

ABOUT THE UNLIMITATION STATUTE ON APPEAL AGAINST LEVY OF EXECUTION BASED ON UNFAIR TERMS

Mirel-Emanuel NEACȘU*

Abstract

This paper aims to clarify the implications of the latest amendments made by the Romanian legislator in the field of unfair terms relating to the exercise of the right to appeal against levy of execution in Romanian civil law. These, far from being unambiguous, are to be explained from the perspective of the effects produced, with the main focus on the time limit for exercising the appeal.

Once these effects have been determined, we will verify whether the rights and interests of sellers or suppliers are not disproportionately affected, whether there were no other legal solutions that the legislator could have implemented and, in any case, whether the changes in the relevant legislation are beneficial or not.

Research methods will be based on a systemic interpretation of civil law provisions as well as rules of Union law. It is also important to identify and analyze the relevant doctrine and, perhaps the most difficult thing to do, to find the link between the autonomous concepts used by the CJEU, the political-jurisdictional authority of the EU, and the concepts of national law.

The case-law of the Romanian courts is also particularly relevant and we will try to indicate, sufficiently and where appropriate, such decisions.

We believe that clarifying the above-mentioned aspects is particularly important and must be done as quickly as possible, as it is necessary to eliminate the non-unitary practices in this area, practices which lead to an undesirable lack of predictability and predictability for both professionals and consumers.

Keywords: *statute of limitations, peremptive period, unfair terms, Directive 93/13/EEC, Law no. 193/2000.*

1. Introduction

As in any procedural law, the exercise of a civil action may take several forms shaped by the state legislator. Depending on the purpose for which they are established, they may be subject to different forms of exercise.

In the context of unfair terms, the Romanian legislator seems to have completely changed the architecture of the remedy of appeal against levy of execution by practically eliminating the most important features that distinguished this remedy from a common law action. As we shall show, it is a question of modifying the grounds on which this action may be brought, as well as the time limit within which it may be brought.

From this latter perspective, the exclusion of the time limits for exercising seems, at first sight, to be a drastic measure and devoid of necessity and proportionality, considering that the CJEU has not imposed the Romanian State to eliminate the time limit for exercising. The legislator therefore had several legislative solutions at its disposal, but chose the most drastic of them for the sellers or suppliers but the most favorable for the consumer.

Under these circumstances, since neither the CJEU case-law nor the substantiating notes of the legislative amendments made by the GEO no. 58/2022¹ are not enlightening as to the reasons for these changes that drastically affect the rights and interests of sellers or suppliers, we considered it particularly important to analyze their compatibility with Union law and the rights and interests of sellers or suppliers.

Moreover, this analysis aims to convince the actors involved in the process of regulation and enforcement of the unfair terms' legislation of the fairness or unfairness of the legislative solution so as to prevent the courts' inconsistent practices or the need for appeals in the interest of the law by the supreme court, its request for preliminary rulings or any other reasons that lead to the delay in the resolution of cases or, even worse, to their defective final decision.

* PhD Candidate, Faculty of Law, „Nicolae Titulescu” University of Bucharest (e-mail: neacsu_mirel_emanuel@yahoo.com).

¹ Published in the Official Gazette of Romania no. 456/06.05.2022.

The major problem, as we will show, stems from the deficient way of regulating some legal provisions regarding the time limit for exercising the right to challenge the execution, having as a legal cause the abusive nature of some unfair terms.

In order to answer the problem raised in this study, we will clarify several procedural aspects so as to clarify the exact effects of the solution adopted by the legislator and then examine the conformity of the legislative solution with the desire to maintain proportionality between its effects and the rights and interests of sellers or suppliers.

We will also examine CJEU and national case-law, as well as relevant national and European legislation, in order to identify, to the extent that they exist, the coherence between the standards imposed by the Court and national law.

Although the legislative amendments are already old in the national legislation, the relevant doctrine has not carefully analyzed the issue we are about to analyze, although, unfortunately, the legislator, by the way he acted, has left necessary to intervene in this respect. As proof of this, the case-law is not currently regulated in a uniform manner either. In some cases there have been solutions proposed in the doctrine, but we do not believe that they are sufficiently well founded to convince those called upon to judge such cases under law.

Therefore, we believe that this study will clarify and persuade how the relevant legislation should be interpreted and applied at this point in time.

2. Brief considerations on the appeal against levy of execution in Romanian civil procedural law

Under Romanian law, enforcement can be started on the basis of an enforceable title, which may be an executory or final judgment or other documents to which the law confers this character².

In the situation in which a document which according to the law constitutes an enforceable title is put into execution, the debtor may defend himself by filing an appeal against levy of execution in accordance with the provisions of art. 713 para. (2) CPC. However, according to this article, grounds of fact or of law relating to the substance of the right contained in the enforceable title may not be invoked if the debtor had at his disposal, prior to the commencement of the enforcement, a legal remedy for its annulment, including an ordinary law action.

In other words, as a general rule, if the debtor has had the possibility to challenge an enforceable title on grounds of the dissolution of the right by an ordinary law action or other procedural remedies, he should no longer be able to influence the creditor's enforcement by means of an appeal against levy of execution on such grounds.

The matter is quite natural, as it cannot be accepted that a person reacts to an obligation incurred against him only when he is required to enforce it and until that moment he has remained passive; especially since the enforcement of the title entails new expenses for the creditor, who should be required by the state to create all the conditions to satisfy his right.

However, following the CJEU case-law, to which we will return below, the Romanian legislator has understood to establish an exception to the above rule, allowing the debtor to prevail the character of unfair terms by way of appeal against levy of execution³, these being grounds concerning the substance of the right.

