditor or the situation the pursued assets.

Given his character essentially incidental, the application for suspending the enforcement will always be settled by the court which settles the opposition to enforcement (as determined by the rules laid down in art. 714 CPC), according to art. 123 par. (1) CPC. Regarding the panel that resolves the suspension request, this is the same that settles the opposition to enforcement both when requesting the suspension until the settlement of the opposition to enforcement and when it is requested the temporary suspension of enforcement¹¹.

The application for suspension of enforcement must meet the formal requirements of art. 148 et seq. CPC on requests addressed to the court. The application shall be stamped with 50 lei, according to art. 10 para. (1) b) the O.U.G. no. 80/2013. As extrinsic requirement specific to this procedure, the law requires the applicant requesting the suspension to pay a bail, determined by the value of the opposition's object¹². The determination of the value of the bail is made in relation to the value of the enforcement opposition and not necessarily by reference to the value of the enforcement itself or the amount to the claim enforced. Therefore, it will consider what is requested through the opposition to enforcement, if it refers to the enforcement itself or to an asset, if it concerns a procedural act which has been fulfilled or the enforcement officer's refusal of fulfilling according to the law.

The bail should not be confused with the judicial stamp tax, so that the applicant's obligation to pay it is not subject to the legal provisions on exemption or granting of privileges on payment the

judicial stamp tax or the granting of legal aid [art. 6 letter d) the O.U.G. no. 51/2008 on legal aid in civil matters relate exclusively to judicial stamp taxes and not to bail]. This is because if the request for suspension is admitted, the bail would remain unavailable until the settlement of the opposition to enforcement and if it is rejected, the bail will be used to cover the damage caused by the delay in enforcement or the claim from the enforcement title (but not the costs of enforcement). If the request for suspension is rejected, the court automatically refunds the bail (art. 1064 par. 4 CPC)¹³.

The law provides certain situations when the bail is not mandatory, but the suspension of enforcement is mandatory. According to art. 719 par. (4) CPC these are: the judgment or the document which is enforced is not, by law, enforceable¹⁴; the document which is enforced was declared false by a judgment given in the first instance; the debtor proves through an authentic document that he has obtained from the creditor a postponement or, where appropriate, has received a payment deadline. Besides these situations, no bail is required if enforcement costs are disputed, according to art. 670 par. (4) final thesis CPC. Also, bail is not required if the suspension application is submitted by a public institution or authority under art. 7 of O.G. no. 22/2002.

A special case is regulated by art. 1045 CPC in the special procedure of evacuation from buildings used or occupied without right. In this case, as a general rule, the enforcement of the judgment can not be suspended. Exceptionally, in case of evacuation for nonpayment of rent or lease, the court may suspend the enforcement in settling the opposition to enforcement or in the appeal exercised by the defendant, only if he submits in cash to the creditor, the rent or lease to which he had been forced to, the amount established to ensure rent or lease rates due to the request for suspension, as well as the rent or lease rates which would become due during the trial. The suspension shall cease *ope legis* if, at the deadline until which the rent or the lease had been covered, the debtor does not file and does not submit the amount to be established by the enforcement court to cover the new rates.

The request for suspension is stamped with a judicial stamp tax of 50 lei, according to art. 10 para. (1) b) the O.U.G. no. 80/2013. The stamp tax must

¹¹ Although, if the request of suspension is admitted on the ground of art. 719 alin. (4) pct. 1 CPC, the judge becomes incompatible to substantively settle the opposition to enforcement, according to art. 42 alin. (1) pct. 1 CPC.

¹² According to art. 719 alin. (2) CPC, the bail is determined taking into account the following valorical limits:

- 10%, if the value is not more than 10.000 lei;
- 1.000 lei plus 5% for what exceeds 10.000 lei;
- 5.500 lei plus 1% for what exceeds 100.000 lei;
- 14.500 lei plus 0,1% for what exceeds 1.000.000 lei.

If the object of the opposition cannot be evaluated pecuniary, the bail is 1.000 lei, except the cases in which the law provides otherwise [art. 719 alin. (3) CPC].

¹³ N.-H. Țiț, *op. cit.*, pp. 264-265.

