

CONSIDERATIONS ON THE PROCEDURE OF REDUCED VALUE APPLICATION IN THE REGULATION OF THE NEW CODE OF CIVIL PROCEDURE

Licuța, Petria¹

Abstract:

The reduced value application procedure is regulated by the New Code of Civil Procedure, in art. 1025-1032, and it purposes to settle the litigations presented for judgment with expediency. The procedure is enforced in the case of applications having a maximum value of 10,000 lei at the date of court notification, and this amount does not include interests, court expenses and other accessory revenues. In the enforcement of the procedure, both the value of the application, and its object shall be taken into account, as the legislator expressly provided in art. 1025 para. (2) and (3) the situations to which this procedure does not apply. The work approaches the aspects related to the reduced value application procedure, from the point of view of the provisions of art. 1025-1032 from the Code of civil procedure in force, and the aspects referring to the area of application, the competent law court, opening and settlement of the procedure.

Keywords: application, reduced value, procedure, litigation.

JEL classification: K00, K10

1. Preliminaries

The Civil Procedure Code² that entered into force on the 1st of February 2013³, establishes in addition to other special procedures of law also the procedure on low value claims governed by art.1025-1032.

The procedure regarding the reduced value claims, had as source (foundation) the Regulation (EC No. 861/2007 of 11.06.2007) establishing an European procedure on applications of reduced value and which aimed to simplify and accelerate litigations on the cross-border reduced value applications⁴.

Through the opening of the proceedings of the reduced value request, the Romanian legislator has sought not only prompt settlement of claims of this type, but the simplification of solving, the applicant leaving the choice between this procedure and the procedure of the common law. This procedure applies only if the applicant expressly requests it and the requirements for admissibility are fulfilled, of art.1025-1032, Civil Procedure Code.

In what follows, we will address some issues relating to the scope, nature, onset and course of the procedure, settlement of claims and appeals.

2. Scope of Application

As outlined in the provisions of the Civil Procedure Code art.1025 procedure regarding the reduced value claims apply only to civil disputes valued in money or claims up to RON 10,000 at the time the court is seized, in this amount the interest, court costs and other income accessories, are not included.

From the actual drafting of the provisions of paragraph art.1025. (1) it appears that what the court needs to check within the control, aiming at the admissibility procedure, it is only the value of the main flow at the date at which the court was notified.

¹ Lecturer Ph.D., "Constantin Brâncoveanu" University of Pitești, F.M.M.A.E. Rm. Vâlcea, Romania

² Law 134/2010 on Civil Procedure Code was republished in the Official Gazette of Romania, Part I, no.545 / 03.08.2012

³ According to GEO No. 44/2012 published in the Official Gazette of Romania, Part I, No 606 / 23.08.2012

⁴ Published in J.O.U.E. 199 of 31.07.2007, pag.1-22 entered into force January 1, 2009 in all Member States except Denmark

Therefore, as emphasized in the doctrine (Boroi, 2013) the settlement procedure, of the reduced value application “does not prevent the increase of the claim , the process started in these conditions will continue to be conducted even if the amount added to the main flow volume makes it to exceed the limit of the value - threshold ”.

The solution is logical and results right from the provisions of the analyzed text, for the threshold value of the litigation subjected to trial, shall be estimated on the date of notification of the court the legislator, not restricting the increase of the claim during settlement proceedings over this limit. In addition to the main flow volume the applicant may also request interests, penalties etc. which must be provided separately in the application, the value of which is not limited as they are not considered in determining the threshold for initiating proceedings.

In addition to the criterion "of the main flow value" another criterion for the admissibility of the request with reduced value, is the one targeting the nature of the legal relationship subject to judgment, the legislator establishing in art.1025 paragraph (2) of the Civil Procedure Code, a number of situations, during which the procedure is not admissible, namely: to revenue, customs or administrative matters nor in concerning liability of the village for acts or omissions in the exercise of public authority.

Excluding these matters is not intended to favor the state. We believe that at the establishment of this exception has been taken into account the complexity of the litigations aiming at the fields of activity listed, requiring the taking of evidence and expertise that leads to increasing the period of settlement of the case, otherwise the purpose of the procedure would not be achieved.

The procedure does not apply to claims relating to: the status or capacity of natural persons, property rights arising from family relations, inheritance, insolvency, the preventive concordat and the procedures for liquidation of insolvent companies or other legal persons or other similar procedures, social security, employment, renting of property except actions on claims concerning payment of money, arbitration, interference with privacy rights or other rights relating to personality.