In fact, only the unfair nature of the contractual terms can be invoked by way of appeal against levy of execution, while no other ground that would represent a cause of ineffectiveness of the legal act, such as voidness, non-opposability to third parties, rescission or termination, cannot.

Up to this point, the justification for the unequal treatment established to the detriment of the sellers or suppliers has been justified by the CJEU on the basis of the consumer's inferior position, which has been noted

² Art. 632 CPC (Law no. 134/2010 republished in Official Gazette of Romania no. 247/10.04.2015, available at <https://legislatie.just.ro/Public/DetaliuDocument/140271>) provides as follows: „(1) Enforcement may be carried out only on the basis of an enforceable title.

(2) Enforceable titles are enforceable judgments referred to in art. 633, judgments with provisional execution, final judgments, as well as any other judgments or documents which, according to the law, may be enforced.”

³ Art. 713 para. (3) CPC: „Where enforcement is based on an enforceable title other than a court judgment, an appeal against levy of execution may also be based on pleas of fact or of law relating to the substance of the right contained in the enforceable title, unless the law does not provide for a legal remedy for the revocation of the enforceable title, including an ordinary action at common law.”

Art. 13 para. (8) of Law no. 193/2000 (republished in the Official Gazette of Romania no. 543/2012) provides: „By derogation from art. 713 para. (2) CPC, the enforcement court shall have the possibility to examine in the appeal against levy of execution, at the request of the consumer or *ex officio*, whether the terms of a contract concluded between a sellers or suppliers and a consumer which constitutes an enforceable title are unfair, such an appeal against levy of limitations being not subject to statute of limitations.”

and recalled repeatedly in its case-law, according to which the system of protection put in place by the directive on unfair terms in consumer contracts is based on the idea that, as regards both bargaining power and the level of information, the consumer is in a position of inferiority in relation to the seller or supplier, which places him in a position of inferiority in relation to the seller or supplier, which leads him to adhere to the terms drafted in advance by the seller or supplier without being able to exercise any influence over their content.⁴

In view of such an inferior situation, art. 6(1) of the Directive provides that unfair terms do not create obligations for the consumer. It is a mandatory provision which seeks to replace the formal balance which the contract establishes between the rights and obligations of the contracting parties by a real balance capable of restoring equality between them (see, *inter alia*, the judgment of the CJEU in Joined Cases C 154/15, C 307/15 and C 308/15 *Gutiérrez Naranjo and Others*, EU:C:2016:980, C 154/15, C 307/15 and C 308/15, EU:C:2016:980, para. 53 and 55, and the judgment of the CJEU in Case C 421/14 *Banco Primus*, EU:C:2017:60, EU:C:2017:60, para. 41).

Further, beyond the legislated exception regarding the legal cause of the appeal against levy of execution, the legislative evolution in the matter has led to what will present the central analysis of this paper, namely, the removal from application of the time limit for filing an appeal against levy of execution. As indicated, at the moment art. 13 para. (8) of the Law no. 193/2000⁵ provides in its final sentence that such an appeal against levy of execution is not subject to statute of limitations.

3. Regarding the time limit for the appeal against levy of execution

Appeals against levy of execution may be made in accordance with art. 715 (1) CPC, *i.e.*, within 15 days from when the debtor becomes aware of the enforcement act that he is contesting, from when he receives the communication or the notice of the establishment of a garnishment, with the specification that in this case, if the garnishment is established on periodic income, the time-limit shall run at the latest from the date of the first deduction of income, or from the date of receipt of the declaration of enforceability or of the summons, or from the date of acknowledgement of the first instrument permitting enforcement, in cases where neither the declaration of enforceability nor the summons has been received, or enforcement is effected without a writ of execution.

The 15-day time limit is a peremption period, which means that exceeding it leads to the loss of the right to appeal against levy of execution under art. 713 CPC regardless of the grounds for the appeal. So, if the appeal against levy of execution had been based on the provisions of Law no. 193/2000 or Directive 93/13/EEC, in the absence of the special provisions laid down in art. 13 para. (8) of Law no. 193/2000, breach of the 15-day time-limit calculated in accordance with art. 715 para. (1) CPC should have led to the consumer's right to appeal against levy of execution being forfeited.

We will come back to the difference between peremption and statute of limitation below.

4. History of the legislative changes regarding the time limit for lodging an appeal against levy of execution

In the following we will analyze how the Romanian legislator arrived at such a legislative solution and to what extent it is justified.

In fact, if the appeal against levy of execution is not subject to any limitation period, a sellers or suppliers may at any time, perhaps even after the debt has been largely recovered or even afterwards, until the enforcement procedure has been completed, be able to identify and invoke a term as unfair, which leads to the possibility that everything the seller or supplier has recovered from the debt owed to the consumer will be returned to the consumer.

Thus, all the time and material resources invested by the sellers or suppliers are wasted for the existence of a right which can be exercised *sine die* by the debtor, while the sellers or suppliers are placed in an uncertain situation due to the lack of predictability of certain legal provisions. Unpredictability caused, in some cases, by the far too general nature of the supra-state provisions, which give the CJEU a right of interpretation that

⁴ See Case C-484/08 *Caja de Ahorros y Monte de Piedad de Madrid* [2010] ECR C-484/08, para. 27, Case C-240/98-C-244/98 *Océano Grupo Editorial and Salvat Editores* [2000] ECR I-4941, para. 25, and Case C-168/05 *Mostaza Claro* [2006] ECR I-10421, para. 25.

⁵ The Law no. 193/2000 is the transposition of the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95/21.04.1993).

(sometimes) creates a genuine context of retroactivity of the law under the pretext of interpreting it. We believe that at least on the face of it, the situation has been reached where a legal sanction operates retroactively through this mechanism. The question requires an exhaustive analysis, which is not the subject of this paper.

