THE LEGAL REGIME OF THE DECISIONS PRONOUNCED IN THE APPEAL IN THE INTEREST OF THE LAW AND THEIR ROLE AS SOURCE OF LAW - CASE STUDIES

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Abstract

Currently, in the Romanian legal system, the judge interprets and adapts the law to the concrete realities, remedies the normative gaps and discovers remedies that can inspire the legislator. In this regard, the role of the judicial precedent materialised in the decisions of the High Court of Cassation and Justice, pronounced in the appeal in the interest of the law, must be emphasised, because these decisions create general rules for interpreting and applying legal provisions that generate non-unitary practices. The legal doctrine is unanimous in considering that the decisions pronounced in the appeal in the interest of the law are sources of law. Of course, there are also differences of opinion in this respect, but insignificant, in the sense that they are considered by some authors as main sources, and by other authors as secondary sources of law, as long as the character of source of law is recognized.

Keywords: *judicial precedent, appeal in the interest of the law, source of law, High Court of Cassation and Justice, judge, law.*

1. Introduction

The debate on the role of jurisprudence as a source of law is an old one and continues to be a controversial topic in the legal field. This is due, in part, to the fact that case law can play an important role in interpreting and applying the law in situations where legislative rules are vague or incomplete. On the one hand, the inevitable insufficiency of the written law and the need to adapt and update it to keep up with the changes in society is recognised[1]. Jurisprudence can help supplement and expand the interpretation of laws in accordance with social and technological developments. However, there are also concerns about the role of jurisprudence in the separation of powers framework[2]. In many states, legislative power is vested exclusively in Parliament, and some argue that accepting case law as a source of law could undermine this legislative authority and jeopardise the principle of separation of powers in the state. In this sense, there are fears that judges could become de facto „legislators", interpreting, and applying the law in ways that could be considered legislative.

The role of jurisprudence as a source of law is a complex and controversial subject that raises important questions about the balance of power in the state and how laws are interpreted and applied in practice. Although jurisprudence can bring necessary clarifications and adaptations to social developments, it is important to maintain a balance between legislative and judicial authority in a democratic society.

In the Romanian legal system, the judge plays an important role in interpreting and applying the law in accordance with the concrete realities of the case he is examining. Although the written law is the main instrument for regulating legal relations, there are situations in which it can be ambiguous or incomplete. In such cases, the judge has the authority to interpret and adapt the law to fit the specific circumstances of his case. Romanian judges can remedy normative gaps by extensive or analogical interpretation of the law or by applying general principles of law. They can also identify creative and inspired solutions to the legal problems they face, even if there is no explicit regulation in law for them. Therefore, in Romanian judicial practice, judges have a significant role in the development and evolution of law, contributing to its adaptation to social, economic, and technological changes. However, it is important to maintain a balance between legislative and judicial authority, so that the interpretation and adaptation of the law is done in accordance with the principles of the rule of law and respecting the separation of powers in the state.

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[1] E.E. Ștefan, *Contribuția practicii Curții Constituționale la posibila definire a aplicabilității revizuirii în contenciosul administrativ*, in Journal of Public Law no. 3/2013, pp. 82-83.

[2] E. Anghel, *The reconfiguration of the judge's role in the romano-germanic law system*, in Lex ET Scientia International Journal - Juridical Series LESIJ no. XX, vol. 1/2013, p. 65-72; E. Anghel, *Reflections on the juridical system*, in CKS-eBook, 2013, p. 470-476, *http://cks.univnt.ro/cks_2013/CKS_2013_Articles.html*.

Without referring to the obligation provided by art. 124 point 3 of the Romanian Constitution and art. 2 para. (1) CPP, according to which the judge is independent and obeys only the law, without being bound by the court decisions pronounced in other similar cases by other judges or even by themselves, it is worth noting the role of the judge to cover, through the pronounced decisions, the possible legislative gaps, as well as to create proposals *de lege ferenda* in the process of interpretation and application of the law, collaborating with the legislative power, in the spirit of the principle of separation of powers in the state, to harmonise the legislation with social realities.

