

# BRINGING ANOTHER PERSON TO COURT

Ionuț TIRITEU\*

## Abstract

*This paper analyzes the legal framework applicable to the request for bringing another person into a civil trial, focusing on the essential conditions for submitting such a request and its legal effects within civil proceedings.*

*The paper seeks to provide reasoned solutions to the main issues identified by legal doctrine or observed in case-law regarding the mechanism of bringing another person to court.*

*Bringing another person into a lawsuit can represent a key procedural instrument, as it primarily aims to clarify the legal relationships between the parties involved, in order to prevent contradictory rulings in separate proceedings. Nevertheless, it is not a frequently used tool in judicial practice, which has led to a lack of attention from legal doctrine regarding this type of incidental request. We believe this may also be due to the unclear legal regulation and, consequently, the insufficient understanding of the legal regime applicable to such requests.*

*Therefore, the ultimate goal of this paper is to contribute to encouraging legal practitioners to use this type of forced intervention request more often — an objective that can only be achieved through a solid understanding of the legal framework governing it.*

**Keywords:** *forced intervention, incidental request, third parties, bringing to court, claimant.*

## 1. Introduction

This study focuses on the request to bring another person to court, analyzing the applicable legal framework and emphasizing both the essential conditions for filing such a request and its effects in civil proceedings.

The request allows for a third party who may claim the same rights as the claimant to be included in ongoing litigation, ensuring a more efficient and unified resolution of the legal conflict and preventing future litigation. The necessity of such a procedural mechanism can be inferred from the fundamental principles of civil procedure, which include, among others, the right to a fair trial and adversarial proceedings.

Starting from the current legal regulation in the Romanian Civil Procedure Code and considering both the main doctrinal positions and practical issues encountered in courts, this paper aims to provide a comprehensive overview of the institution of bringing another person to court. It will highlight theoretical aspects and practical implications of the procedure, with the ultimate goal of promoting a deeper understanding of this incidental procedural request and encouraging its use in civil litigation.

Currently, this procedural tool is not widely applied in practice, nor is it deeply explored in legal scholarship. This may be attributed to the ambiguity of its regulation and, implicitly, the limited understanding of its legal framework, which this article seeks to clarify and develop further.

## 2. Content

### 2.1. Legal regulation and definition

Bringing another person to court is regulated in the current CPC<sup>1</sup> by art. 68–71, Chapter II, Subsection 2 — „Forced Intervention”.

*Art. 68: Filing the request. Deadlines*

(1) Any of the parties<sup>2</sup> may bring into court another person who could claim, by means of a separate action, the same rights as the claimant.

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\* PhD Candidate, Faculty of Law, „Nicolae Titulescu” University of Bucharest (e-mail: office@univnt.ro).

<sup>1</sup> Republished in the Official Gazette of Romania no. 247/10.04.2015.

<sup>2</sup> „(...) a person may become a party to the proceedings if they submit a claim to the court, if they request for themselves—or even on behalf of another party in the proceedings—a claim that has already been brought before the court, or if a claim is made against them.”

(2) A request made by the claimant or principal intervenor must be filed no later than the conclusion of the investigation phase before the first instance.

(3) A request made by the defendant must be filed within the deadline for submitting the statement of defense before the first instance, and if the statement of defense is not mandatory, no later than the first hearing.

*Art. 69: Serving the request*

(1) The request must be reasoned and, along with the accompanying documents, must be served both to the third party brought into court and to the opposing party.

(2) The copy intended for the third party must include copies of the statement of claim, statement of defense, and any documents on file.

(3) The provisions of art. 64 and 65 apply accordingly.

*Art. 70: Status of the third party in the trial.* The person brought into court acquires the procedural status of claimant, and the judgment produces effects in relation to them as well.

*Art. 71: Removal of the defendant from the case*

(1) In the case provided in art. 70, when the defendant, sued for a monetary debt, acknowledges the debt and declares their intention to fulfill the obligation to the person whose right is established judicially, they shall be removed from the case if the owed amount is deposited with the court.

(2) Similarly, a defendant sued for the delivery or use of an asset shall be removed from the case if they declare their willingness to deliver the asset to the person whose right is established by court judgment. The asset in dispute shall be placed under judicial sequestration by the court hearing the case, and the provisions of art. 972 *et seq.* shall apply.

(3) In these cases, the trial shall continue only between the claimant and the third party brought into court. The judgment shall also be communicated to the defendant and shall be binding upon them.