If this approach can be found to be proportionate in the light of the consumer's situation, as the Court has held, it remains to be further weighed and identified whether there are other legislative solutions that are better suited to the relationship between the rights and interests of consumers and those of sellers or suppliers.

It should be noted that sellers or suppliers are currently exposed to a perpetual risk that may lead to their exit from the market, whether deliberately or not. Consumers are not immune to the effects of the above-mentioned policies either, since the risk of loss of earnings is passed on at the cost borne by other consumers to the extent that the seller or supplier survives in the marketplace.

4.1. CJEU case-law on the matter

The non-applicability of the statute of limitations to the appeal against levy of execution based on the provisions of Law no. 193/2000 arose as a result of the CJEU case-law. More specifically, the Order of 06.11.2019, *BNP Paribas Personal Finance SA Paris Sucursala București and Secapital*, C-75/19 (hereinafter C-75/19), subsequently by the CJEU Judgment of 17.05.2022, *IO v. Impuls Leasing Romania IFN SA*, C-725/19 (hereinafter C-725/19) and by the CJEU Judgment of 04.05.2023, *TU and SU v. BRD Groupe Société Générale SA and Next Capital Solutions Limited*, C-200/2021 (hereinafter C-200/2021).

In concrete terms, as a first step, in Case C-75/19, the CJEU ruled that Council Directive 93/13/EEC precludes a rule of national law under which a consumer who has concluded a credit agreement with a credit institution and against whom that sellers or suppliers have commenced enforcement proceedings is deprived of the right to rely on unfair terms in order to challenge those proceedings after the expiry of a period of 15 days⁶ from the service of the first documents in those proceedings, even if that consumer has at his disposal, under national law, an action for a declaration of the existence of unfair terms, the bringing of which is not subject to any time-limit, but the outcome of which does not affect the outcome of the enforcement proceedings and which may be imposed on the consumer before the outcome of the action for a declaration of the existence of unfair terms.

In practice, at the time this judgment was handed down, as in Romanian law today, although the consumer was being foreclosed on the basis of a bank loan contract constituting an enforceable title, he was still able to bring an ordinary law action for a legal cause of action to establish the unfairness of the terms, which would have rendered them void and deprived them of any legal effect.

The Court found, on the basis of the rules submitted by the referring court, that even if this possibility existed, there was a risk that the enforcement would be finalized before the ordinary-law process, with the consequence that the consumer would be deprived of *a priori* protection. For example, the consumer could have lost the foreclosed dwelling, so that, even if he subsequently obtained a favorable judgment, it would no longer be of as much use to him because he would have lost the property for good.

However, the referring court did not bring to the CJEU's attention the fact that the foreclosure itself could have been suspended pursuant to art. 638 para. (2) CPC⁷ with the payment of a security calculated on the basis of art. 719 CPC⁸. Therefore, the judgment was not rendered by taking into account all the legal rules applicable to the given case and thus the Romanian courts could not apply it.

⁶ We emphasize the fact that, prior to the regulation that appeals against levy of execution in unfair terms were not subject to the statute of limitations, the 15-day limitation period within which an appeal could be lodged was fully applicable.

⁷ Art. 638 CPC provides that: „(1) The following are also enforceable titles and may be put into execution:

1. the judgments and minutes drawn up by bailiffs which, according to law, constitute enforceable titles;
2. authentic instruments in the cases provided for by law;
3. notarial enforceable titles issued under the conditions prescribed by law;
4. credit titles or other documents recognized by law as enforceable.

(2) The suspension of the execution of the titles referred to in para. (1) items 2 and 4 may also be applied for in the action on the merits of the action for their annulment. Article 719 shall apply accordingly.”

⁸ Art. 719 CPC (Stay of execution): (1) Pending the appeal against levy of execution or other application for enforcement, the competent court may, at the request of the interested party and only for reasonable grounds, suspend enforcement. The stay may be requested together with the appeal against levy of execution or by a separate application.

(2) In order to order a stay of enforcement, the party applying for the stay must first lodge security, calculated by reference to the value of the matter against which the application is made, as follows:

- a) 10%, if this value is up to 10.000 lei;

On 17.05.2022, the CJEU by Grand Chamber ruled in Case C 725/19 that art. 6(1) and 7(1) of Directive 93/13/EEC preclude national legislation which does not allow a debt enforcement court, seized of an appeal against levy of execution of a claim, to assess, of its own motion or at the consumer's request, the unfairness of terms of a contract concluded between a consumer and a sellers or suppliers which constitutes an enforceable title, since the court of substance, which may be seized with a separate action at common law to examine whether the terms of such a contract are unfair, can stay the enforcement proceedings pending a judgment on the merits only after the payment of security at a level likely to discourage the consumer from bringing and maintaining such an action.

Following this decision, art. 13 para. (9) of Law no. 193/2000⁹ by which the Romanian legislator established that „by derogation from the provisions of art. 719 para. (2) and (3) CPC, when applying for suspension of enforcement, consumers are exempted from the payment of a security deposit when they prove that their monthly income does not exceed the cumulated amount of two minimum wages per economy”.

Subsequently, in Case C-200/2021 delivered on 04.05. 2023, the Court was made aware of those legal provisions and ruled that Directive 93/13/EEC precludes a provision of national law which does not allow an enforcement court, before which an appeal against levy of execution of a contract concluded between a consumer and a sellers or suppliers, which constitutes an enforceable title, is brought, outside the 15-day period allowed by that provision, to assess, of its own motion or at the consumer's request, the unfairness of the terms of that contract, in circumstances in which the consumer has on the other hand, an action on the merits enabling him to apply to the court seized of that action for such a review and for a stay of enforcement pending the outcome of that action, in accordance with another provision of that national law, where that stay is possible only in return for the payment of a security, the amount of which is likely to deter the consumer from bringing and maintaining such an action, a matter which it is for the referring court to determine.