¹⁴ In this case, the judge becomes incompatible to solve the opposition to enforcement, according to art. 42 par. (1) CPC. For details, see N.-H. Țiț, *Considerations with Respect to the Jurisdiction and the Structure of the Court invested with the Application of Suspending the Legal Enforcement in the New Code of Civil Procedure*, in AGORA International Journal of Juridical Sciences, Vol. 7, No. 3/2013, pp. 186-191.

be paid in all cases requiring suspension, including in those covered by art. 719 par. (4) CPC, because in these cases the law provides that bail is not necessary and do not provide an exemption from stamp tax payment.

The request for suspension shall be always settled in adversarial proceedings, summoning the parties, in a short term, even before the deadline set for settling the opposition. The dismissal which solves the suspension request is subject only to appeal separately to the dismissal that settled the opposition to enforcement. The term for appeal is 5 days and it runs from the pronouncement for the present party, namely from the communication for the absent party [art. 719 par. (6) CPC]. In case the request for the suspension is admitted, the decision is communicated automatically, immediately to the enforcement officer, so he would not carry out other acts of enforcement.

Regarding the effects that are produced by the dismissal of admitting the application of suspension, art. 719 CPC is equivocal, stating only that the competent court may order suspension of enforcement until settling the opposition to enforcement. The question is whether the text refers to settling the opposition to enforcement in first instance or settling the opposition to enforcement through a final settlement. The problem arises when the application for suspension of enforcement is admitted, but afterwards the first court rejects the opposition to enforcement. In one opinion, the suspension will have effects in this case, pending the final settlement of the opposition¹⁵. In other words, even if the opposition has been rejected in the first instance, the debtor would still benefit from the effects of the suspension of enforcement pending the resolution of the appeal filed against the judgment dismissing the opposition to enforcement.

In another opinion, with which we agree, the suspension takes effect only until settling the opposition in first instance, since the court's dismissal rejecting the opposition is enforceable [art. 651 par. (4) C.proc.civ]¹⁶. To benefit for the effect of suspension until the final settlement of the opposition, meaning even during the appeal, the interested party will have to submit an application of suspension of the provisional dismissal of rejecting the opposition to enforcement, under art. 450 CPC¹⁷. In case of admitting the request for suspension, and subsequently, the opposition by the first instance, the enforcement cannot be continued until the final resolution of the opposition, due to the

enforceable nature of the judgment of admitting the opposition. If this solution is final, the enforcement acts performed on the day of resolving the request for suspension, even provisional, are abolished by the effect of the law as a result of admitting the request for suspension and the enforcement opposition [art. 701 par. (4) CPC].

If the pursued assets are subject of destruction, deterioration, alteration or impairment, by dismissal, the competent court may order only the distribution of the price obtained from valorizing these goods [art. 719 par. (5) CPC].

The suspension of enforcement does not affect the obligations of the third party withheld in the garnishment regarding the amounts and the assets garnished. Therefore, according to art. 784 par. (1) CPC, once the notification of garnishment is communicated to the third party withheld all amounts are frozen and the assets garnished. From garnishment until full payment of the obligations under the enforcement title, including during the suspension of the enforcement through garnishment, the third party withheld will not make any further payments or other transactions that would diminish the goods seized, unless the law provides otherwise. In other words, the suspension of enforcement does not affect the amounts and assets seized and submitted to the enforcement officer, nor those seized, but still not submitted to the enforcement officer, the latter remaining frozen until the end of the suspension. Regarding the sums and assets owed to the debtor by third party withheld after suspension, they are not frozen and can be issued to the debtor because subsequently to the suspension of enforcement cannot be performed any act of enforcement in order to achieve the debt. Therefore, are suspended not only the submitted amounts or the property owed to the debtor by third party withheld to the enforcement officer, but even their unavailability, with the consequence that they should be released to the debtor¹⁸.

The law provides the possibility of filing a request of temporarily suspension of enforcement¹⁹, which is effective only until the settlement of the suspension made in the enforcement opposition [art. 719 par. (7) CPC]²⁰. In order to file such an application, the appellant must demonstrate an urgent situation (implying that he must invoke and prove special grounds, distinct from those on which the opposition to enforcement is based on) and he must pay the bail established according to art. 719

¹⁵ E. Oprina, I. Gârbuleț, *op. cit.*, p. 499.