Legal doctrine<sup>3</sup> has shown that „The parties may expand the subjective scope of the trial by filing a request to bring other persons into court [art. 68–71 CPC], a third-party notice [art. 72–74 CPC], or a motion identifying the actual right-holder [art. 75–77 CPC]. Third parties themselves may also request participation in the trial by filing a voluntary intervention request [art. 61–67 CPC].”

„Bringing another person to court represents a request for forced intervention through which one of the original parties or the main intervenor requests that a third party who could claim the same rights as the claimant or the intervenor be introduced into the trial in the event they file a separate action.”<sup>4</sup>

From this definition, which we consider accurate, the following conclusions can be drawn:

- only the initial parties and the principal intervenor (who became a party under art. 65) may request the introduction of the third party;
- the essential condition is that the third party could claim the same subjective rights as the claimant or principal intervenor<sup>5</sup>;
- the party requesting the forced intervention must justify a personal interest — namely, to prevent potential litigation that could be initiated by the third party regarding the same right<sup>6</sup>.

- G. Boroi, M. Stancu, *Drept procesual civil, Partea generală. Judecata în fața primei instanțe*, 6<sup>th</sup> ed., revised and added, Hamangiu Publishing House, Bucharest, 2023, p. 49.

<sup>3</sup> M. Tăbărcă, *Drept procesual civil, Vol. I – Teoria generală*, Universul Juridic Publishing House, Bucharest, 2013, p. 75-76.

<sup>4</sup> D.N. Theohari in G. Boroi (coord.), O. Spineanu-Matei, A. Constanda, C. Negrilă, V. Dănăilă, D.N. Theohari, D.M. Gavriș, F.G. Pănescu, M. Eftimie, M. Stancu, *Noul Cod de procedură civilă. Comentariu pe articole. Vol. I. Art. 1-455*, 2<sup>nd</sup> ed., Hamangiu Publishing House, Bucharest, 2016, p. 154.

<sup>5</sup> From the wording of art. 68 para. (1) CPC, it is clear that it is not necessary for the third party in question to have actually asserted the respective subjective right; however, it is obviously necessary that they have not renounced that subjective civil right.

<sup>6</sup> „The defendant has an interest in filing a request to bring into the proceedings other persons who may claim the same rights as the claimant in the following situations, exemplified in legal doctrine:

– in the case of legal obligations involving multiple creditors, if the debtor is sued by only one of them and has grounds to refuse payment—invoking, for example, legal termination of the contract, extinction of the claim, etc.—the debtor may request the inclusion of the other creditors in the proceedings in order to obtain a single judgment enforceable against all of them, thereby avoiding potential future litigation from the others;

– in the case of assignment of claims, when the assigned debtor is sued by the assignor, although a third party has notified them of the assignment, the debtor may submit a request to include the assignee in the proceedings to avoid the risk of an invalid payment;

– in the case where the former creditor has notified the debtor that they do not recognize the validity of the assignment and have instructed the debtor not to make payment, and the assignee later sues the debtor, the latter has an interest in bringing the assignor into the proceedings;

## 2.2. Deadline for filing the request to bring another person into the proceedings

The maximum deadlines for submitting the request to bring another person into court are provided under art. 68 para. (2) and (3) CPC.

For requests submitted by the claimant and the principal intervenor, art. 68 para. (2) CPC establishes as a time limit the completion of the evidentiary stage before the first instance. For requests submitted by the defendant, art. 68 para. (3) CPC provides that „the request shall be submitted within the time limit for filing the statement of defense before the first instance; if the statement of defense is not mandatory, no later than the first trial date.”<sup>7</sup>

Of course, during a trial, a party may hold multiple procedural roles, including those of both claimant and defendant, depending on the incidental claims filed in the case (for example, if the defendant in the main action files a counterclaim, they will act as claimant in relation to that claim, while the original claimant becomes the defendant in respect of the counterclaim). Therefore, when determining the deadline for submitting a request to bring another person into the case, the relevant procedural role under which the party submits the request must be taken into account.

