THE SUMMARY OF THE DOCTORAL THESIS
"THE APPEAL IN THE ROMANIAN CIVIL PROCEDURE"

Keywords: appeal, the new Civil Law Proceeding, the motifs of appeal, the filtration of appeals, legal solutions.

In time, The Code of the Civil Procedure in 1865 has undergone many additions and changes. These changes have been brought about by some of its imperfections, the difficulties encountered in its application, the increasing in the number of processes, their complexity through problems of law and of fact on which they were built, the delivery of a large number of unlawful non-substantial decisions, as well as the slow pace of processes' settlement.

The Code of the Civil Procedure enshrines the rule of uniqueness for the appeal and the order of exercising the appeal ways, proposing and structuring a coherent system of remedies, designed to ensure both a promptly conduct of the civil trial, but also the unity of the jurisprudence and the correct application of the law.

With regard to the appeal, the jurisdiction of the settlement returns to the High Court of Cassation and Justice. It will examine the decision subject to compliance with the rules of the applicable law, ensuring in this way a uniform judicial practice throughout the country. On grounds relating to the material and human base, there are numerous categories of decisions which do not end up in the Court of Appeal, but stop before the Courts of Appeal (art. 483 of the New Code of the Civil Procedure). It was entered the incident appeal, and the provoked appeal and file preparation for the

judgment in recourse is made, with the necessary adaptations, as in the case of the appeal. It was reintroduced the filtering appeals procedure, improved compared to the attempt made by O.U.G. 58/2003. It was dispelled the possibility of amending the judgment in the case of the admission of the appeal and was returned to the solution in 1993, keeping only the cassation solution.

All these changes in the current legislation as well as the inherent difficulties that have arisen and will arise in judicial practice are the basis of this analysis, the project proposed to be presented as a doctoral thesis. The adoption of the new code of civil procedure must represent a major reform in the process matters, and such a prospect is still real, since it undoubtedly contains many progressive and effective regulations (PhD. prof. Ioan Leş, *Tratat de drept procesual civil. Supliment gratuit (Modificările şi completările aduse actualului Cod de procedură civilă prin legea pentru accelerarea proceselor no. 202/2010 „Mica Reformă"),* Edition 5, C.H. Beck, Bucharest, 2010, p. 4)

The provisions relating to the Code of the Civil Procedure come to settle some controversy and gaps in the legislation and bring novelty items of specific appeal rules reviewed, many of these issues, long ago, forming the subject of proposals of the *lex ferenda*.

With the adoption of the new Code of the Civil Procedure an appeal is subject to adjustments meant to bring some corrective to the drawbacks in the legislation in force. In connection with the adoption of a new Code of the Civil Procedure, PhD. prof. Ioan Leș said: "*The adoption of a new Code of the Civil Procedure is a work needed, for long decades by the world juridical body in our country, representing an undeniable progress in terms of legislative*" (PhD. Prof. Ioan Leş, *Spre un mare Cod de procedură civilă?,*

in „Curierul Judiciar”, no. 11/2009, pp. 603-605). Also, by removing the existing restrictions currently in the object of the application for appeal was restricted the scope of the recourse, this reaching its true status of extraordinary attack path, not just by its location in the new Code of the Civil Procedure and through its features and effects, but also by its subject matter.

By carrying out a comparative analysis with other legal systems in Europe we may outline a broad perspective on the comparative law. The procedure for filtering of appeals provided for in the legislation of other European countries-France, Germany and Sweden – will complete the understanding and the analysis carried out on the basis proposed as the doctoral thesis. This comparative approach of the subject, with examples of national and international judicial practice, can thus constitute in a complete and structured way of analysing and understanding for both the civil law specialists, but also for the foreign partners in the countries mentioned.

The changes brought about by the new Code of the Civil Procedure, as well as the desire to carry out a comparative analysis on the appeal institution to other existing European legislation, determined us to try and work out a comprehensive study. We consider that the complexity and novelty of the research proposed, as evidenced from this comparative study, represent a viable argument for the development of this doctoral thesis.