As we have already pointed out, at the time this judgment was handed down, the Romanian legislator had already legislated a solution to protect consumers with a material status that would not have allowed them to suspend the enforcement of the execution.

Since the object of this paper is to analyze the appeal against levy of execution, which is not subject to statute of limitations, in order to establish the unfairness of contractual terms, we will analyze below the CJEU's considerations regarding the length of the time limit and the date from which it runs in order to verify whether such a drastic measure was indeed necessary for the rights and interests of sellers or suppliers.

In Case C 75/19, the Court held, inter alia, that the referring court had asked whether Directive 93/13 must be interpreted as precluding a rule of national law under which a consumer who has concluded a credit agreement with a credit institution and against whom that sellers or suppliers have commenced enforcement proceedings is deprived of the right to rely on unfair terms in order to challenge those proceedings after the expiry of a period of 15 days from the service of the first documents in those proceedings (para. 24 of the order).

Therefore, with regard to the aforementioned time limit, we note that, in terms of length, it is 15 days and, in terms of calculation, it runs from the communication of the first acts of the enforcement procedure.

b) 1.000 lei plus 5% for what exceeds 10.000 lei;

c) 5.500 lei plus 1% for what exceeds 100.000 lei;

d) 14.500 lei plus 0,1% for what exceeds 1.000.000 lei.

(3) If the object of the contestation is not assessable in money, the bail shall be 1,000 lei, unless otherwise provided by law.

(4) The stay of execution is mandatory and bail is not required if:

1. The judgment or writ which is being enforced is not, according to law, enforceable;

2. The document which is to be enforced has been declared false by a judgment given at first instance;

3. The debtor proves in an authentic instrument that he has obtained a postponement of payment from the creditor or, where applicable, a period of grace.

(5) If the property sought is subject to destruction, deterioration, alteration or depreciation, only the distribution of the price obtained from the realization of such property shall be suspended.

(6) The court shall, in all cases, give a ruling on the application for suspension by judgment, even before the time-limit set for hearing the appeal. The parties shall always be summoned and the judgment may be challenged separately, only by appeal or, if issued by the Court of Appeal, only by appeal, within 5 days of the judgment for the party present, or within 5 days of the communication for the absent party.

(7) If there is urgency and if, in the cases referred to in paragraph. (2) and para. (3), the court may, by order without summoning the parties, order a provisional stay of enforcement pending the outcome of the application for stay. The judgment shall not be subject to any appeal. The security lodged in accordance with this paragraph shall remain unavailable even if the application for provisional stay of enforcement is dismissed and shall be deductible from the final security, if any, set by the court.

(8) The decision ordering a stay of enforcement shall be served on the bailiff ex officio and forthwith.”

⁹ The mentioned paragraph was introduced by art. 1 point 4 of GEO no. 58/2022, published in the Official Gazette of Romania no. 456/06.05.2022.

It follows from paragraph 26 of that order that the length of the time-limit must be taken into account, according to the court, it must be examined whether there is a not negligible risk that the consumer will not bring an action also because of the particularly short time-limit. It follows from paragraphs 30 to 33¹⁰ that the continued effectiveness of Directive 93/13 is lost if consumers are discouraged from lodging an 'objection' to defend their case, which is discouraged by the setting of a 15-day time-limit for lodging an appeal against levy of execution.

In case C-725/19 it is easy to see that the Romanian legislation was criticized only from the point of view of the cost of the security, which would discourage the consumer from bringing an ordinary law action to suspend the enforcement. Therefore, we consider that the judgment is not relevant for our analysis.

However, the most recent case, C-200/21, provides particularly useful considerations for the coordination of the present analysis. Beyond the coordinates of the principles of effectiveness and equivalence, para. 39, we say, betrays the essential element on which the Court dealt, namely the question of the levying of charges or guarantees on the consumer in order to suspend enforcement pending the outcome of the ordinary-law action.

We thus note that at no time did the CJEU have a problem with the establishment of a limitation period for appealing against levy of execution under Law no. 193/2000 and yet the Romanian legislator has established the non-applicability of the statute of limitations for this civil action, while legislating mechanisms to improve the situation of the consumer who would appeal against a common law action and would request the suspension of the enforcement of the execution, by reducing the financial guarantees criticized by the Court.

4.2. The effects of the legislative solution to abolish the statute of limitations on appeals against levy of execution

Art. 13 para. (8) of the Law no. 193/2000 was introduced by point 4 of GEO no. 58/2022. It does not appear from the explanatory memorandum of the GEO¹¹ what the secondary legislature had in mind for the introduction of this measure, which is not explained.

Moreover, we believe that the regulation of the text was made without due attention to the problem that it was intended to prevent.

Thus, an examination of that article shows that a derogation from the provisions of art. 713 para. (2) CPC is established with regard to the subject-matter of the appeal against levy of limitations, but, as regards the time-limit within which an appeal against levy of execution may be lodged, the secondary legislature no longer referred to the provisions of art. 715 CPC but merely indicated that the action is not subject to statute of limitations and is not subject to the sanction of peremption.

The problem with the regulation is that, in Romanian law, the sanction of the statute of limitations is different from that of the peremption, having completely different effects, and since the provision of art. 715 CPC establishes a peremptive period, the addressee of the rule will be misled as to the derogatory and special nature of the rule provided for by the provision of art. 13 para. (8) of Law no. 193/2000.