Specifying specific situations where with reduced value request procedure shall not apply to eliminate any erroneous interpretation and application of the provisions of paragraph art.1025. (1).

3. The character of the procedure

As shown in art. 1026 Code of Civil Procedure, the proceedings on the application of reduced value is not mandatory for the applicant, he may choose between this procedure and the procedure of the common law.

Therefore, if the applicant understands to opt for the reduced value request procedure, will complete the form for the reduced value request¹ and send it to the competent court according art.1028 Civil Procedure Code.

If the applicant has completed the application form and notified the court with a written request under Art.194, it will be resolved according to the ordinary the procedure.

The legislature provided, however, that in this situation the applicant may request expressly no later than first hearing special procedure to be applied. Therefore not using the form for reduced value does not preclude the applicant's right to request under the law the application of this procedure.

The doctrine has rightly pointed out that this procedure "coexists with the special procedure for payment (Gheorghe, 2013) of the order so that the applicant is the one who chooses how to capitalize claims.

¹ The application form was approved by Order 359 / C / 2013 of the Ministry of Justice

4. Competent court

The court with competence for the reduced value request procedure is expressly provided for art.1027 Civil Procedure Code which shows that in the first instance material competence belongs to the court, and in terms of territorial jurisdiction, the provisions of article 107 are applicable and the following of the Code of Civil Procedure.

To note is that the court will set the first procedure chosen by the applicant, and if choosing the procedure of the reduced value request he will first check the competence and then the conditions for admissibility.

5. Triggering and the conduct of proceedings

For initiation of the procedure the legislator in art.1023 sets clear rules that the applicant must comply with. Therefore court notification is made by completing the application form approved by Order of the Ministry of Justice 359 / C / 2013, comprising headings concerning identification of the parties, the value of the claim and accessories, indicating evidence, necessary elements of the case, and an indication of whether the applicant wishes or not to have an oral hearing. As highlighted the request instituting the proceedings may be written according to Art.194 Code of Civil Procedure the applicant being able to seek in terms of art. 1026 paragraph (2) to apply the procedure. The application form is submitted by the applicant or his representative, or sent by post or by any other means that ensures the form and send confirmation of receipt, in the number of copies provided by art.149 paragraph (1), together with copies of the documents the applicant understands to use in the issue and proof of payment of stamp duty¹.

If the information provided by the applicant are not clear enough, or inadequate, or the form is not completed correctly, the court will send the applicant an application form in the form prescribed in Annex 2 to the Minister of Justice no .359 / C / 2013 which requires him to complete or rectify the form or to provide additional information or documents.

If the application form is not completed or corrected within the time specified by the court, the request will be canceled. It can be seen that cancellation penalty applies only to the situation mentioned, and the solution is logical since in the absence of essential elements, the application can not be solved. Moreover, in art.1026 paragraph (3) the legislature expressly stated that if the request can not be resolved according art.1025-1032 the court shall inform the complainant of this, and if it does not withdraw the request, it will be judged according to the law.

According to art.1029 of the Civil Procedure Code the judgment proceedings of reduced value requests is conducted as a whole in the council chamber. Paragraph (2) art.1029 contains provisions regarding the appearance of the parties from which it appears that the initiative to require the parties to appear at trial, belongs to the court, but also the parties may request the taking of such measures.

The court may refuse the application if it considers oral hearing to be unnecessary. The refusal shall be justified in writing and can not be attacked separately. If the court orders the parties' in person appearance they will be cited for the period prescribed for that purpose (art. 153-173 Civil procedure code). After the court receives the properly completed form it will be sent as soon as possible to the defendant the feedback form accompanied by a copy of the application form and copies of the documents attached to it.

Within 30 days of receiving the aforementioned procedures, the defendant must notify the court, with the complete response form. We believe that the defendant may not use the response form, having the opportunity to respond by any suitable means, for

¹ According to Article 6 of Ordinance No. 80/2013 published in the Official Gazette of Romania, Part I, nr.392 / 06.29.2013, small claims are stamped RON 50 if the value of the demand does not exceed RON 2,000 and the RON 150 for applications where the value exceeds RON 2,000

instance by the defense, but it is much easier to complete the feedback form. The answer of the defendant at the request of the applicant is required.

The defendant may, also counterclaim, which must fulfill the requirements of Art.209, paragraph (1) of the Civil Procedure Code and the conditions of admissibility laid down by art.1025 without which it will be draw backed and judged according to common law [art.1029 paragraph (7)].