Under the new Code of the Civil Procedure, the appeal has a wider-ranging. With this, the number of judgments that cannot be appealed increases. On the other hand, a novelty in the matter of the appeal as well as a settlement of some controversy from the doctrine and the judicial practice is the possibility of challenging the discharges handed down by the Court of Appeal. Thus, for example, in the matter of the suspension of the judgment

appealed against, the conclusion pronounced by the Court of Appeal can be appealed separately by recourse within 5 days after the conclusion (art. 478 para. 5 of the Code of the Civil Procedure). The review in this case is going to be done by another Court of Appeal determined randomly, not later than 10 days after the registration of the appeal request, without having to go over the filter procedure (art. 478 para. 6).

The Code of the Civil Procedure reverts to our legislation the procedure of filtering the appeals from the Supreme Court. Moreover, the Government Emergency Ordinance no. 58/2003 regulated a genuine procedure of filtering the appeals, that is an innovative solution which required completion of a procedure concerning the admissibility of the appeal in principle, an institution which, if it had been kept in the processual, our legislation could help to relieve the Supreme Court of a series of appeals that did not correspond to certain requirements, in particular, by the formal order.

In this procedure are established and detailed some older provisions (subsequently repealed – fact regretted by the doctrine) relating to the preparation of a report on the appeal. This report will verify that the appeal meets the requirements of form set out under the penalty of nullity, if the reasons fall into those provided for by article 482 of the Code of the Civil Procedure, if there are reasons of public policy or if the Appeal is manifestly unfounded. The report shall also contain, where appropriate, references to the jurisprudence of the Constitutional Court, the High Court of Cassation and Justice, the European Court of Human Rights and the Court of Justice of the European Union, as well as the position of the doctrine of law aimed at absolution given by the contested decision.

We shall follow up the filtration on appeals under the Romanian laws, but also the filtering of the appeals provided for in other European countries' legislation, namely filtration procedure of the appeal in France, the procedure for the appeal filtration in Germany, the filtration of the appeal procedure in Sweden, we even tried a comparative approach to the subject, with examples from judicial practice.

In this ground-breaking approach we have used the following research methods: *the analytical and judicial method* (to which the subject will be tackled and analysed systematically), *the historical method* (based on chronological analysis) *the observation method* (by which we shall access the public documents and we shall collect information of interest), *the comparative method* (by which we shall identify and differentiate the researched aspects), *the logical method of research* (which allows the structuring of the information obtained in logic order to prepare relevant conclusions and possibly even the proposal of appropriate solutions).

For this study we used published monographs in Romania and abroad, articles in specialised magazines, studies and research carried out and published, with visible impact. We also browsed the various existing virtual libraries at this time on the Internet, as some journals and magazines that have provided valuable information on the appeal institution in Civil Procedural Law and in various European legal systems.

In this study we used the following papers prepared by experts in the study of Romanian Civil Procedural Law: Ion Leş, Ion Deleanu, Viorel Ciobanu, Sebastian Spinei, Niculae Măniguţiu, Ioan Bălan, Mihail Lohănel, Gheorghe Dobrican, Gabriel Boroi, Gheorghe Liviu Zidaru, Mircea Duţu, etc. The comparative analysis on the old and the new Code of the Civil Procedure has given me the opportunity to observe the evolution of the

Romanian Civil Procedural Law, on the one hand, and to realize a study trying to complete what has been done up to the present time, on the appeal, *the Appeal in Civil Procedural Law.*

Also, studying some scientific papers in foreign judicial literature, particularly from France and Spain, as well as: E. Garsonnet, Ch. Cézar-Bru, Charles-Eugéne Camuzet, R. Morel, J. Vincent, S. Guinchard, A. Boudahrain, etc., helped to outline a comparative and interesting study.

Starting from the Romanian Constitution, with the provisions of art. 21 and art. 129, as well as the provisions of art. 6, para. 1, phrase 1 of the European Convention on Human Rights and Fundamental Freedoms, ratified by Romania by the Law no. 30/1994, the appeal and the recourse were legislated as remedies for the pursuit of Justice.

