APPEAL IN THE INTERESTS OF THE LAW WITHIN CURRENT REGULATIONS

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Abstract

The paper approaches theoretical issues of appeal in the interests of the law, emphasizing the role of such legal institution which aims at ensuring the uniform interpretation and application of the law across the country. The constitutional attribute of ensuring the uniform interpretation and application of laws by all courts rests with the High Court of Cassation and Justice which should only refer to the interpretation of the law.

Key Words: *appeal, appeal in the interests of the law, uniform application of the law, law court*

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1. Preliminary Issues

An appeal in the interests of the law has acquired a new approach by Law no. 134/2010 regarding the Civil Procedure Code[2], with subsequent amendments and additions.

By the reform brought about by the new regulations, the purpose has been for this legal institution to create the general framework meant to ensure the uniform interpretation and application of the law throughout the country where legal issues have been addressed differently by the courts. Currently, an appeal in the interests of the law is regulated by Article 514-518 of the Civil Procedure Code, and the provisions of the law state that such a legal institution is not a remedy at law[3], since as shown in Article 517 Paragraph (2) of the Civil Procedure Code, the decisions ruling in the interests of the law do not affect examined judgments, nor do they affect the situation or interests of the parties in those trials. Therefore, the reason of this legal institution consists in building and maintaining a uniform practice throughout the country[4].

2.Topics of an Appeal in the Interests of the Law

As results from Article 514 of the Civil Procedure Code, legal standing belongs to the general prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice which may act ex officio or upon the request of the Ministry of Justice, the Board of Directors of the High Court of Cassation and Justice, the boards of directors of courts of appeal as well as of the Ombudsman. The actual wording of the provisions in Article 514 of the Civil Procedure Code clearly states that the authorities mentioned in it have the duty to demand the High Court of Cassation and Justice to rule on these law issues that have received a different resolution from the courts. Therefore, these authorities are required to notify the High Court of Cassation and Justice to rule on those law issues which have been settled differently by the courts, solving some controversial law issues being a real support to a judge to settle the causes dealing with such issues.

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[2] Reissued in Part 1 of Romanian Official Gazette no. 545 of 3 August 2012;

[3] For further details, see Ioan Leș, Noul Cod de Procedura Civila (New Civil Procedure Code), comments of articles (1 - 1133), CH Beck Publishing House, Bucharest, 2013, p. 758; Marian Nicolae, Recursul în interesul legii şi dezlegarea în prealabil, a unei chestiuni de drept noi de către Înalta Curte de Casație şi Justiție în lumina noului Cod de procedură civilă (Appeal in the Interests of the Law and Prior Settlement of a New Legal Issue by the High Court of Cassation and Justice in Light of the New Civil Procedure Code), in Law no. 2/2014,pp.20 – 21; Gabriel Boroi, Mirela Stancu, Drept procesual civil (Civil Procedural Law), Second Edition, revised and improved, Hamangiu Publishing House, 2015,p.746;

[4] Ioan Leș, Tratat de drept procesual civil (Civil Procedural Law Treaty), CH Beck Publishing House, Bucharest, 2001, p.645;

The obligation imposed by a lawmaker is justified because it is only this legal way that can help one remove the errors in the uniform interpretation and application of the law by all courts.

Yet, one can notice that a lawmaker does not impose any sanction where authorities empowered by the law do not refer the matter to the supreme court to rule on the issues of law that have received different resolutions.

3. Object of An Appeal in the Interests of the Law

The object of an appeal in the interests of the law ensues from the provisions of Article 514 of the Civil Procedure Code. Thus, according to the final part of Article 514, an appeal in the interests of the law aims at the "law issues that have been settled differently by the courts".

An essential provision in the analyzed material is also contained in Paragraph (2) of Article 517 which stipulates that resolutions are pronounced in the interests of the law and have no effect on the examined judgments or on the situation of the parties to those trials. Accordingly, an appeal in the interests of the law only concerns the law issues settled differently by the courts. As such, it does not concern matters of fact, even if they have been wrongly perceived by the courts[1].

Concerning the scope of the judgments that can be challenged by an appeal in the interests of the law, Article 515 makes it clear that an appeal in the interests of the law covers only final judgments[2].