¹⁰ „30 However, as mentioned in para. 26 of this order, the existence of a review by a court as to the absence of an unfair term in the contract concerned only at the stage of opposition to enforcement is not capable of maintaining the effectiveness of Directive 93/13 unless consumers are not discouraged from raising such opposition (see, to that effect, Case C 448/17 EOS KSI Slovensko, EU:C:2018:745, para. 51).

31 In the present case, although the national legislation at issue in the main proceedings provides for a strict time-limit of 15 days within which the consumer may appeal against the order for payment, it is common ground that, beyond that time-limit, the unfairness of certain terms of the contract which form the basis of such an order cannot be examined before that order is enforced.

32 In that regard, if the enforcement procedure is terminated before the decision of the court of substance declaring the unfairness of the contractual term at the origin of that enforcement and, consequently, the nullity of that procedure, that decision would provide the consumer concerned with only a posteriori protection of a financial nature, which would prove to be incomplete and inadequate and would constitute neither an appropriate nor an effective means of preventing the continued use of those terms, contrary to art. 7(1) of Directive 93/13 (see, to that effect, Case C 415/11 Aziz [2013] ECR C 415/11, EU: C:2013:164, para. 60).

33 Accordingly, legislation such as that at issue in the main proceedings gives rise to a not negligible risk that the consumer concerned will not lodge an objection within the strict time-limit of 15 days following service of the notice of the enforcement proceedings and, consequently, that it will not be possible for a court to review whether there is an unfair term in the contract concerned (see, to that effect, Case C 448/17 EOS KSI Slovensko EOS KSI Slovensko [2018] ECR I-10417, EU:C:2018:745, para. 53)."

¹¹ Available on <https://gov.ro/ro/guvernul/procesul-legislativ/note-de-fundamentare/nota-de-fundamentare-oug-nr-58-28-04-2022&page=43>, consulted on 08.01.2025. Nor does the legislative course of the Ordinance reveal the intention intended by the legislature. See, for the legislative course, https://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=20097, consulted on the same date.

However, we believe that the legislator had in consideration to remove the application of the common law *peremptive period* applicable to appeals against levy of execution¹².

In this regard, it should be noted that art. 13 para. (8) of Law no. 193/2000 refers to the exercise of a civil action before a court so that the provisions of art. 185 para. (1) CPC, which provide that when a procedural right must be exercised within a certain time limit, failure to comply with that time limit entails *loss of the exercise of the right*, unless the law provides otherwise. Procedural steps taken out of time are void.

Statute of limitation, however, is a specific sanction of substantive (material) civil law, regulated as an institution by the provisions of art. 2500 *et seq.* CC¹³.

Art. 2500 para. (1) and (2) CC provides that, once the limitation period has expired, the holder of a subjective civil right loses the right to compel a person, by means of public force, to perform a certain service, to comply with a certain legal situation or to bear any other civil penalty. In other words, the expiry of the limitation period makes it no longer possible to bring a civil action for the protection of a right still existing in the patrimony of the person entitled. For example, the creditor of a claim, once the limitation period has expired, will not be able to involve the State in order to protect his right by bringing a civil action in one of its means¹⁴, *i.e.*, by a summons, payment order, small claim, etc., and will lose any right to bring an action. It must be borne in mind, however, that the right still exists in the creditor's patrimony.

However, art. 13 para. (8) of Law no. 193/2000 expressly states in the final part of the text that such a challenge to execution is not subject to the statute of limitations. So, the legislator expressly individualizes the procedural means of the civil action represented by the appeal against levy of execution and provides that it is not subject to the statute of limitations.

Now, since the consumer's substantive right of action in the form of a challenge to enforcement is declared not subject to a limitation period of 15 days, it cannot be held that the consumer can nevertheless be criticized for the 15-day peremptive period. If the contrary were accepted, then the rule laid down in art. 13 para. (8) of Law no. 193/2000 would remain inapplicable, or the legal rule must be interpreted in the way of its application according to a logical interpretation.

Therefore, as the consumer can at any time demand the seller or supplier to bear a civil penalty incurred by the use of unfair terms by means of an appeal against levy of execution, he is not bound to respect the 15-day peremptive period set by art. 715 para. (1) CPC.

Moreover, in support of our conclusion we also point out that the provisions of art. 185 para. (1) CPC establish the application of the *ultima ratio* of peremption („unless the law provides otherwise”). Therefore, the establishment of the statute of limitation period established by the legislator is incompatible with the application of the procedural sanction (peremption), so that the intention to derogate from the common law in the matter of the appeal against levy of execution is evident.

Clearly, however, greater care in the operation of this legislative amendment would have been required. A simple derogation from art. 715 CPC or the precise stipulation that the appeal against levy of execution is not subject to any peremptive period would have made the rule clearer and more predictable, otherwise the risk of ununitary practice is still major. Therefore, *de lege ferenda*, we consider that it is necessary to amend art. 13 para. (8) of Law no. 193/2000 in the above-mentioned sense.

It should be noted that some Romanian courts continue to assess the applicability of the peremptive period of 15 days in the matter of unfair terms exercised by way of appeal against levy of execution¹⁵.

5. Analysis of the appropriateness of the legislative solution

Before analyzing whether a limited time limit could nevertheless be imposed within which an appeal against levy of execution can be brought on the grounds of the unfairness of contractual terms, it is necessary

¹² See G. Boroi, *Drept Procesual Civil, 2. Judecata în căile de atac. Proceduri Speciale. Executarea Silită*, Hamangiu Publishing House, 6th ed., revised and added, p. 665 and C.D. David Samoilă, *Jurisprudența CJUE și dispozițiile OUG nr. 58/2022 care se referă la imprescriptibilitatea acțiunii în constatarea caracterului abuziv al unor clauze din contractele profesioniștilor încheiate cu consumatorii*, available at www.juridice.ro, accessed on 08.01.2025.