In terms of remedies, the new Code of the Civil Procedure (NCCP) establishes simple rules, fully in line with most European legal systems. Thus, the Court of First Instance may be appealed by appeal, which becomes an ordinary way. The appeal constitutes second degree of jurisdiction, whereas the Court of Appeal shall, within the limits of the appeal request, run a complete control of legality and solidity of judgment appealed, having the opportunity to redo or complete the court-run evidence in the Court of First Instance (article 463 para 1, article 466). As a result, the appeal becomes an extraordinary remedy which, under art. 470 para. 3 of NCCP, seeks to obey the High Court of Cassation and Justice, according to the law, and to the decision subject to compliance with the applicable rules of law.

The article 470 from NCCP shows the changing vision of the legislature towards the remedy, the recourse. The aim of the recourse is not to retry the case fund, but to verify to what extent the judgment rendered is in accordance with the applicable rules of law. "*The current rules of the*

recourse regulation, the extraordinary way, aim at examining the decision subject to compliance with the applicable rules of law. This examination of legality shall be performed in accordance with the law of procedure and is the main attribute of the High Court of Cassation and Justice". (PhD. Gabriela Cristina Frenţiu, Denisa-Livia Băldean, *Noul Cod de procedură civilă comentat şi adnotat,* Hamangiu, Bucharest, 2013, p. 741). The legal doctrine considers that this skill is only partially correct; this is also our point of view. However, the recourse keeps the character of a remedy, of reformation, of non-devolution and non-suspensive.

Following the adoption of the new Code of the Civil Procedure, the cassation recourse is reintroduced, which existed in the legislation. Called in another way, "*the resolution of the recourse was conceded again in the common law jurisdiction of the supreme court, to ensure a unity of jurisprudence at the level of the whole justice system*" (Ioan Leş, *Noul Cod de procedură civilă...,* p. 665.). Thus, the recourse falls within the competence of the High Court of Cassation and Justice, which must ensure the correct application of the law by all courts in the country, while maintaining the unity of jurisprudence. In the recent legal doctrine, "*the recourse in cassation is the archetype of the remedy intended to eliminate violations, to abolish the unlawful decisions and ensure the unity of jurisprudence*" (S. Spinei, *Recursul în procesul civil*, Hamangiu, Bucharest, 2008, p. 287.).

In **the first chapter** of the thesis, entitled **"A brief history of the appeal regulation in the Romanian legislation"**, we conducted a quick review of the appeal in our legislation. This historical overview of legislative developments show appeal this remedy, as it has been flipped in the code of civil procedure.

The old Romanian Law, covered in old Romanian statutes and regulations, has its springs in codex and law collections of Roman law and Byzantine law. Since the formation of the feudal Romanian States and after the unification of Romanian Country with Moldavia, on January 29, 1859, the Romanian legislation has been modernized, receiving Western European accents and influences. Thus, the civil procedure code in 1865 was drawn up on the Model Code of the Canton of Geneva in 1819 and the French Code of Civil Procedure in 1806. This Romanian civil code had been „*a steady progress towards the existing local regulations*" (Prof. Dr. Viorel Mihai Ciobanu, *Editorial*, în „Curierul Juridic", nr. 5/2009, Editura C. H. Beck, Bucureşti, p. 243). In its preparation, three things were taken into consideration: simplicity, rapidity and efficiency.

Despite the fact that the adoption of such a code was a real breakthrough for the Romanian legal system, the code has not been spared from criticism and changes. Modified, but keeping intact the great juridical institutions, particularly in the first instance judgment and enforcement, the Civil Procedure Code will expire in 2013, through the adoption of a new code of civil procedure, which aims to solve the difficulties and gaps of the old code.

The new code of civil procedure establishes early in its preliminary title, the purpose, the rules, the basic principles and the rules of the law of civil procedure. Under this code, in Book II are regulated the matters relating to the appeal, as extraordinary legal remedy. The competence of solving this way is, in principle, the High Court of Cassation and Justice, "*to examine the conformity of the decision subject to the rules of law applied, ensuring in this way a uniform legal practice at the level of the whole*

country" (Prof. Dr. Viorel Mihai Ciobanu, *Editorial,* în „Curierul Juridic", nr. 5/2009, Editura C. H. Beck, Bucureşti, p. 244).