¹⁶ O. Popescu, C. Dobre, *op. cit.*, p. 106, D. M. Gavriș, în: G. Boroi (coord.), *Noul Cod de procedură civilă*, Vol. II, București: Hamangiu, 2013, p. 211.

¹⁷ G. Boroi, M. Stancu, *op. cit.*, p. 1014.

¹⁸ O. Popescu, C. Dobre, *op. cit.*, pp. 107-108.

¹⁹ For the evolution of the legislation regarding the provisional suspension, see Șt. I. Lucaciuc, *Contestația la executare în reglementarea noului Cod de procedură civilă*, București: Hamangiu, 2014, pp. 318-321.

²⁰ Regarding the period of the provisional suspension, see E. Oprina, I. Gârbuleț, *op. cit.*, pp. 499-500.

par. (2) or (3) C.proc.civ²¹. Also, to request temporary suspension of enforcement, it is necessary that the interested party files a request for suspension in the enforcement opposition, according to art. 719 par. (1) CPC, as it is not possible to formulate main requests of suspension, without any enforcement opposition pending or other application regarding the enforcement or the validity of the enforcement title²². The request for provisional suspension shall be settled by the panel entrusted with settling the opposition to enforcement in a summary procedure, without summoning the parties, in the council chamber, thorough dismissal which is not subject to any appeal. Regardless of the decision on the demand for provisional suspension, the paid bail remains unavailable and will be deducted from the bail payable for processing the application for suspension of enforcement filed according to art. 719 par. (1) CPC.

The law provides special situations of optional (judicial) suspension of the enforcement regarding judgments subject to appeal. We refer to the suspension of the judgment settled in first instance, which is provisionally enforceable by the court of appeal, pending the resolution of the appeal (art. 450 CPC); the suspension of enforcement of the judgment given in the appeal pending the resolution of the recourse (art. 484 para. 2-7 CPC); the suspension of the final judgments contested with dispute in annulment (art. 507 CPC) or revision (art. 512 CPC).

Nevertheless, the optional suspension of enforcement is provided by the law in the event of a recusal request of the enforcement officer [art. 653 par. (2) CPC]²³. Thus, a recusal request does not suspend the enforcement *ope legis*, the enforcement court may dispose justifiably the suspension pending the resolution of the recusal request. The suspension will be decided by dismissal that is not subject to appeal. In the absence of any provision providing the contrary, the application for suspension until the settlement of the recusal will be settled by summoning the parties. The law requires paying in advance a bail with a fixed value of 1,000 lei, and if the amount of the claim under the enforceable title does not exceed 1,000 lei, the bail will be 10% of the claim amount. Since the text of the law provides that the bail is paid in advance, its proof should be submitted along with the application for suspending the enforcement. The application shall be stamped with a stamp tax of 50 lei, according to art. 10 para. (1) b) the O.U.G. no. 80/2013, the text of the law being applicable to any request for suspension regardless its basis or the procedural framework in which it would be filed. The paid bail will be

refunded in accordance to art. 1064 CPC, the special provisions of art. 720 par. (6) CPC being inapplicable in case a request for recusal of an enforcement officer.

Therefore, if the application for suspension of enforcement pending the resolution of the recusal application is rejected, the court will automatically refund the bail, according to art. 1064 par. (3) CPC. Also, the bail will be refunded *ex officio* through the dismissal of admitting the application for recusal, given that it is not subject to appeal. If the request for suspension is admitted, but the recusal request is rejected, the bail will be refunded only if the affected party by the suspension measure does not make any request for payment of damages in 30 days from the date when the dismissal of rejecting the recusal request has remained final [the dismissal in first instance is subject to appeal within 5 days from the notification under art. 10 para. (4) of Law no. 188/2000], respectively if he expressly states that he does not seek to oblige the person who has submitted it to pay the damages caused by suspension pending the resolution of the request for recusal [art. 1064 par. (2) CPC].