The counterclaim, the defendant's response and the justifying documents annexed shall be notified immediately by the court to the plaintiff, so that he could make his defense. The court may request other evidence outside the pleadings filed by the parties that it deems necessary to solve the case, but not accepted, those samples in management which are necessary expenses disproportionate to the lawsuit, the demand value, or both, or the demand counterclaim (art. 255 Civil Procedure Code). It follows that the court may admit evidence which it considers necessary and appropriate to the resolution of the case, documentary evidence taking priority because it is much easier to manage.

Paragraph (10) of art.1029 sets and an obligation for the court. Thus the legislature states that "whenever the court sets a deadline to meet a pleading , it shall notify the person concerned of the consequences of its failure."

Express mention of this requirement is to prevent parties of the negative effects of procedural failure resulting from their duties and cause them to act accordingly.

6. Settlement of the request of reduced value

From the wording of paragraph art.1030. (1) of the Civil Procedure Code, it appears that the rendered and written decision shall be made within 30 days of receipt of all information necessary to solve the case or, where appropriate, oral debate.

Unlike common law where after deliberation it shall proceed to preparing minutes (Boroi, 2013) and following the writing within 30 days from delivery (art. 401 and 426 alin.5 of Civil Procedure Code) if the request procedure of reduced value, the court will decide and draw judgment at the same time flowing the receipt of the information or where appropriate, oral debate.

Therefore, the court has a fixed term of 30 days in which you have to decide and to draw decision. We believe that the wording of the judgment should not be made in same day with the delivery, but must only within the period of 30 days to make both delivery and writing.

Paragraph (2) of art.1030 stipulates that without the answer or information required under art.1029 the court will rule on the principal claim or counterclaim based on documents in the file. It can be noted that the rule of par. (2) is non-punitive art.1029 the court proceeding to settle the claim solely on the basis of evidence on record.

We consider that the rule mentioned, is designed to mobilize the parties and make them respect the procedural discipline, for a good capitalization corresponding to their rights (art.633 Civil Procedure Code). The court will decide by sentence that unlike common law is enforceable by law. Enforcement is but temporary, from the judgment and until a definitive them.

The interested party may request the suspension of the decision to the court of appeal, which may approve, but only by paying a bail of 10% of the value that is disputed (art.449 și art.418 alin (2) Civil Procedure Code). The court will rule on request, also on costs arising from the case. Thus the unsuccessful party will be ordered to pay the costs, consisting of stamp duty administration charges of evidence, legal fees etc. (art.1031).

The legislature, however, establishes an exception to this rule stipulating that there will not be "granted those expenses that were not necessary or that their value was disproportionate to the value of the demand" (art.449 și art.418 alin (2) Civil Procedure Code).

7. Legal remedies

The judgment given, by the court may be appealed under Code of Civil Procedure art.1032 only with the appeal to the court, within 30 days from notice. The appeal shall be settled under the procedure provided for by the Civil Procedure Code art.466-482 being removed character paperwork. For good reasons the appellate court may order as mentioned suspending the contested judgment but only with the bail of 10% of the disputed amount.

The decision of the first instance is final if no appeal has been exercised within the legal term and enjoys res judicata as well as the judgment in appeal.

8. Conclusions

Unlike common law procedure, the request procedure, of reduced value is characterized by being accessible, since it uses the form to not raise issues for completing, detailing the problems that the applicant must address, it is a relatively simple procedure, usually being written, and involves the appearance of the parties only if the court considers it absolutely necessary.

Another feature of the procedure is the speed, the stages of the procedure being established expressly in art.1029 parties setting out the tasks and sanctions procedural non-compliance.

An advantage of the procedure is represented also by the stamp duty, which is low compared to the common law so that those interested in opt for this procedure because it is cheaper.

References:

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- [2] Cristina Gheorghe - "Discussion on the special procedure, of the payment order in the regulation of the new Code of Civil Procedure" Law magazine, No. 2/2013;
- [3] Law 134/2010 on Civil Procedure Code was republished in the Official Gazette of Romania, Part I, no.545 / 03.08.2012;
- [4] Law No.76 / 2012 on the implementation of Law 134/2010 on Civil Procedure Code, published in the Official Gazette of Romania, Part I, no.365 / 30.05.2012;
- [5] Law No. 2/2013 on certain measures for relieving the courts and to prepare the implementation of Law 134/2010 on Civil Procedure Code, published in the Official Gazette of Romania, Part I, No. 89 / 12/02/2013;
- [6] EO No. 4/2013 for the amendment of the Law No.76 / 2012 for the implementation of Law 134/2010 on the Code of Civil Procedure and for the amendment of some related acts published in the Official Gazette Romania, Part I, No. 68 / 31.01.2013.