The Court of Cassation, as it appeared in the Romanian Law, has its roots in the French cassation. Occurred since the time of the early French kings, cassation regulate the procedure of Cassation of unjust decisions, mistakes, or spoken with manifest political enmity or inequity.

In the old Romanian law the highest court was the Princely Divan. This judged the decisions given by the First Boyars Divan[1]. The princely divan judgments with more political character, because every decision could be amended on the same sofa presided over another gentleman. Consequently the Princely Divan was not a Court of Cassation. The principle of the work trial did not apply, whereas the judgment given by the divan could not be attacked during the ruler under the Dominion which was handed down.

The beginnings of the High Court of Cassation and Justice are related to the Paris Convention (article 38), in 1858, which provides for the establishment of such institutions in Focsani, for both the Romanian Principalities. The Central Commission project, after a Belgian model, provided for the establishment of two sections: one criminal and one civil. Instead, the document drawn up by the ad hoc Committee was envisaged, after the French model, the Division on three sections: complaints, civil and criminal. Even if the previous variant admitted the research system of the appeals, of the plaintiffs, being provided by the Department of Civil Defence, the judge, who admitted a complaint, already formed an opinion and thus prejudged the problem. C. Bosianu was one who fought and

[1] The Article 319-330 of the *Regulamentul Organic ale Munteniei* and the article 362-366 din *Regulamentul Organic al Moldovei.*

managed to impose on the French model, arguing that the Central Commission is not entirely viable for the Romanian legal system.

Established by the law of 24 January 1861, the Court of Cassation started operating at Bucharest on 15 March 1862. Along with the establishment of the High Court of Cassation and Justice were also abolished by the High Court in Bucharest and Iasi's Princely Divan. The two instances and the Supreme Court took the place of the four courts in both principalities. Decisions sent to Cassation were tried by the High Court. After Cassation, the court reference had "*the right to resist*" to the doctrine of the Court, and the Court of Cassation judged the matter in the United Sections. The decision was sent to the Court, and that had to comply with.

The experience gained over the years will lead to changes in the Organization of the High Court of Cassation and Justice. The law on the organization of the Court of Cassation in 1861 will be changed later through a series of laws in the years 1910, 1921, 1925 and 1932, the appeal being regulated under these laws (adopted in succession and called for *acceleration of value judgments*) until 1948, when it is introduced into the Code of civil procedure.

The mission of the High Court of Cassation was to have or to annul the decisions of the courts of law for violation of form or substance, for misapplication of the law or for improper interpretation thereof, for power.

The second chapter of this paper ("**Regulating the appeal in the new Code of the Civil Procedure. A comparative overview"**) is dedicated to a general presentation of civil appeal characters in the old and new Code of the Civil Procedure. Thus, the principles for the exercise of the appeal are presented, and also, its substantive conditions and form.

In the context of the New Code of the Civil Procedure, the appeal is defined as "*the remedy through which the parties or the Public Ministry shall, under the conditions and for the reasons determined by law limiting illegality, dismantle a judicial decision handed down in appeal and other decisions in the cases provided for by law*" (PhD. Prof. Ioan Leş, *Noul Cod de procedură civilă. Comentariu pe articole,* C. H. Beck, Bucharest, 2013, p. 664).

The right to have recourse to this remedy is not guaranteed by the Constitution or the jurisprudence of the European Court of Human Rights. The Constitution provides that "*the jurisdiction of the courts and the court procedure are provided only by law*" (art. 126 para. (2). by this, the basic law of the Romanian State shall not restrict the right of every citizen to exercise remedies, but refers to the regulation of terms and conditions of their use.

As evident from the definition, the appeal, in the New Code of the Civil Procedure, the following features: it is an extraordinary remedy, a way of reformation, of non-devolution and non-suspensive.

The appeal is an extraordinary remedy whereas its object is "*decisions given in the appeal, the given, according to law, without appeal and other decisions in the cases expressly provided by law*" (art. 483, para. (1) the NCCP). It is a way to reform because it is settled by a higher court which ruled the contested decision. In this way, this superior court carries out judicial review. It is a non-devolution remedy because it does not result in a new trial. It is also a non-suspensive remedy for execution of the judgment appealed against. Being an extraordinary path of attack and this feature is specific to the extraordinary ways of appeal, the appeal shall not prevent *ope*

legis, also appeal decisions. It is a subsequent remedy, meaning that no recourse may be exercised by passing over the appeal.