In this context, the role of the judicial precedent materialised in the HCCJ decisions pronounced during the appeal in the interest of the law, must be emphasised, because through these decisions, general rules for the interpretation and application of the legal provisions that generate non-unitary practices are created.[3]

2. Historical view on the appeal in the interest of the law

The appeal in the interest of the law was institutionalised in France by art. 3 of the Law of December 1, 1790. The reason for this appeal was to ensure the Court of Cassation's role of maintaining respect for the law, imposing it on all jurisdictions and establishing the unity of jurisprudence, a role that would not have been fulfilled if his action had been entirely subordinated to the action and interests of the parties concerned[4].

In our legislation, the appeal in the interest of the law was introduced by art. 13 of the Law on the Court of Cassation which entered into force in 1851. The appeal in the interest of the law was repealed by Decree no. 132 of April 2, 1949, for judicial organisation. This normative act repealed the entire chapter of special appeals and replaced them with the „request for correction". This extraordinary appeal was modified by finally receiving, by Decree no. 471/1957, the name „supervision appeal".

The doctrine of the time defined the appeal in supervision as an extraordinary way of appeal through which the general prosecutor of the Romanian People's Republic refers the Supreme Court to examine some final decisions in the supervision procedure[5].

The declared purpose of the supervisory appeal was to exercise the right of supervision over the judicial activity regarding the final judgments of any ordinary or special court.

Legal doctrine attributed to this extraordinary avenue of attack the characteristics of a „socialist type" institution with the aim of contributing to the consolidation and ensuring popular legality by abolishing those final decisions of any court, ordinary or special, decisions that were judged to be groundless or illegal.

Also, this appeal considered how both the former Supreme Court of the RPR and the General Prosecutor of the RPR exercised, under the law, the task outlined in the Constitution, namely, to supervise the judicial activity of all courts. The RPR Constitution of September 27, 1952 contained the following provisions: art. 72 "The Supreme Court of the Romanian People's Republic supervises the judicial activity of all courts in the Romanian People's Republic"; Art. 73 „The Prosecutor General of the People's Republic of Romania exercises superior supervision of the observance of laws by ministries and other central bodies, by local bodies of power and state administration, as well as by civil servants and other citizens".

The changes initiated by the socialist legislator came to replace the old regulations according to which the task of supervising the judicial activity of the courts was assigned to the former Supreme Court of Justice according to the provisions established by the Constitution of the RPR of April 13, 1948. According to the same constitutional provisions, the role of the prosecutor was to oversee compliance with criminal laws. The application of this constitutional principle was regulated by the Law on judicial organisation, respectively Law no. 341 of December 5, 1947. Later, by Decree 1/1948, along with the right of the first president of the Supreme Court, the right of the Prosecutor General of the Romanian People's Republic to request, through an extraordinary appeal, the annulment of final and irrevocable judicial decisions or acts contrary to the law was regulated[6].

As it was also shown, the appeal in the interest of the law was initially called „request for correction" (the amendments brought to the Code of Civil Procedure by Decree no. 132/1952). The rectification request deadline was replaced by the supervision appeal deadline by Law no. 2 of April 6, 1956, regarding the amendment of Law

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[3] E. Anghel, *Judicial precedent, a law source*, in Lex ET Scientia International Journal - Juridical Series LESIJ no. XXIV, vol. 2/2017, p. 68-76.

[4] V.M. Ciobanu, *Tratat de procedură civilă*, vol. II, Naţional Publishing House, Bucharest, 1997, p. 457-461 *apud* L.G. Gheorghiu, *Recursul în interesul legii – izvor de drept. Aplicarea deciziilor interpretative în timp*, Curentul Juridic Journal no. 3-4, 2006.

[5] G. Porumb, *Tratat de procedură civilă comentat şi adnotat*, vol. II, Scientific Publishing House, Bucharest, 1962, p. 112.