According to art. 244 para. (1) CPC, „when the judge deems the case sufficiently clarified, they declare the evidentiary phase closed and may set another hearing date for the substantive debate, either *ex officio* or at the request of the parties.” Therefore, up until the moment when the judge formally declares the evidentiary stage closed, the claimant and the principal intervenor may file the request to bring another person into the proceedings.<sup>8</sup>

It has been pointed out that „unlike the previous regulation, where the deadline for submitting the request was set at the closing of the debates under art. 57 para. (3) CPC 1865, the current CPC sets this limit at the end of the evidentiary stage, which precedes the closing of the debates. This legislative change is a natural one, as under the current regulation, the moment of completing the evidentiary phase implies that no further motions may be submitted by the parties — with the term 'motions' including this form of forced intervention. In contrast, under the previous regulation, the right to submit such a request up to the closing of the debates could lead to their reopening and possibly also to a reopening of the evidentiary phase, especially if additional evidence needed to be administered, thus delaying the resolution of the case.”<sup>9</sup>

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– when the possessor of a property is sued by a person claiming to be an heir, the possessor may request the inclusion of other heirs in the trial to obtain a judgment enforceable against all of them, especially if they have means to contest the main claim;

– if the claimant seeks to recover property from the defendant, the latter may request the inclusion of a third party who also claims ownership of the property, particularly if the defendant has grounds to contest the main claim or wishes to hand over the asset to the party ultimately proven to be the rightful owner, etc.

The claimant also has an interest in filing a request to bring into the proceedings other persons who may claim the same rights as themselves in the following situations, as exemplified in the doctrine:

– in the situation where the assignee sues the debtor, and the latter defends themselves by invoking a prohibition to pay that was previously notified by the assignor, the claimant has an interest in bringing the assignor into the proceedings to prove the existence of their right and, implicitly, the nonexistence of the third party's claimed right;

– when the creditor seeks payment of their claim and the debtor defends themselves by stating that they were notified of the assignment by a third party, the claimant also has an interest in including the alleged assignee in the trial, again in order to prove their own right and the invalidity of the third party's claim;

– if an asset is being claimed, and the defendant indicates that a third party is the rightful owner of that asset—without, however, filing a request under art. 75 CPC—the claimant may request the inclusion of that third party in the case, in order to prove the validity of their own claim and the invalidity of the right asserted by the third party.” D.N. Theohari in G. Boroi (coord.), O. Spineanu-Matei, A. Constanda, C. Negrilă, V. Dănilă, D.N. Theohari, D.M. Gavriș, F.G. Păncescu, M. Eftimie, M. Stancu, *op. cit.*, p. 154-155. See also: V.M. Ciobanu, G. Boroi, T.C. Briciu, *Drept procesual civil. Curs selectiv. Teste grilă*, 5<sup>th</sup> ed., C.H. Beck Publishing House, Bucharest, 2011, p. 80. Also, for a detailed analysis of the legal nature and characteristics of the request to bring another person into the proceedings, see G. Boroi, M. Stancu, *Drept procesual civil*, 4<sup>th</sup> ed., revised and added, Hamangiu Publishing House, Bucharest, 2017, p. 129-143 and I. Leș, *Noul Cod de procedură civilă. Comentariu pe articole. Articolele 1-1133*, C.H. Beck Publishing House, Bucharest, 2013.

<sup>7</sup> For examples see G. Boroi, M. Stancu, *Drept procesual civil*, *op. cit.*, 2017, p. 134.

<sup>8</sup> In accordance with art. 400 CPC, if the court reopens the proceedings by deeming it necessary to administer additional evidence, the claimant or the principal intervenor may submit a request to bring another person into the case, given that the evidentiary stage has been resumed. It is worth recalling that, pursuant to art. 237 para. (1) CPC, „During the evidentiary stage of the proceedings, procedural acts shall be carried out, under the conditions provided by law, either at the request of the parties or *ex officio*, in order to prepare the substantive debate of the case, where applicable.” Art. 237 para. (2)-(7) CPC further provides that, in achieving the purpose set out in para. (1), the court „shall approve the evidence requested by the parties, insofar as it deems it relevant, as well as any other evidence it deems necessary for resolving the case, which it shall administer in accordance with the law.” Consequently, the administration of additional evidence may take place only within the evidentiary stage of the proceedings.

<sup>9</sup> D.N. Theohari in G. Boroi (coord.), O. Spineanu-Matei, A. Constanda, C. Negrilă, V. Dănilă, D.N. Theohari, D.M. Gavriș, F.G. Păncescu, M. Eftimie, M. Stancu, *op. cit.*, p. 155.

In the case of the defendant, if the statement of defense is not mandatory, the request to bring another person into the proceedings may be filed no later than the first trial date, provided that „the procedure of serving the summons to the defendant and communicating the statement of claim has been lawfully fulfilled, thereby allowing the defendant to become aware of the proceedings.” Although art. 68 para. (3) CPC refers strictly to the first trial date, it is evident that if the defendant was not properly served with the summons for that hearing, the procedural deadline for filing the intervention request does not begin to run. Furthermore, since this is an imperative deadline running against the defendant, it is not required that the claimant or other parties be properly summoned for the first trial date.