Another case of voluntary suspension of judgment is regulated by art. 824 CPC in regard to real estate pursuit. According to the text of law, within 10 days from the communication of the dismissal of granting the proceedings, the debtor may request to the enforcement court to accept that the entire payment of the debt, including interest and costs of enforcement, to be made from the net income of his real estate, even unpursued, or other income, during 6 months. The application is settled by summoning the parties, in the council chamber, through final judgment. In case the request of the debtor is admitted, the court would suspend the pursuit of real estate, the dismissal being communicated to the enforcement officer [art. 824 par. (2) CPC]. The suspension of the pursuit will be communicated by the care of the enforcement officer to the tenants and the lease-holders or other debtors who, from the communication date, will submit all amounts due in the future at the unity prescribed by the law and will file the receipt to the enforcement officer, the affected income serving exclusively to cover the pursuer creditor's claim [art. 824 par. (3) and (4) CPC]. Unlike other forms of voluntary suspension, the one under art. 824 CPC can be established for a fixed term according to law, of 6 months, following the enforcement to continue *ex officio* if at the end of that period have not been fully covered the main claim, the accessories and the enforcement expenses. For good reasons, the creditor may request the court to resume the pursuit

²¹ Nevertheless, the party has to pay the judicial stamp tax of 50 lei, according to art. 10 alin. (1) lit. b) of O.U.G. nr. 80/2013, different from the stamp tax due to the request of enforcement suspension until settling the opposition to enforcement.

²² E. Oprina, I. Gărbuleț, *op. cit.*, p. 500.

²³ N.-H. Țiț, *op. cit.*, pp. 268-269.

before the expiry of the six months term, the demand for resumption of enforcement being settled in the same manner as the request for suspension [art. 824 par. (5) CPC]²⁴.

Regardless the situation of suspension of enforcement, after its cessation, the enforcement officer, at the request of the interested party shall order the continuation of the enforcement, as far as the acts of enforcement or the enforcement itself had not been abolished by the court or it has not ceased as an effect of the law [art. 701 par. (5) CPC]. The continuation of the enforcement after the judicial suspension will not be, therefore, ex officio, but only on request, as a disposal act of the creditor. In the absence of such a request, the enforcement officer will ask the creditor, in writing, to clarify whether he persists in enforcement, from the communication of the request runs the term of obsolescence, according to art. 697 par. (1) CPC²⁵. Exceptionally, in case of the suspension of real estate pursuit under article 824 CPC, since it is decided by the court for a period set by the law (6 months), at the expiry of the term, the enforcement officer continues the pursuit ex officio, if the debt is not entirely paid, as well as the interest and the costs of enforcement. If the enforcement has been resumed after suspension, a new notice to the debtor is not necessary, but only in case of renewal after obsolescence, according to art. 699 par. (2) C.proc.civ.²⁶. Taking into consideration that the text of law provides that the enforcement officer will continue the enforcement at the request of the interested party, means that such a request can be filed not only by the creditor, but also by other people, such as a creditor intervener who has an

enforcement title, given that he may require to carry out acts of enforcement, according to art. 695 par. (1) C.proc.civ final thesis²⁷. However, in what concerns the voluntary suspension of the enforcement at the creditor's request, we consider that only he could file such a request, otherwise the possibility conferred by law would be purposeless.

4. Conclusions

The analysis of the situations of suspension of enforcement is of particular importance in the context of civil enforcement law, especially given the effects that this incident during the enforcement procedure has in practice. This is the reason why, on the regulation included in the Civil Procedure Code were made many interpretations and comments. From a theoretical perspective, it is necessary to correct classify the suspension situations, in order to identify the characteristic elements of each case. From a practical perspective, the distinction is necessary both to assess situations in which suspension operates and the reasons why it is ordered, but also to properly identify the effects it produces in relation to the acts of enforcement or other incidents related to enforcement, such as the postponement or obsolescence. In conclusion, the correct determination of the procedural characteristics of each type of suspension is important both theoretically and practically and certain differences of interpretation can be eliminated and wrong tendencies in implementing the legal texts can be corrected.

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²⁴ N.-H. Țiț, *op. cit.*, p. 269.

²⁵ M. Dinu, R. Stanciu, *Executarea silită în noul Cod de procedură civilă*, București: Hamangiu, 2015, p. 156.

²⁶ E. Oprina, I. Gârbuleț, *Tratat...*, p. 467.

²⁷ M. Dinu, R. Stanciu, *op. cit.*, p. 156.