[6] Art. 33 of Decree no. 1 of April 22, 1948, published in Official Gazette no. 95/1948.

no. 5/1952, being taken over by the provisions of the Civil Procedure Code through the amendments brought to it by Decree 471 of September 30, 1957.

The appeal in supervision as it was regulated by Decree 470 of December 5, 1958, was analysed by the doctrine through the prism of the differences compared to the previous regulatory mode as well as through the prism of the particularities that this extraordinary way of attack had.

First, it was shown that the appeal in supervision is an extraordinary way of attack that can be exercised by a single body, namely the Prosecutor General of the RPR who had both the task and the responsibility of the superior supervision of compliance with legality.

Secondly, the General Prosecutor of the RPR could intervene when the cycle of the two levels of jurisdiction was closed, in other words, only final court decisions could be re-examined by way of supervision.

Thirdly, the right of the General Prosecutor of the RPR through the prism of the provisions of Decree no. 470/1958 became an exclusive right.

Fourthly, the supervisory appeal was not mandatory for the supervisory body, but it could exercise it when it found that the mistakes committed were essential, so that it is necessary to abolish the decision that was the subject of the referral (the bodies of the prosecution, of the Ministry of Justice as well as any interested person could petition the General Prosecutor asking him to exercise his right of supervision).

Fifthly, the final decisions did not enjoy absolute res judicata authority, being considered by the doctrine of the time as an interest cultivated by the „dominant exploiting classes".

Judicial Organization Law no. 58/1968 and Decree no. 27/1973 established a new name, namely that of extraordinary appeal. The extraordinary appeal could be introduced only by the general prosecutor, within 1 year of the decision becoming final, for the essential violation of the law or the manifest groundlessness of the contested decision[7].

Law no. 59/1993 for the amendment of the Civil Procedure Code, the Family Code, the Administrative Litigation Law no. 29/1990, and Law no. 94/1992 regarding the organisation and functioning of the Court of Accounts of Romania reintroduced the appeal in the interest of the law, it being regulated by the provisions of art. 329 Civil Procedure Code.

The Romanian legislator also fluctuated in the post-December period in the formulation of the text of art. 329 of the Code of Civil Procedure, in the sense that it, the text, underwent repeated changes.

In its current form, art. 329 CPC has the following content: *„In order to ensure the uniform interpretation and application of the law by all courts, the general prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice, ex officio or at the request the Minister of Justice, the governing board of the High Court of Cassation and Justice, the governing boards of the appeal courts, as well as the People's Advocate have the duty to ask the High Court of Cassation and Justice to rule on legal issues that have been resolved differently by the courts judges".*

The decisions by which referrals are resolved are pronounced by the HCCJ United Sections and are published in the Official Gazette of Romania, Part I.

3. The appeal in the interest of the law - source or source of the right

The solutions are pronounced only in the interest of the law, they have no effect on the judicial decisions examined nor about the parties in those processes. The resolution given to the legal issues tried is mandatory for the courts. In essence, the appeal in the interest of the law has become an extraordinary way of attack designed to ensure the uniform interpretation and application of the law.

According to the legal provisions (art. 471 *et seq.* CPP and art. 516 *et seq.* CPC), the appeal in the interest of the law is not an appeal that has direct effects on the parties involved in a process. The main purpose of the appeal in the interest of the law is to ensure the uniform interpretation and application of substantive and procedural laws throughout the country. Therefore, when an appeal is brought in the interest of law, the supreme court has the right and responsibility to give a clear and uniform interpretation of the law in question. Decisions made following appeals in the interest of the law are important for establishing case law and for ensuring consistency and predictability in the application of the law. We believe that the legal nature of the appeal in the interest of the law does not result only from the criminal and civil procedural provisions that enshrine it. As I have shown, in accordance with the provisions of art. 126 para. (3) of the Constitution „The High

[7] G. Boroi, D. Rădescu, *Codul de Procedură Civilă – comentat şi adnotat*, ALL Publishing House, Bucharest 1994, p. 594.