Failure to comply with the deadlines stipulated in art. 68 para. (2) and (3) CPC results in the party being barred from exercising the right to submit the request to bring another person into the case. However, such requests will not be annulled *per se* under art. 185 para. (1) CPC, but rather dismissed as inadmissible pursuant to art. 64 CPC [applicable under art. 69 para. (3)], in order for the dismissal order to be subject to appeal, in accordance with the provisions of art. 64 para. (4), which state: „In the case where the appeal against the order dismissing the request for intervention as inadmissible is admitted, the judgment issued in the case shall be automatically quashed, and the case shall be retried by the same court from the moment of discussing the preliminary admissibility of the request.”<sup>10</sup>

We agree with the doctrinal opinion according to which, for requests for forced intervention filed outside the time limits provided by art. 68 para. (2) and (3), the parties may mutually agree for them to be judged, and the court is not entitled to raise the tardiness of the request *ex officio*.<sup>11</sup>

Indeed, the deadlines provided under art. 68 CPC for filing the request to bring another person into the proceedings are of a private order, being imposed on the claimant and the defendant, but ultimately for the benefit of the third party.

<sup>10</sup> If the intervention request were to be annulled rather than dismissed as inadmissible, it could be interpreted that the analysis of its nullity was carried out by means of a procedural order prior to the stage of examining its preliminary admissibility, and the appellate court would no longer be able to act in accordance with art. 64 para. (4) CPC, in the event it finds that the annulment was erroneously ordered.

<sup>11</sup> „If the request for forced intervention is submitted before the first-instance court after the deadlines provided in art. 68 para. (2) and (3) CPC have passed, but before the closing of the debates, since no jurisdictional level is thereby infringed and the law does not require the express consent of the parties for its acceptance beyond the deadline, it follows that the parties may give their tacit agreement to this effect, and the court is not entitled to raise *ex officio* the exception of late submission of the intervention request.” - D.N. Theohari in G. Boroi (coord.), O. Spineanu-Matei, A. Constanda, C. Negrilă, V. Dănilă, D.N. Theohari, D.M. Gavriș, F.G. Păncescu, M. Eftimie, M. Stancu, *op. cit.*, p. 156. The arguments put forward in support of this opinion are as follows: • the legal text does not require the express consent of the parties for accepting a request filed after the deadline, which means that tacit agreement is also permitted; • when the legislator has made the acceptance of a late request conditional upon the express consent of the parties, it has done so explicitly (for example, in the case of an additional claim or a request for the taking of evidence), in which situations, in the presence of only a tacit agreement, the court is entitled to raise *ex officio* the exception of late submission; • in such cases, it is evident that the applicable legal norms are of a private nature, since, if they were of public order, the parties would not be allowed to derogate from them even by express agreement. Therefore, in this context, the legal norms are of a private nature with a derogatory regime regarding the court's ability to raise *ex officio* the issue of tardiness, rather than public order norms with a derogatory regime regarding the parties' ability to agree to derogate. The essential feature of a public order norm is precisely the prohibition against the parties derogating from the conduct prescribed or forbidden by law; • there is no justification for treating differently the legal norms governing the request to bring another person into the proceedings (as public order norms) and those governing additional claims (as private law norms). Both categories of norms are of private law, but they have a distinct legal regime with respect to the court's ability to raise tardiness *ex officio*. While for an additional claim, the legislator expressly requires the express consent of the parties for its acceptance after the deadline – failing which the court may invoke tardiness *ex officio* – for the request to bring another person into the case, no such condition is imposed, which implies that the request may be accepted even based on the parties' tacit agreement, in which case the court cannot raise *ex officio* the tardiness; • this distinction in legal regime between forced intervention requests and additional claims can be explained by the benefits of resolving forced intervention requests within the same proceedings – namely, preventing contradictory judgments and ensuring better judicial efficiency, as the court would rule not only on the substantive legal relationship between the claimant and defendant, but also on the legal relationships between the intervening third parties and the original parties; • if one were to consider that the deadline for filing the incidental request in question is governed by norms of public order, this would mean that even when the parties expressly agree to accept the late request, they would not be able to override the sanction of forfeiture, and the court would remain entitled to invoke tardiness *ex officio*. Such a conclusion would conflict with the parties' right to define the procedural framework of the case, in accordance with the principle of party autonomy (disponibility).“

In a similar vein, it has been argued that the rule governing the peremptory legal deadline for filing the request to bring another person into the proceedings is one of private law, „so that, if the parties agree, a belatedly submitted forced intervention request may be adjudicated together with the main claim”. The authors nevertheless emphasize that an express agreement of the parties is required in this regard, stating that „the judge shall verify whether the other parties expressly consent to the acceptance of the late submission, and if they respond in the negative or fail to express their position, the request shall be dismissed as late”. See G. Boroi, M. Stancu, *op. cit.*, p. 1135-1136.