For exercising the appeal, as well as for the exercise of any remedies, are necessary the fulfilment of certain conditions. The substantive conditions of the recourse or the appeal suspect decisions, the subjects of the recourse - the parties, the third parties, the Prosecutor, which may exercise this extraordinary remedy, and the time limit for the appeal.

The object of the appeal, as is regulated by the NCCP, is "*decisions given in the appeal, the given decisions, according to law, without appeal and other decisions in the cases expressly provided by law*" (art. 483, para. (1) of the NCCP). "*They are not subject to appeal the judgments in applications under art. 94 point 1 (a) to (i), those relating to civil navigation and port activity, labour disputes and social insurance, in respect of expropriation, in applications relating to compensation for damage caused by miscarriages of Justice, and in other applications of evaluable in cash up to 500,000 lei*" (art. 483, para. (2) of the NCCP).

The New Code of the Civil Procedure subject to the conditions governing the appeal time limit within which it may be exercised. On lawsuits pending at the time of entry into force of the New Code of the Civil Procedure, the legislature decided that decisions handed down at first instance, in the trials started after the enforcement of NCCP, will be subject only to appeal. Processes started before 15 February 2013 "s*hall remain subject to the rights of the appeal provided for by the law under which the process started*" (art. 27 of NCCP).

The referral to the Court of Appeal is made in a request which will have to meet certain mandatory particulars. On the appeal request, the

legislature established a few mandatory particulars which must be fulfilled (art. 486 para. (1) the NCCP).

In **Chapter III** (**"The grounds of appeal")** we presented the reasons for the appeal as specified in the old and the new Code of the Civil Procedure. This comparative study between the old and the new legislation, as well as references to other legal systems, gives the possibility of understanding the superiority of the new regulations against the old ones. In this regard, we considered appropriate to present information about the appearance of grounds of appeal regulated by: *The Law in 1861, The Law in 1872, Law on the Court of Cassation and Justice in 1925, The Law on the Court of Cassation and Justice in 1939, The Civil Procedure Code of 1948, under the Old Code of the Civil Procedure* and, last but not least, *The New Code of the Civil Procedure.* We also presented grounds of appeal from *other legal systems - the French, the Moroccan, the Algerian, the Tunisian, the Luxembourg system, the Spanish, the Swiss, the Italian, the Ecuadorian,* etc.

The grounds of the appeal designate "*limiting assumptions provided by law for which it can be required the disposal or the modification of the assailed decision*" (Ioan Băl*a*n, *Motivele de recurs în procesul civil,* Wolters Klower, Bucharest, 2007, p. 38). Thus, any mistakes or gripes of one party may be grounds for the appeal, but only those which satisfy the hypotheses provided for by law as grounds of appeal.

The legal features for the grounds of appeal are: the legal character, the grounds of appeal being expressly provided for by law (art. 488 NCCP); are imposed by special procedural provisions, of strict interpretation, which may not be extended by analogy; targeting only the decision subject to the illegality; the effect is the disposal of the decision, in whole or in part.

The Article 488 para (1) in the NCCP regulates the eight reasons of the appeal. The immediate effect of admitting the appeal is the cassation of the appealed judgment. Thus, the admission of the appeal is the cassation of a judgment and can be made whether one of the following grounds of illegality is realised:

1. When the Court was not composed according to legal provisions.

2. If the judgment was given by another judge than the one that took part in the debate on the merits of the process or another trial jury than the one established randomly for the resolution of the case or whose composition has been changed, in violation of the law.

3. When the judgment was given in breach of public policy competence of another court, invoked under the law.

4. When the Court has exceeded the powers of the judiciary.

5. When, by the way of the judgment, the Court has violated the rules of procedure whose failure attracts the sanction of invalidity.

6. When the judgment does not include the grounds on which it is based or where conflicting reasons only includes foreign reasons to the nature of the case.