Court of Cassation and Justice ensures the uniform interpretation and application of the law by the other courts, according to its competence."

The decisions pronounced in the appeal procedure in the interest of the law represent the main way by which the supreme court fulfils the constitutional attribution of ensuring the uniform interpretation and application of the law. Therefore, the appeal in the interest of the law is not only a civil and criminal procedural institution, but, at the same time, it is an institution that has its legal foundation in the constitutional norm mentioned above.

The constitutional nature of the appeal in the interest of the law has two important consequences.

The first consequence refers to the legislator's obligation to regulate in the civil and criminal procedure the legal instrument by which the High Court of Cassation and Justice can fulfil its constitutional attribute of ensuring the uniform interpretation and application of laws by all courts. In this sense, the legislator has two possibilities: the first would be to regulate the exclusive competence of the supreme court to resolve all appeals, and the second, to keep the currently regulated procedure of the appeal in the interest of the law. The constitutional provision contained in art. 126 para. (3) of the Constitution also represents a guarantee of the fundamental law. Given the principle of conformity of all law with constitutional norms, the legislator cannot regulate the material competence of the supreme court without also establishing the procedural instrument by which it ensures the uniform interpretation and application of laws by all courts.

The second consequence refers to the necessity of conformity of the decisions pronounced in this procedure with the constitutional norms. The HCCJ decisions must be strictly limited to the interpretation of the law. The supreme court cannot complete, modify, or abrogate the rules contained in the law. Otherwise, the principle of separation and balance of powers in the state, explicitly enshrined in the provisions of art. 1 para. (4) of the Constitution, because the court would exceed the limits of judicial power and would manifest itself as a legislative authority. The rule of conformity with the constitutional norms also considers the other provisions of the Constitution.

The decisions of the High Court of Cassation and Justice, by which appeals are resolved in the interest of the law, are binding and are published in the Official Gazette of Romania, Part I, being also brought to the attention of the Ministry of Justice. The unified interpretation and application of legal issues is pronounced only in the interest of the law, it has no effect on the court decisions that were pronounced differently in the matter under consideration, nor about the parties in the trial. The appeal procedure in the interest of the law does not resolve the case on its merits. The parties do not participate in judging the appeal in the interest of the law, and the procedure for solving the problem that generated the appeal in the interest of the law does not meet the features of a trial. According to the provisions of art. 471 *et seq.* CPP and art. 516 *et seq.* CPC, the solution given to the legal issues tried is mandatory for the courts. Therefore, according to the provisions of domestic law, the resolution given by the High Court of Cassation and Justice to the legal issues resolved by the decision given in the interest of the law are mandatory to be followed by the courts. The decision pronounced in the resolution of the appeal in the interest of the law is part of the category of *„norms" of domestic law, so it falls under the category of „provisions […] of domestic law*" referred to in art. 148 para. (2) from the Constitution.

The question arises whether the decisions pronounced by the supreme court in this procedure are formal sources of law. Constantly in specialised literature, the notion of the source of law is defined as „the forms of expression of legal norms that are determined by the way they are enacted or sanctioned by the state"[8]. In the light of this opinion, the decisions pronounced by the High Court of Cassation and Justice cannot be considered sources of law because they do not contain legal norms. Moreover, in our legal system, jurisprudence is not a formal source of law. However, the law stipulates the binding nature of these decisions. The courts must comply with the interpretation of the law made by the supreme court, otherwise, a judgment pronounced in violation of the solutions established by the decisions pronounced in the appeal procedure in the interest of the law, being illegal, with all the consequences arising from this. In this context, specialised literature sometimes distinguishes between the sources of law and the sources of law[9]. We appreciate that this discussion in the specialised literature does not make a clear differentiation because the two notions, that of „source" and that of „source", lead to the same finality, namely that the decisions pronounced by HCCJ in appeal in the interest of the law

[8] I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, C.H. Beck Publishing House, Bucharest, 2003, vol. I, p. 26.