According to art. 65 para. (1) and (2) CPC<sup>12</sup>, the third party brought into the case will become a party to the proceedings only after the court grants preliminary admissibility of the request. The third party will take over the procedure in the state it was in at the time of admission, may request the administration of evidence, and all procedural acts thereafter shall be carried out with respect to them as well. Therefore, the rationale behind the legislature's decision to allow third-party participation only until the evidentiary phase is completed lies in the observance of the third party's right of defense (in a broad sense), particularly their opportunity to actively participate in the evidentiary stage of the case.

Consequently, if a request for forced intervention is submitted after the deadlines laid down in art. 65 para. (1) and (2) CPC, the express or tacit agreement of the original parties to the trial becomes irrelevant (as such agreement would disregard the third party's procedural rights). What must be verified instead is the express or tacit agreement of the third party whose introduction is being requested.

It is true that in the case of a principal intervention, the law allows it to be filed before the closing of substantive debates, and even on appeal, provided there is express agreement of the parties. However, unlike the request to bring another person into the proceedings, where the deadlines in art. 68 para. (2) and (3) are binding on the claimant and defendant for the benefit of the third party, the maximum time limit for principal intervention under art. 62 para. (2) is binding on the third party, but benefits the original parties to the proceedings.

A request to bring another person into the case filed directly in appeal or cassation is inadmissible under the provisions of art. 478 para. (3) and art. 478 para. (1) CPC. „This solution is based on the argument that at the stage of trial before the first instance, a procedural time limit is imposed, the violation of which results in forfeiture, governed by rules of private law. However, by filing the request directly in the appeal stage, the mandatory jurisdictional levels are bypassed — which are protected by the provisions of art. 478 para. (1) and (3) CPC — thus requiring the sanction of inadmissibility, a sanction governed by public order rules and which may be raised by the court *ex officio*.”<sup>13</sup>

### 2.3. The legal nature of the request to bring another person into the proceedings

According to one opinion, „the request to bring another person into the proceedings is not a genuine statement of claim, such as the principal voluntary intervention or the third-party notice. In fact, the Code expressly provides only for the latter two that they must comply with the format required for a statement of claim [art. 62 para. (1) and art. 73 para. (1) CPC]. For the request to bring another person into the proceedings, CPC only requires reasoning, as is also the case for the motion identifying the actual right-holder, thus establishing a legal distinction — the latter two, by contrast, not adopting the formal requirements of a statement of claim. (...) The purpose of the request to bring another person into the proceedings is to involve the third party in the trial in order to ensure the enforceability of the judgment against them. Under art. 71 CPC, this type of request seeks to determine the person who is the actual holder of the right claimed in the main action, in view of releasing the defendant from the obligation imposed on them. This form of forced intervention is initiated by the claimant, defendant, or principal intervenor against the third party, but the position of the forced intervenor vis-à-vis the claimant in the overall litigation does not entitle them to obtain rights in their own patrimony through the court judgment, except in the derogatory situations governed by art. 71 CPC.”<sup>14</sup>

According to another opinion, the request to bring another person into the proceedings does constitute a genuine statement of claim: „From a procedural perspective, the request based on art. 68 CPC is a true claim, assimilated by the legislature to one submitted by the claimant. The particularity of this request lies in the fact that the claim brought before the court by the party in the pending trial does not belong to that party, but to a third party, who is compelled through the request to intervene and assert that claim in the capacity of claimant. As a result, although art. 69 para. (1) CPC refers explicitly only to the need for reasoning, the request grounded in this provision must meet all the formal conditions required by law for a statement of claim, namely the

<sup>12</sup> According to art. 69 para. (3) CPC, the provisions of art. 64 and 65 shall apply accordingly.

<sup>13</sup> D.N. Theohari in G. Boroi (coord.), O. Spineanu-Matei, A. Constanda, C. Negrilă, V. Dănăilă, D.N. Theohari, D.M. Gavriș, F.G. Păncescu, M. Eftimie, M. Stancu, *op. cit.*, p. 157.

<sup>14</sup> *Idem*, p. 156.

requirements set out in art. 194 CPC, and in addition, must include references to the case in which it is being filed.”<sup>15</sup>

In our opinion, the request to bring another person into the proceedings cannot be regarded as having the legal nature of a true statement of claim, because it does not assert any claim against another person, nor on behalf of another person. Rather, it indicates that there may be a potential claimant whose participation in the proceedings is necessary for the proper resolution of the dispute.