4. Eligibility Conditions

The eligibility requirements of an appeal in the interests of the law are provided by Articles 514 and 515 of the Civil Procedure Code and in order that the supreme court be legally notified, these requirements must be met cumulatively. Thus, the conditions of an appeal in the interests of the law envisage :

a) active legal standing;

b) object of the appeal;

c) the existence of a legal issue which has received a different resolution from the courts.

The essential condition for the eligibility of an appeal in the interests of the law is the existence of a law issue which has been settled differently by the courts. Therefore, as already pointed out, the factual situations erroneously set by the courts cannot trigger an appeal in the interests of the law.

Practice has shown that an issue of law receives a different interpretation by the courts when it is unclear, questionable, incomplete etc[3]. However, it should be noted that only the presence of a legal issue is not enough, but it is necessary that this issue be given a different interpretation by the courts, which means that a legal issue settled differently can be the object of an appeal in the interests of the law provided it has been settled by the courts, not by other judicial bodies.

Another requirement envisages the situation where a legal issue has been settled differently by final judgments[4].

A requirement that emerges from the statutory provisions in the field refers to the fact that contradictory final judgments must be attached to the appeal application. A lawmaker does not impose any condition regarding the number of contradictory judgments, but sets as eligibility requirement for an appeal in the interests of the law the existence of such resolutions as, otherwise, an appeal would be devoid of purpose.

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[1] Idem , p.648;

[2] Article 329 of the Civil Procedure Code of 1865 only included a general reference to judgments without making their delimitation;

[3] In this respect, also see Marian Nicolae, op. cit., p. 25;

[4] See Article 634 of the Civil Procedure Code;

5. Procedure to Settle an Appeal in the Interests of the Law

The procedural rules to be followed in settling an appeal in the interests of the law are referred to in Articles 516-518 of the Civil Procedure Code. Thus, an appeal application shall include in principle all the elements of an application addressed to the courts. Additionally, it shall also decide the judgments including various solutions on the same issue of law under debate.

The Civil Procedure Code does not include any provisions regarding the reasoning of an appeal in the interests of the law, yet the reasoning is necessary for the supreme court to know which the contradictory views are that have given rise to different resolutions and to order accordingly.

It should be specified that it is also necessary to mention in an appeal application the resolution of law deemed to be in compliance with the statutory provisions in the field, as only showing the contradictory viewpoints is not enough, because the point of view of the person making the notification is also necessary, and the panel empowered to settle the appeal may form a correct view only after considering all the resolutions specified in the notification.

Regarding the term of exercise, it can be seen that the regulations in the field of an appeal in the interests of the law do not impose a specific deadline, which may be exercised at any time, regardless of the date on which the contradictory judgments were pronounced. The ability to settle an appeal in the interests of the law belongs in all situations to the High Court of Cassation and Justice which, according to Article 126 Paragraph (3) of the Constitution, ensures the uniform interpretation and application of the law by other law courts.

By the year 2010, an appeal in the interests of the law used to be settled by the United Sections of the Supreme Court. After the entry into force of Law no.202/2010, an appeal in the interests of the law is judged by a panel made up of 25 judges according to Article 516 of the current Civil Procedure Code. According to the above mentioned article, the panel is made up of the chairman or, in his/her absence, the vice-president of the supreme court, the presidents of its four sections and twenty judges of whom fourteen judges from the section/sections in whose jurisdiction the legal issue falls, settled differently by the courts, and 2 judges from the other sections.

When an issue of law is the concern of two or more sections or does not fall in the jurisdiction of any section, the ability of the panel is determined by Article 516 Paragraphs (2) and (3). In all cases, the appointment of judges making up the panel of settling an appeal in the interests of the law is made randomly, according to Article 516 Paragraph (4). According to the provisions in Paragraph (9) of Article 516, when there are objective reasons, appointed judges may be replaced following the rules for their appointment.