[9] In the doctrine, jurisprudence is analysed, as a source of administrative law. See in this sense, E.E. Ștefan, *Administrative law Part I.*, IVth edition, Revised and added, Universul Juridic Publishing House, Bucharest, 2023, pp.109-111.

interpreting the analysed normative act with a binding character shapes social relations in the sense of the interpretation offered to that normative act.

4. Case studies

In the light of what has been stated, we propose to study some decisions pronounced on appeal in the interest of the law, which are both novel and of particular importance in the process of interpretation and uniform application of the provisions of the Civil Code, the Code of Civil Procedure as well as the Criminal Code.

a. The governing board of the CA Bucharest notified the High Court of Cassation and Justice with the resolution of the appeal in the interest of the law aimed at the interpretation and application of the provisions of art. 253 para. (1) lit. c) CC and art. 94-point 1 letter h) and k) and art. 95 point 1 CPC, the meaning of establishing the material competence to resolve cases with the object of requests to establish the illegal character of the act that affects non-patrimonial rights, requests based on the provisions of art. 253 para. (1) lit. c) CC, when they are formulated simultaneously with requests based on the provisions of art. 253 para. (4) CC to grant compensation for the non-patrimonial damage caused that does not exceed the value of 200,000 lei inclusive.

The legal provisions subject to interpretation were: art. 253 CC regarding means of defense „(1) The natural person whose non-patrimonial rights have been violated or threatened may at any time ask the court: (...) c) to ascertain the illegal nature of the committed act. , if the disorder it caused survived. (4) Also, the injured person can ask for compensation or patrimonial reparation for the damage, even moral, that was caused to him. him, if the injury is attributable to the author of the prejudicial act. In these cases, the right to action is subject to the limitation period."; Art. 94 CPC, regarding the material competence of the Court „(...) h) requests regarding obligations to do or not to do assessable in money, regardless of its contractual or non-contractual source, except for those given by law in the jurisdiction of other courts; (...) k) any other claims evaluable in money up to 200,000 lei inclusive, regardless of the quality of the parties, professionals or non-professionals" and the provisions of art. 95 CPC regarding the substantive jurisdiction of the court "Courts judge: 1. in the first instance, all requests that are not given by law in the jurisdiction of other courts".

By dec. no. 1/13.03.2023[10], HCCJ decided that in the interpretation and uniform application of the provisions of art. 253 para. (1) lit. c) CC and art. 94-point 1 letter h) and k) and art. 95 point 1 CPC, the tribunal is the materially competent court regarding the settlement of cases with the object of requests to establish the illegal character of the act that affects non-patrimonial rights, requests based on the provisions of art. 253 para. (1) lit. c) CC, when they are formulated simultaneously with requests based on the provisions of art. 253 para. (4) CC to grant compensation for the non-patrimonial damage caused that does not exceed the value of 200,000 lei inclusive.

To rule in this way, the court found that it is necessary to clarify the following aspects with priority:

A first aspect takes into account the relationship between the end of the claim with the object of ascertaining the illegality of the deed, on the one hand, and the award of compensation to cover the non-pecuniary damage caused, on the other hand, *i.e.*, if the claim with the object of ascertaining the illegal nature of the deed that affects a non-patrimonial right, based on the provisions of art. 253 para. (1) lit. c) CC, has the nature of an autonomous claim, distinct from others, whose object is the payment of compensation for moral damages, based on the provisions of art. 253 para. (4) CC or represents only a species of tortious civil liability action regulated by art. 1349 CC, which cannot be dissociated from the compensations requested to repair the damage caused, since this requires, implicitly, the establishment of the existence of the illegal act, which is one of the necessary conditions for incurring tortious civil liability. HCCJ retains the request to establish the illegality of the act committed, in the case of the violation or threat of the non-patrimonial rights of the natural person, based on art. 253 para. (1) lit. c) CC, constitutes a claim distinct from that concerning the obligation of the author of the prejudicial act to grant patrimonial compensation for the non-patrimonial damage caused, based on art. 253 para. (4) CC. The request, based on art. 253 para. (1) lit. c) CC, it cannot be considered a type of tortious civil liability action, since the finding of the illegal character of the act, based on the mentioned legal text, is considered by the legislator to be one of the defense methods provided in favor of the person whose non-patrimonial rights were violated or threatened, while, in the case of tortious civil liability action, the illegal nature of the deed constitutes only one of the cumulative conditions that must be met for the admission of the action,