The third party will acquire the status of claimant based on the subjective right that they could have pursued independently, and the court remains seised only with the claim formulated in the original statement of claim. It will then decide, if applicable (for instance, in the scenarios described in art. 71 CPC), which of the claimants may obtain admission of the action<sup>16</sup>.

In practice, in such scenarios, the request to bring another person into the proceedings is a procedural act aimed at involving persons other than the original claimant, who may have active standing in relation to the subjective right under dispute in the initial action. Therefore, in such cases, the court's decision cannot involve, for instance, admitting the principal claim as well-founded while dismissing the forced intervention claim as unfounded, since both claimants cannot simultaneously have active standing over the same subjective right. Depending on the facts of the case, the court will need to assess and admit the lack of standing of one of the claimants.

It is also possible that the third party introduced into the proceedings may not wish to obtain recognition of their right through a court judgment or to obtain an enforceable title against the defendant. In such cases, the court must take into account that option, limiting itself to dismissing the principal claim as being filed by a person without active standing. The reasoning section of the judgment should reflect the court's assessment regarding the existence or nonexistence of the third party's right.

The request for forced intervention must be filed in writing, as according to art. 148 para. (4) CPC, applications may only be made orally in cases expressly provided by law. According to art. 64 para. (1) CPC [also applicable to the request to bring another person into proceedings under art. 69 para. (3)], „the court shall communicate the request for intervention and copies of the accompanying documents to the parties”. Therefore, the provisions of art. 149 CPC also apply, which state that „When an application is to be served, it shall be filed in as many copies as necessary for communication, except in cases where the parties have a common representative or where a party acts in multiple procedural capacities, in which case a single copy shall suffice. In all cases, one copy for the court is also required.”

Under art. 69 para. (1) CPC, reasoning of the request to bring another person into the proceedings is mandatory, meaning it must be substantiated both in fact and in law.

No court fee is owed for filing a request to bring another person into the proceedings, because — as we have argued above — it is not a true statement of claim. Art. 34 para. (3) of GEO no. 80/2013 stipulates that only the principal intervention and the third-party notice are subject to stamp duty.<sup>17</sup>

#### 2.4. Preliminary admissibility of the request to bring another person into the proceedings

According to art. 69 para. (3) CPC, the provisions of art. 64 and 65 CPC shall apply accordingly.

Art. 64 CPC provides the following:

**„Art. 64 – Trial procedure. legal remedies**

(1) The court shall serve the request for intervention and copies of the accompanying documents to the parties.

(2) After hearing the intervenor and the parties, the court shall rule on the preliminary admissibility of the intervention by means of a reasoned court order.

(3) The court order may be challenged only together with the merits of the case.

<sup>15</sup> See G. Boroi, M. Stancu, *Drept procesual civil*, op. cit., 2017, p. 130.

<sup>16</sup> Of course, such an approach will not apply in the situation where the request to bring another person into the proceedings was filed solely to ensure the enforceability of the judgment against the third party, and not to determine who holds the right in dispute.

<sup>17</sup> Also see D.N. Theohari in G. Boroi (coord.), O. Spineanu-Matei, A. Constanda, C. Negrilă, V. Dănăilă, D.N. Theohari, D.M. Gavriș, F.G. Păncescu, M. Eftimie, M. Stancu, op. cit., p. 160.

(4) If the legal remedy filed against the court order that rejected the intervention request as inadmissible is admitted, the judgment issued shall be legally quashed, and the case shall be retried by the court before which the intervention was submitted, starting from the moment of ruling on its preliminary admissibility.”

Thus, after the request and accompanying documents are served to all parties and to the third party being summoned, the court will conduct an adversarial discussion on the preliminary admissibility of the forced intervention request. It is not excluded that this admissibility analysis might require the administration of evidence (for example, a document in the possession of a third party), in which case the court will postpone ruling on admissibility until after the evidence is administered.

Although the text of art. 64 does not expressly define what preliminary admissibility of a forced intervention entails, art. 68 para. (1) CPC indicates that the court must at least verify whether the condition is met for the third party to be able to claim the same rights as the claimant. The court’s reasoning on this aspect will be included in the hearing order and must be cautiously drafted to avoid creating a situation of judicial incompatibility.