In order to examine an appeal in the interests of the law, the panel chairman shall appoint three judges of the panel members to draw up a report on the appeal, with the possibility of requesting the opinion of specialists on the issue of law that needs clarifying. The report shall include the elements provided in Paragraph (7) of Article 516, namely that different resolutions of the issue of law and the arguments underlying them, the relevant jurisprudence of the Constitutional Court, the European Court of Human Rights, or the European Court of Justice, where appropriate, the doctrine in the field, the opinions of specialists. The reporting judges shall prepare and motivate the project of the resolution suggested. All panel members participate in the hearing. According to Article 516 Paragraph (10), an appeal in the interests of the law is argued before the panel by the General Prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice, or by the prosecutor appointed by him/her, by the judge appointed by the board of directors of the High Court of Cassation and Justice or of the Court of Appeal, or by the Ombudsman or his/her representative.

An appeal shall be heard within 3 months from the notification of the court, and the resolution shall be adopted with at least two thirds of the panel judges, nonvoting being rejected [Article 516 Paragraph (11)].

6. Potential Resolutions to be Pronounced in an Appeal in the Interests of the Law

The panel of the High Court of Cassation and Justice rules on an appeal application by the decision to accept or reject it. Rejection of the appeal occurs when the requirements for eligibility expressly provided by the law are not met.

When an appeal is admitted, a decision is pronounced as shown in Article 517 Paragraph (2) only in the interests of the law and has no effect on the examined judgments or on the situation of the parties in these trials.

According to Article 517 Paragraph (3) of the Civil Procedure Code, a decision is motivated within 30 days from its ruling and is issued within not more than 15 days from its reasoning in Part I of the Romanian Official Gazette.

The settlement of legal issues judged by the supreme court is binding on the courts, from issuing the decision in the Romanian Official Gazette.

A decision expires on the date of the amendment, repeal or declaration of unconstitutionality of the legal provisions which have been the subject of interpretations (Article 518).

Of all the above mentioned provisions, it results that a judge must follow the decision given by the supreme court, with the provision contained in Article 518 being imperative. Violating this provision, however, is not sanctioned by the law, but a judge may get a disciplinary sanction.

It should be specified that the errors regarding the correct interpretation and application of legal norms is not only due to the large amount of existing normative acts in force at a particular time, but also to their faulty typing which generates multiple interpretations and creates the impression among parties that justice is not impartial.

Also worth mentioning is that such normative acts bear frequent changes, the norms on their application being issued late, moreover, they complicate rather than explain law enforcement and often add what is unconstitutional to it. The large number of normative acts and legislative instability generate stress for those who must apply them, so that a simplification of legislation is imperative[1]. These issues have been raised promptly and in an argued manner by several experienced doctrine makers, but apparently they have not yet been considered by those competent. In order to be applied properly, the law must be accessible and predictable because otherwise even the fairest citizen may violate it, and this is not beneficial for the society or for the citizens.

7. Waiver of Appeal in the Interests of the Law

Lawmakers make no reference to the possibility of a waiver of an appeal application, but legal practice has ruled favorably on this issue, as a resolution criticized by the doctrine.

It is considered that the author of a notification cannot waive an appeal application as the role of this legal institution would be removed, which has not been the intention of the lawmaker.

Even if an appeal in the interests of the law would be clearly inadmissible or devoid of purpose as a result of the fact that the law text generating controversy was repealed after notifying the supreme court, withdrawing the appeal has no influence on the settlement procedure, because the supreme court must rule on the waiver by decision, too, something that is clear from the provisions of law texts regulating this legal institution.

Conclusions

Non-uniform judicial practice creates a state of anxiety and mistrust in the justice among individuals/parties.

[1] For further details on law simplification, see Mircea Duţu- ,, Simplificarea- imperativ al modificării şi ameliorării calităţii dreptului în Dreptul nr.3/2015 (Simplification - Imperative of Changing and Improving the Quality of Law in Law No.3/2015), pp. 74-89;

An appeal in the interests of the law is a procedural means by which judicial practice can be unified, thereby ensuring both equality before the law and the certainty and stability of legal reports. Ensuring a uniform practice can be done under the legislation in force only by the High Court of Cassation and Justice in accordance with statutory and constitutional powers, its decisions are binding on courts and they are designed to guide the courts in issuing legal uniform solutions.

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