[10] HCCJ, RIL dec. no. 1/2023, *Competence. Requests regarding the illegal nature of the acts affecting non-patrimonial rights. Moral damages*, published in the Official Gazette of Romania no. 337/21.04.2023.

the aim being to cover the damage caused by the commission of the illegal deed, damage that can be patrimonial or non-patrimonial .

Thus, the supreme court ruled that the request to establish the illegal nature of the act committed, in the case of the violation or threat of the non-patrimonial rights of the natural person, based on art. 253 para. (1) letter c) CC, constituting by itself a reparative measure (of a non-patrimonial nature) for non-patrimonial damages, regulated separately from the other legal means of protecting non-patrimonial rights contained in art. 253 para. (3) and (4) CC, is independent from the request regarding the obligation of the author of the prejudicial act to grant patrimonial compensation for the non-patrimonial damage caused, based on art. 253 para. (4) CC.

The second aspect concerns the hypothesis in which it would be considered that there are two distinct and autonomous heads of request; it is necessary to establish what is the legal nature of the request based on the provisions of art. 253 para. (1) lit. a)-c) CC, respectively if this has the legal nature of a declaratory action (in defense of a non-patrimonial right) which, not being part of the category of actions listed in art. 94 point 1 letter a)-k) CPC to enter the court's settlement competence, will be the jurisdiction of the tribunal, according to art. 95 point 1 CPC, or if it refers, in a broad sense, to obligations to do or not to do, which fall within the jurisdiction of the court, according to art. 94 points 1 lit. h) CPC. Which is the materially competent court when the two heads of claim (establishment of the illegal nature of the act and payment of compensations that do not exceed the value of 200,000 lei inclusive) are formulated simultaneously in the action based on the provisions of art. 253 para. (4) CC, one under discussion, regarding the legal nature of the request based on the provisions of art. 253 para. (1) lit. c) CC, the High Court of Cassation and Justice holds that the action to establish the illegal nature of the deed is a non-patrimonial action (in defense of a non-patrimonial right), which seeks to restore the violated non-patrimonial right, which, not being part of the listed actions category of art. 94 point 1 letter a)-k) CPC, does not fall within the jurisdiction of the court, so it will be within the jurisdiction of the court, as a court of common law, according to art. 95 point 1 CPC, which provides that the courts judge in the first instance all claims that are not given by law to the jurisdiction of other courts.

Considering the analysis carried out, by dec. no. 1/2023, HCCJ admitted the appeal in the interest of the law formulated by the Board of Directors of the CA Bucharest and established that in the interpretation and uniform application of the provisions of art. 253 para. (1) lit. c) CC and art. 94-point 1 letter h) and k) and art. 95 point 1 CPC, the tribunal is the materially competent court regarding the resolution of cases with the object of requests to establish the illegal nature of the act that affects non-patrimonial rights, requests based on the provisions of art. 253 para. (1) lit. c) CC, when they are formulated simultaneously with requests based on the provisions of art. 253 para. (4) CC to grant compensation for the non-patrimonial damage caused that does not exceed the value of 200,000 lei inclusive.

b. The Prosecutor General of the Public Prosecutor's Office attached to the High Court of Cassation and Justice promoted an appeal in the interest of the law regarding the following legal issue if the act of theft committed by using an improvised device that blocks the activation and centralised closing system of the doors of a motor vehicle by jamming the signal related to this system meets the typical conditions of the crime of theft provided by art 228 para. (1) CP or those of the crime of qualified theft committed by using a false key provided by art 228 para. (1) CP related to art 229 para. (1) letter d) CP.