Doctrine has stated that when analyzing preliminary admissibility of a request for intervention, the court will verify the following: „whether the party filing the request justifies a legal interest; whether the third party could, through a separate action, claim a right against the parties to the pending case; whether the right that may be invoked by the third party is the same as the one claimed by the claimant (who may be, as the case may be, the claimant in the principal action, the counterclaim, or the principal intervenor); whether the request for forced intervention was filed within the statutory deadline; whether, given the nature of the dispute between the original parties, it would be legally admissible for the third party to claim the same rights as the claimant; and whether the other conditions for the exercise of procedural rights forming the civil action are met (procedural standing and capacity). The court will also verify whether the formal requirements of the intervention request, under art. 194 CPC, are met, along with any extrinsic requirements such as proof of payment of the court fee, proof of representation, etc.”<sup>18</sup>

In our opinion, the existence of legal interest, the observation of deadlines for filing the intervention request, procedural capacity and standing, compliance with formal and extrinsic conditions — these are not aspects that should be examined within the scope of preliminary admissibility of the request to bring another person into the case. However, in order to allow the interested party to invoke the provisions of art. 64 para. (4) in any case where the intervention request has been dismissed, and to ensure the purpose intended by the legislature is fulfilled (*i.e.*, full effectiveness of the remedy if the appeal against the order of inadmissibility is admitted), we believe that in all cases where such irregularities are identified, the court should issue a judgment dismissing the forced intervention request as inadmissible.

Nevertheless, we consider that in certain situations, the preliminary admissibility of the request should be assessed **before** serving it on the third party whose introduction into the case is sought [even though art. 64 para. (1) and (2) provide otherwise], in order to ensure the speedy conduct of the trial and to avoid unnecessary formalities.

For example, an unsigned or unreasoned request should be dismissed **before** being served on the third party whose participation is being requested. In such a case, we believe it is redundant to serve the request to the third party only for it to later be dismissed as inadmissible. This procedure would not prejudice the interests of the third party, since the outcome is favorable to them, and the person who filed the request still retains the legal remedy provided by art. 64 CPC.

## 2.5. The status of the third party introduced into the case

According to art. 70 CPC, „the person brought into the proceedings acquires the procedural status of claimant, and the judgment shall also produce effects with regard to them.”

Thus, as a result of the court’s preliminary admission of the forced intervention request, the third party acquires the status of claimant. In accordance with art. 65 para. (2) CPC, „they shall take over the procedure in the state it is in at the time the intervention is admitted but may request the administration of evidence either in the request for intervention or, at the latest, by the first trial date following the admission of the intervention request. All subsequent procedural acts shall also be performed with respect to them.”

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<sup>18</sup> G. Boroj, M. Stancu, *Drept procesual civil, op. cit.*, 2017, p. 140.

The fact that the third party takes over the procedure in the state it is found at the time of the intervention's admission means that they cannot request the re-administration of evidence or the repetition of procedural acts carried out before their participation in the case.

Since the third party is not the initiator of the forced intervention request, they cannot unilaterally withdraw it. However, they may renounce the right which they are claimed to potentially hold or may conclude a judicial settlement.<sup>19</sup>

Filing a forced intervention request may result in the **interruption of the statute of limitations** applicable to the new claimant's substantive right of action under art. 2537 para. (1) CC, if the request for forced introduction into the case can be construed as an express or tacit acknowledgment of the right subject to limitation.

Given that the forced intervenor acquires the status of claimant, they have the possibility to **file their own request to bring other persons into the proceedings**, if those persons could claim the same rights as the claimant. This is expressly provided for in art. 68 para. (2) and (3) CPC, which allow such requests to be made by the claimant.

In the cases governed by art. 70 para. (1) and (2) CPC, the trial may continue only between the initial claimant and the newly introduced claimant. However, the judgment must also be communicated to the defendant, to whom it is binding.<sup>20</sup>

### 3. Conclusions

From the content of this paper, the following conclusions can be drawn as most relevant:

- only the original parties to the proceedings and the principal intervenor (who became a party under art. 65 CPC) may request the introduction of a third party into the case;
- the essential condition for filing such a forced intervention request is that the third party being brought into the proceedings must be able to claim the same subjective rights as the claimant or the principal intervenor;
- the party using the forced intervention request must justify a personal interest, which consists of preventing a future lawsuit that the third party might initiate concerning the same subjective right;
- in the case of the defendant, if the statement of defense is not mandatory, the request to bring another person into the proceedings may be filed no later than the first hearing, provided that the procedures for serving the summons and communicating the statement of claim to the defendant have been properly carried out, thereby giving them the opportunity to become aware of the proceedings;
- failure to comply with the deadlines stipulated in art. 68 para. (2) and (3) CPC results in forfeiture of the right to file the request to bring another person into the case; however, such requests will not be annulled under art. 185 para. (1) CPC, but will be dismissed as inadmissible under art. 64 CPC;
- for forced intervention requests submitted after the deadlines under art. 68 para. (2) and (3) CPC, the parties may agree that they be judged, and the court is not entitled to raise ex officio the exception of late filing;
- if the forced intervention request is filed outside the time limits set forth in art. 65 para. (1) and (2) CPC, the existence of the express or tacit agreement of the original parties is irrelevant (since it would disregard the rights of the third party brought in); what must be verified is only the express or tacit agreement of the third party whose introduction is being requested;
- the request to bring another person into the proceedings cannot have the legal nature of a genuine statement of claim, as it does not assert any claim against another party, nor on behalf of another, but rather points out the possible existence of another potential claimant whose participation is required for the fair resolution of the case;
- the third party acquires the status of claimant by virtue of the subjective right they could assert independently, and the court remains seized only with the claim formulated in the original statement of claim.

<sup>19</sup> For the opposing view, which we do not share, see, O. Haneș, V. Luncean, B. Diamant, *Cererea de chemare în judecată a altei persoane. Condiții de admisibilitate. Calitatea pe care o dobândește persoana chemată în judecată în temeiul art. 57 C. pr. civ.*, in *Pandectele Române* no. 3/2003. „It goes without saying that the person brought into the proceedings, who acquires the status of an intervenor with a personal interest (regardless of whether the court admitted the request filed by the initial claimant or defendant—lawfully or not), may at any time renounce this status and refuse to participate in the proceedings, stating that they have no interest in claiming the same rights as the claimant or the defendant.”

<sup>20</sup> For a detailed analysis of these situations, see D.N. Theohari in G. Boroș (coord.), O. Spineanu-Matei, A. Constanda, C. Negriță, V. Dănilă, D.N. Theohari, D.M. Gavriș, F.G. Păncescu, M. Eftimie, M. Stancu, *op. cit.*, p. 164-165.



It will then determine, if necessary (as in the situations governed by art. 71 CPC), which of the claimants may be granted the request. In such cases, the request to bring another person into the proceedings is a procedural act aimed at involving persons other than the original claimant, who might have active standing regarding the subjective right in dispute. Consequently, the court cannot render a decision that both admits the main claim as well-founded and dismisses the forced intervention request as unfounded, since both claimants cannot have active standing over the same right. Therefore, depending on the case, the court will have to raise and admit the lack of standing of one of the claimants;

- it is possible that the third party introduced into the case may not wish to obtain judicial recognition of their right or to obtain an enforceable title against the defendant. In such a case, the court must take into account their choice and simply dismiss the main claim as filed by a person lacking active standing. The judgment's reasoning must include the court's findings on the existence or absence of the third party's right;
- the request to bring another person into the proceedings must be made in writing and be reasoned, but it is not subject to a judicial stamp duty;
- the existence of legal interest, the observance of the deadline for filing the intervention request, the procedural standing and capacity, the fulfillment of formal conditions and external conditions (such as proof of payment of fees, representation, etc.) should not fall under the preliminary admissibility analysis of the request to bring another person into the case. However, in order to allow the interested person to invoke art. 64 para. (4) CPC in any case where the forced intervention request was dismissed and to ensure the legislative purpose behind the appeal mechanism, we believe that whenever such irregularities are found, the court should issue a decision dismissing the forced intervention request as inadmissible;
- in certain situations, preliminary admissibility should be analyzed even before the request is served on the third party [even if art. 64 para. (1) and (2) provide otherwise], to ensure expeditious adjudication and to avoid unnecessary procedural steps;
- the fact that the third party takes over the procedure in the state it is in at the moment of admission means that they may not request the re-administration of evidence or the repetition of procedural acts performed before their participation in the proceedings;
- filing a forced intervention request may interrupt the statute of limitations for the new claimant's substantive right of action, under art. 2537 para. (1) CC, if the request can be construed as an express or tacit acknowledgment of the right subject to limitation.

Through these conclusions, to the extent they are accepted, the procedural path and effects of a request to bring another person into court are clarified, contributing to the establishment of consistent judicial practice and ensuring that the trial activity remains predictable for civil litigants.

Of course, only judicial practice will reveal those unforeseeable situations that, by definition and despite the most significant efforts, remain inaccessible to authors or researchers (even those with practical experience), and which may eventually lead to a reconsideration of the above conclusions. For this reason, it remains necessary to continue analyzing atypical cases from judicial practice and to draw the appropriate conclusions.

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