¹³ Law no. 287/2009, republished in the Official Gazette of Romania no. 505/15.07.2011.

¹⁴ Art. 29 CPC states that „civil action is the set of procedural means provided by law for the protection of the subjective right claimed by one of the parties or of another legal situation, as well as for the defense of the parties in the lawsuit”.

¹⁵ See Brașov Court, civ. sent. no. 12044/2024, Case no. 19112/301/2024, final judgment by non-appeal, available on www.rejust.ro, accessed on 09.01.2025.

to analyze to what extent this regulation would be in line with the obligation of the court to invoke of its own motion the unfairness of a term, an obligation established by the CJEU through its case-law and by the provision of art. 131 (I) of Law no. 193/2000, according to which „the court is required to examine of its own motion the unfairness of a contractual term as soon as it has the legal and factual elements necessary for that purpose”. In other words, if the court's obligation to examine the unfairness of terms of its own motion were absolute, there would be no point in regulating a peremptive period for appealing against levy of execution.

Until the introduction of the statute of limitations for appeals against levy of execution on unfair terms, there were three main situations in which unfair terms could be invoked in this way.

Thus, there was a situation in which the creditor initiated the enforcement procedure and the debtor did not make an appeal against levy of execution indicating the existence of unfair terms.

In this situation, in the absence of an open procedural framework before a court, there was obviously no obligation to plead *ex officio* the unfairness of contractual terms. We note that the States, as a rule, for both *a priori* and *a posteriori*¹⁶ protection of a right, have the obligation to provide a procedural framework as resulting from para. 46 of the CJEU judgment of 18.02.2016, *Finanmadrid EFC SA v. Jesús Vicente Albán Zambrano and Others*, C-49/14 (hereinafter C-49/14)¹⁷, applied *mutatis mutandis*.

Another situation could have arisen if the debtor had lodged an appeal against levy of execution within the peremptive period based on other grounds of ineffectiveness of the legal act, which would have opened a procedural framework before a court. The legitimate question in such a case would have been whether the court was obliged or able to invoke the unfairness of the terms contained in the legal instrument that had been declared enforceable.

This issue is fully resolved in the CJEU judgment of March 11, 2020, *Györgyné Lintner v. UniCredit Bank Hungary Zrt.*, C-511/17.

The case arose from the fact that the original action brought by Ms Lintner sought only a declaration that the contractual terms conferring on UniCredit Bank the possibility of unilaterally amending the loan agreement at issue in the main proceedings were unfair. However, the referring court was called upon to rule on the question whether it was required, pursuant to Directive 93/13, to extend, of its own motion, to the assessment of its own motion, the assessment of whether the terms of the contract at issue in the main proceedings relating to the notarial certificate, the grounds for its termination and certain costs imposed on Ms Lintner were unfair, even though those latter terms were not challenged by the applicant in the main proceedings in her initial action.

The Court has held (para. 20) that „*although the consumer protection sought by Directive 93/13 requires positive intervention by the national court before which the matter is brought, it is nevertheless necessary, in order for that protection to be afforded, for court proceedings to have been brought by one of the parties to the contract (see in this regard the judgment of October 1, 2015, ERSTE Bank Hungary, C 32/14, EU:C:2015:637, para. 63)*”.

It is therefore necessary, once a procedural framework is in place, for the consumer to emerge from passivity and activate the mechanism provided by the state.

In order to analyze how the Leitner judgment could be applied in the situation imagined above, it is first necessary to clarify the subject matter of the dispute.

From the perspective of Romanian civil procedural law, the notion of object of the dispute could be interpreted in two ways.

In a first interpretation, it would be the object of the civil action, which would be concretized, as we have shown above, with a procedural means provided by law for the protection of a subjective right claimed by one of the parties or of another legal situation, as well as the defense of the parties in the lawsuit.

¹⁶ Para. 32 from C-75/19.

¹⁷ „45 In the present case, it must be held that the Spanish order for payment procedure is governed by rules and specific features such that, apart from the circumstances in which the court may intervene, as set out in para. 24 of this judgment, that procedure is closed without any possibility of reviewing whether unfair terms have been used in a contract concluded between a sellers or suppliers and a consumer. If, therefore, the court before which the order for payment is to be enforced does not have jurisdiction to assess the existence of such terms of its own motion, the consumer could be faced with an enforceable title without, at any stage of the proceedings, being guaranteed that such an assessment will be made.

46 In that context, it must be held that such a procedural regime is liable to undermine the effectiveness of the protection sought by Directive 93/13. Thus, such effective protection of the rights deriving from that directive can be guaranteed only on condition that the national procedural system allows, in the order for payment procedure or in the procedure for enforcement of the order for payment, an *ex officio* review of the potentially unfair nature of the terms contained in the contract at issue.”

In another interpretation, the concept of the subject-matter of the dispute could be identified with the claim formulated by the claimant. For example, by means of a claim, the sellers or suppliers sue the consumer to pay him a sum of money on the basis of a contract between them. The sum of money claimed is the subject matter of the civil dispute by reference to the provisions of art. 32(1)(b) of the Directive and art. 194 para. (1) letter c) CPC¹⁸. This is also apparent from para. 28 of Linter, the Court noting that „Such an examination must, at a second stage, respect the limits of the subject-matter of the dispute, understood as the result which a party seeks by its claims, interpreted in the light of the conclusions and pleas in law put forward for that purpose”.

However, to the notion of subject-matter of the dispute, we consider that we must attach the legal cause of the action, together with the claim sought. This is deduced from the final part of para. 28, namely „understood as the result which a party seeks by its claims, interpreted in the light of the conclusions and pleas in law put forward for that purpose”, thus taking into account the factual and legal grounds used by the person bringing the action before the court.