In a first jurisprudential orientation, the courts appreciated the circumstantial element of aggravation provided by art. 229 para. (1) letter d) CP with reference to the unauthorised use of a false key in the event of a theft by using a device that blocks the activity of the centralised closing of the doors of a motor vehicle by jamming the signal related to this system. In support of this opinion, it has been shown that according to consistent doctrine and practice a false key is an unauthorised multiplied counterfeit key or any device that can act on a locking mechanism without destroying it used by the active subject to open the locking mechanism interposed between the active subject and the stolen property. Or, in relation to the factual situation described as a rule in the referral act consisting in the fact that the defendant blocked the operation of the signal emitted by the remote control of the car, the central locking being thus operated and taking into account the principle of strict interpretation of criminal law, the court considered that the retention of the aggravating circumstantial element would constitute an application by analogy to the defendant's disadvantage, another argument is that the improvised remote control device used to jam the signal related to the central locking system of passenger cars having the effect of blocking the activation of this system which no longer goes from the open position to the closed position does not fall under the notion of a false key in the sense of the criminal law so that the

detention instead of the crime of simple theft of the crime of qualified theft considering that the provisions of art. 229 para. (1) letter d) CP violates the principle of the legality of incrimination provided by art. 1 para. (1) CP.

A second jurisprudential orientation is in the sense that the courts retained the aggravating circumstantial element provided by the provisions of art. 229 para. (1) letter d) CP considering that the specially made device for blocking the activation of the central locking system constitutes a false key within the meaning of the criminal law.

In justifying this opinion, the courts have shown that the action of the defendant of aces up and the goods belonging to the injured persons inside their vehicles, using in this sense specially complex ionic devices of the remote control type to jam the command of the centralised closing signal of a vehicle, achieves the material element of the crime of qualified theft by using a false key provided by art 228 para. (1) related to art. 229 para. (1) letter d) CP. In a single ruling, the court showed that the electronic device used to jam the electronic key lock of the injured person's vehicle constitutes both a means of burglary in relation to the electronic vehicle door locking system and a false key within the meaning of the aggravating circumstance provided for by art. 229 para. (1) letter d) CP. In support of the expressed opinion, it was highlighted that there is no legal definition of the notion of a false key, but the doctrine was invoked which showed that by this is meant the false key multiplied by unauthorised or any other device that can be used to act on a mechanism of closing without destroying it, damaging it, or rendering it unusable.[11]

In another opinion, it was shown that by false key is meant a counterfeit fake key or a passepartout, *i.e.*, speracle or any tool with which the opening mechanism of the device can work without being destroyed or degraded.[12]

It is also shown that the aggravation exists no matter how rudimentary the key used is[13], because the legislator understood to punish more severely the theft committed by using a false key, taking into account not the skill of making even a false one, nor its similarity to the real one, but the fact that the lock intended to ensure increased protection of the locked goods was violated[14]. Another author[15] shows that in relation to the new technological realities and according to an evolutionary interpretation, keys in the meaning of the aggravating circumstance and access cards in a building, the access code of a person's fingerprint or his voice can be keys.

An act of theft committed by blocking the activation of the locking system is substantially different from an act of simple theft because it involves the perpetrator also committing an action other than that of taking by which he aims to make the centralised locking system inoperable and thus to- and facilitate access to good circumstances that give the act an increased gravity and that justify its inclusion in a more serious crime. In relation to the purpose pursued by the perpetrator by using the jamming device and the concrete way in which it acts on the centralised locking system by retaining art. 229 para. (1) letter d) CP regarding the act of theft committed by using an improvised device that blocks the activation of the central locking system of the doors of a motor vehicle by jamming the signal related to this system, the extension of the norm of incrimination by analogy to another act is not carried out c the application of the norm to a new way of committing the criminal act.

This interpretation is in accordance with the substance of the crime and the text of the legal provision because it updates the content of the rule and applies it to another situation which is nothing more than a new form of existence of the aggravating circumstantial element provided by art. 229 para. (1) letter d) CP.

Taking into account the aspects set out above, the High Court of Cassation and Justice pursuant to art. 471 related to art. 474 CPP, by dec. no. 7/29.03.2023[16], admitted the appeal in the interest of the law filed by the general prosecutor of the prosecutor's office attached to the High Court of Cassation and Justice and, in the interpretation and application of the provisions of art. 228 para. (1) related to art. 229 para. (1) letter d) final sentence CP will establish that the act of theft committed by using an improvised device that blocks the activation of the system of centralised closing of the doors of a motor vehicle by jamming the signal related to this system

[11] M. Udroiu, *Drept penal, Partea specială*, 6th ed., C.H. Beck Publishing House, Bucharest, p. 287.

[12] T. Vasiliu, *Codul penal comentat şi adnotat, Partea specială*, vol. I, Scientific and Encyclopedic Publishing House, Bucharest, 1975, p. 209.

[13] V. Cioclei, *Drept penal, Partea specială I*, C.H. Beck Publishing House, Bucharest, 2021, p. 274.

[14] V. Papadopol, M. Popovici, *Tribunalul Suprem Secția penală, Decizia nr. 3229/1970 - Repertoriu alfabetic de practică judiciară în materie penală 1969/1975*, p. 182.

[15] S. Bogdan, D.A. Șerban, *Drept penal. Partea special*, Universul Juridic Publishing House, Bucharest, 2020, p. 48.

[16] HCCJ RIL dec. no. 7/2023 regarding the interpretation and uniform application of the provisions of art. 228 para. (1) related to art. 229 para. (1) letter d) the final sentence CP, published in Official Gazette of Romania no. 559/21.06.2023.

meets the typical conditions of the crime of qualified theft committed by using a false key provided by art. 228 para. (1) CP referred to art. 229 para. (1) letter d) final sentence of the same code.

5. Conclusions

As decided by CCR dec. no. 1014/2007[17]: «By ruling on an appeal in the interest of the law, the supreme court contributes to ensuring the supremacy of the Constitution and the laws, through their uniform interpretation and application throughout the country, a fact likely to materialise another fundamental principle, provided in art. 16 of the Constitution, regarding the equal rights of citizens. That is why it is inadmissible for people in equal legal situations to be subject to different legal regulations. (...) The Court considers that the institution of the appeal in the interest of the law gives the judges of the supreme court the right to give a certain interpretation, thus unifying the differences in the interpretation and application of the same legal text by the lower courts. Such interpretive, constant and unitary solutions, which do not concern certain parties and do not have an effect on previously pronounced solutions, which entered the power of *res judicata*, are invoked in the doctrine as „judicial precedents", being considered by the legal literature „secondary sources of right" or „interpretive sources" (...)».

The statement that decisions in the interest of the law are true sources of law, due to their mandatory and general characteristics, is one commonly accepted in the theory of law. Decisions in the interest of the law are issued by judicial or administrative authorities and are considered binding on citizens and other authorities. They set standards and rules that must be respected and applied by all those affected. This obligation derives from the legal authority of the institutions that issue them and from the fact that they are intended to ensure the correct and uniform application of the law. Decisions in the interest of law are formulated in a general manner so that they apply to a wide range of similar situations. They are not specific to an individual case but are designed to provide guidelines and rules that apply generally. This generality is important to ensure predictability and consistency in the interpretation and application of the law. Therefore, because decisions in the interest of law fulfil these two characteristics - bindingness and generality - they are considered genuine sources of law.

The decisions of the supreme court may contain interpretations and clarifications of the law that are not normative acts in themselves but are considered sources of law. These decisions can provide important guidance and understandings of the law, which are subsequently applied in legal practice. The appeal in the interest of law does not create new law but explains the meaning and application of existing laws[18]. Thus, even if supreme court decisions are not considered normative acts per se, they may provide binding interpretations of the law or interpretive norms that are binding on lower courts and other legal authorities. Therefore, they are considered as important sources of law, which contribute to the formation and development of law in each jurisprudence.

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