Thus, if the consumer invokes the voidness of a term on grounds other than its unfairness, the court is not obliged to become the party's defender and provide him with a legal cause of action that it considers more efficient, favorable, etc.

According to art. 720 CPC, if the appeal against levy of execution is admitted, the court, taking into account the subject matter of the appeal, shall, as the case may be, rectify or void the contested enforcement act, order the annulment or termination of the enforcement itself, or void or clarify the enforceable title. This provision is in fact also the claim sought by the appellant.

In this regard, if, by means of an appeal against levy of execution, *the statute of prescription to the right to obtain the enforcement* would be invoked as the cause of the claim to cease/cancel the enforcement, the court cannot be considered as being obliged to invoke the abusive nature of contractual terms of its own motion.

Therefore, if an appeal against levy of execution had been lodged within the peremptive period of 15 days, based on other grounds of ineffectiveness of the legal act, which would have opened a procedural framework before a court, the appellant not having indicated any factual or legal grounds relating to the application of the law on unfair terms, the court could not have changed the legal cause of action by invoking the unfairness of the contractual terms of its own motion.

Also, in the case of exceeding the 15-day time limit provided for the appeal against levy of execution on the grounds of the abusive nature of the terms, we consider that the invocation of the exception of the submission of the application beyond the legal time limit (the exception of the late filing of the appeal against levy of execution) and its admission would have been equivalent to an unlawful vesting of the court, any act made after the deadline being void, therefore considered as non-existent, which would have made it impossible to continue the trial on this aspect and, therefore, the non-existence of the court's obligation to invoke the abusive nature beyond the time limit provided by law.

Therefore, we consider that the Romanian legislator could have been free to keep the peremptive period, as it has improved the consumer's means of suspending enforcement by means of common law actions, it could have increased the peremptive period. However, we will not, for the reasons that follow, go into the conditions for setting a time limit for actions based on Law no. 193/2000.

It should be noted that the subjective civil right to invoke the unfairness of the term is not subject to a limitation period, the finding of this character leading to the application of absolute voidness which can be invoked at any time by any interested person under art. 1247 para. (2) and art. 1249 para. (1) CC. That right could not, however, be exercised by way of appeal against levy of execution unless the peremptive period of 15 days was respected.

There are several reasons for the establishment of this deadline within the appeal against levy of execution, including urgency, as the Romanian legislator established that unlike other claims, the appeal against levy of execution is not subject to the regularization procedure provided for in art. 200 CPC¹⁹ and that this case is judged urgently and with priority. Moreover, this procedure must be settled as quickly as possible, given that the creditor's interests are affected since he holds an enforceable title which he enforces, and the appeal against levy of execution lodged by the debtor delays the satisfaction of his claim.

¹⁸ In this regard, see also D.N. Teohari, in G. Boroï (coord.), *Noul Cod de procedură civilă. Comentariu pe articole*, vol. I, Hamangiu Publishing House, Bucharest, 2013, p. 457.

¹⁹ Art. 200 CPC regulates a procedure for the verification and regularization of the applications filed before the courts, which, although it ensures the smooth conduct of the civil proceedings, affects the duration of the proceedings by its possible delay.

However, as we have pointed out, the debtor may, as a rule, at any time bring an action at common law and suspend enforcement of the judgment in so far as he can invoke a ground that is not affected by the expiry of any limitation or peremptive period as a substantive law sanction such as the unfairness of the terms.

In Romanian law, peremptive sanctions exist in both procedural and substantive law (art. 2545 CC). Thus, if peremptive in procedural law, as we have shown, affects the exercise of a legal action, peremptive in substantive law affects the very existence or exercise of a subjective civil right.

Therefore, we note that since the consumer could at any time have brought an ordinary-law action for annulment of the terms found to be unfair, he could in any event have been able to delay enforcement by suspending it.

Thus, keeping the initial architecture of the appeal against levy of execution, including for the invocation of unfair terms, seemed inappropriate and violated, we believe, the spirit of the legislation in the matter, practically obliging the consumer to procedural activities that could have been associated with excessive formalism.

Not infrequently, for various reasons, consumers fell prey to ignorance of the law. Thus, when he appealed against levy of execution, his application was rejected for various reasons such as inadmissibility or exceeding the time limit for exercising the right of action, when, after losing the sums invested in the appeal against levy of execution, he could have exercised another common-law right of action.

The situation of creditors was not the most fortunate either, due to the lack of a unified practice which affected the security of the legal relationships in which they were engaged. There were situations in which consumers who lost their homes ended up being compensated but were unable to recover their lost homes. So both the sellers or suppliers and the consumer were disadvantaged.

Therefore, the legislator had the possibility of establishing a peremptive period which would have done nothing more than to maintain, in part, the system of appeal against levy of execution, which would not have benefited either party in relation to the non-applicability of the statute of limitations of the substantive law sanction.

Thus, the legislator has fully transformed the appeal against levy of execution into a common law action as long as its cause of action is the unfairness of the contractual terms.

The measure appears to be in line with art. 8 of Directive 93/13, according to which Member States shall raise the level of protection afforded to consumers and, in any event, proportionate to the rights and interests of sellers or suppliers.

We have indicated earlier in this paper that the imprescriptibility of the appeal against levy of execution may appear to be disproportionate in relation to the rights and interests of sellers or suppliers, but this disproportion, if it existed, was not affected in any way, since the unfair terms could, as we have shown, be invoked at any time, even after the contract had been performed.

It should also be noted that the solution adopted also particularly benefits the Romanian courts by reducing the number of cases registered. Thus, whereas previously there was a risk of lodging an appeal against levy of execution and then an ordinary-law action, now the consumer can successfully bring one of them.

However, from the perspective of proportionality, it should be noted that, at least in the view of the European legislator and the CJEU, the non-applicability of the statute of limitations of the sanction applicable to unfair terms, depending on the judicial system of each state, must ensure the objective set by art. 6 (1) of Directive 93/13, namely that such terms do not create obligations for the consumer.

6. Conclusions

By point 4 of the GEO no. 58/2022, the Romanian legislator amended the provisions of Law no. 193/2000 so that the consumer was given the possibility that in the event of being foreclosed, he/she may file an appeal against levy of execution, in which he/she may claim the unfairness of the contractual terms at any time, without limiting the exercise of the action by a peremptive period, the possibility to suspend the foreclosure under more reasonable conditions when his/her income does not allow him/her to pay a deposit.

As we have shown, although art. 13 para. (8) of Law no. 193/2000 refers to the fact that the appeal against levy of execution is not subject to a limitation period, the legislator's intention was to derogate from the provisions of common law on the appeal, which establish a peremptive period of 15 days for the exercise of the action.

In this respect, we propose that the wording of the text be amended *de lege ferenda* so that this derogation is expressly understood. This is necessary to remove the risk of inconsistent practice and, not least, to ease the burden of documentation for those called upon to apply the legal text. It should not be the case that the understanding of a text that could be easy to understand requires the reading of specialized material and lengthy documentation.

Given the not subject to a limitation period of the sanction of absolute nullity, a sanction applicable in Romanian civil law to unfair terms, the removal of the peremptive period specific to the challenge is, we believe, the best solution that the legislator could have adopted, although he also had the possibility to increase the time limit for exercising the challenge.

Although the proportionality between the legislative measure and the rights and interests of the sellers or suppliers is apparently infringed, as we have shown, proportionality is justified to the same extent that the European legislator's objective of preventing any effect of unfair terms in contracts concluded between sellers or suppliers and consumers is justified.

In the following, we consider that this paper serves, firstly, to clarify the effects of the establishment of the imprescriptibility of the appeal against levy of execution based on Law no. 193/2000 and Directive 93/13 and, on the other hand, it contributes to the understanding of the reasons that the legislator most probably had in mind when enacting these measures.

Also, perhaps the most important role of the work should be to remove the ununitary practice, still existing at the moment in Romanian jurisprudence.

With regard to further research, we believe that it would be interesting to examine the proportionality of legal measures, including at the EU level, with the property rights of sellers or suppliers provided for in the European Convention on Human Rights or other international treaties to which the Romanian state is a party.

The fact that the civil sanctions applicable following a finding of unfair contractual terms can be applied at any time, without any time limit, is an extremely harsh mechanism that gives rise to civil liability. Thus, even in criminal law, although the crime of aggravated murder, perhaps the most serious of crimes, is not subject to a limitation period, criminal liability is extinguished with the death of the perpetrator and civil liability is also extinguished within a certain period of extinctive prescription.

Finally, without going any further on this issue, it should be noted that legal certainty for sellers or suppliers is profoundly affected, as indicated above, and it should be examined to what extent the legislative solution proposed by the EU legislator should be maintained, especially given that the system of setting limits for the application of EU law by the CJEU may lead to the retroactive application of penalties to sellers or suppliers.

References

- Boroi, G. (coord.), *Noul Cod de procedură civilă. Comentariu pe articole*, vol. I, Hamangiu Publishing House, Bucharest, 2013;
- Boroi, G., Stancu, M., *Drept procesual civil*, vol. 2, *Judecata în căile de atac. Proceduri Speciale. Executarea Silită*, 6th ed., revised and added, Hamangiu Publishing House, Bucharest, 2023;
- Samoilă, C.D.D., *Jurisprudența CJUE și dispozițiile O.U.G. nr. 58/2022 care se referă la imprescriptibilitatea acțiunii în constatarea caracterului abuziv al unor clauze din contractele profesioniștilor încheiate cu consumatorii*, available on www.juridice.ro;
- Council Directive 93/13/EEC of April 5, 1993 on unfair terms in consumer contracts (OJ L 95/21.04.1993);
- Law no. 287/2009 (CC), republished in the Official Gazette of Romania no. 505/15.07.2011;
- Law no. 134/2010 (CPC), republished in the Official Gazette of Romania no. 247/10.04.2015;
- Law no. 193/2000 on unfair terms in contracts concluded between traders and consumers, republished in the Official Gazette of Romania no. 543/03.08.2012;
- GEO no. 58/2022 amending and supplementing some normative acts in the field of consumer protection (published in the Official Gazette of Romania no. 456/06.05.2022);
- Judgment of 27.06.2000, *Océano Grupo Editorial and Salvat Editores*, C-240/98-C-244/98, ECLI:EU:C:2000:346;
- Judgment of 26.10.2006, *Mostaza Claro*, C-168/05; ECLI:EU:C:2006:675;
- Judgment of 03.06.2010, *Caja de Ahorros y Monte de Piedad de Madrid*, C-484/08, ECLI:EU:C:2010:309;
- Judgment of 20.09.2018, *EOS KSI Slovensko*, C-448/17, EU:C:2018:745;
- Order of 06.11.2019, *BNP Paribas Personal Finance SA Paris Paris Sucursala București and Secapital*, C-75/19, ECLI:EU:C:2019:950;
- Judgment of 17.05.2022, *IO v. Impuls Leasing Romania IFN SA*, C-725/19, ECLI:EU:C:2022:396;

- Judgment of 04.05.2023, *TU and SU v. BRD Groupe Société Générale SA and Next Capital Solutions Limited*, C-200/21, ECLI:EU:C:2023:380;
- <https://gov.ro/ro>;
- <https://legislatie.just.ro>;
- <https://www.cdep.ro>;
- <https://www.rejust.ro>.