7. When it was violated the res judicata authority.

8. When the judgment has been given in breach or misapplication of the rules of law.

Chapter IV (“The procedure for the resolution of the appeal”) is devoted to the analysis of the procedure of filtering, through the new regulations of the Code of the Civil Procedure. This process of filtering has a dual purpose: on the one hand, the rejection of the appeals that do not comply with the requirements of form, including the cassation reasons invoked and breaking their development which does not fall into that

prescribed by law; on the other hand, the establishment of a procedure for the resolution of significant appeals which are groundless or that raise only issues of law that are not controversial.

The procedure for filtering the appeals is not an entirely new institution for the Romanian judiciary. This enjoys a certain tradition in the system of *common law* having followers in Romano-Germanic Law. Its adoption is closely related to the usefulness or even to its reason to be. Thus, the procedure for filtering the appeals is regulated for the first time by O.U.G. 58/2003, trying to eliminate overcrowding of the High Court of Cassation and Justice of Romania.

Under the terms of the adoption of the new Code of the Civil Procedure, the filtering was legislated, searching for a harmonisation between Romanian legislation and European legislation. Introducing the filtering procedure was necessary as a result of changes in the field of competence and of the rights of appeal in accordance with the Law no. 219/2005 concerning the approval G.O. 138/2000 for modification of the Code of the Civil Procedure, to optimise the level of judicial scrutiny of the European Court.

Before the adoption of the New Code, some of the specialists have expressed over the imposition of two cumulative means for declaring the appeal: the establishment of a minimum value under which the appeal cannot be declared; ensuring the compliance of the filter procedure as constitutional provisions relating to access to justice, the rights of defence and a fair procedure, the regulation of a contradictory procedure, preferably written, which give the opportunity to all parties to express their views with regard to the admissibility of the appeal.

In comparison with the Romanian legislation, we have tried to present how other foreign legal systems are regulating the procedure of filtering. Thus, in the French law, by the law of 25 June 2001, the French legislature created a procedure for filtering appeals. According to art. 136-1 of the Code of Judicial Organization a fully restrained body by three judges of the Supreme Court may reject the "*inadmissible or unfounded on a serious of Cassation means"* appeals.

In Germany, there is a procedure for filtering appeals based solely on the criteria of quality, and not financial. A system for filtering appeals similar to the German one can be found in Austria and Spain. Similar solutions have also promoted the Scandinavian countries.

In connection with the judgment of the civil process, as evidenced by the art. 494 and 495 of the NCCP, this also takes place as in the first instance and in the appeal judgment. Thus, the rules relating to administration of the evidence, to solving the exceptions, when discharges of sitting and pronouncement, the straightening and the explanation thereof, to establish the obligation for payment of the costs which are similar to those of the Court of the First Instance or in the appeal.

Similar to the judgment in appeal, during the recourse it is not possible to change the quality of parties, the object and cause of the request for taking to court. In contrast, however, in the recourse shall be admitted acts of disposition of the parties, as well as waiving the right, the consenting, the transaction or becoming incident such institutions as the suspension of the judgment, the obsolescence.

If the court having jurisdiction to hear and determine the appeal notes that the judgment given in the appeal is legal, by analysing the reasons of

Appeal invoked by the recurrent, and the reasons of the public order could be invoked ex officio, it shall order the rejection of the appeal as unfounded.

The admission of the appeal by the Court of competent jurisdiction determines the modification or cassation, either wholly or in part of the contested judgment. The appeal is upheld by the Court when one or more of the grounds of appeal are valid, regardless of whether this reason was cited by the recurring part or was raised by the Court of its own motion, as a ground of public policy.

The last chapter of this paper, **Chapter V** (**"The Court of Appeal Solutions**"), is devoted to the analysis of the solutions adopted by the Courts of Appeal. The judging of the process has as its ultimate time the pronouncing of a judicial decision with specific features and effects. In the case of an appeal, so the old code and the new code of civil procedure, the legislature has provided that the Court of Appeal to decide, by issuing a solution for the cause.

After the conclusion of the debate, the Court of Appeal deliberates upon the reasons invoked by the parties or raised ex officio by it (art. 306 para. (2) in the NCCP). After the recession, the Court shall decide on admitting, rejecting, cancelling or noting obsolescence of the appeal, as provided for in art. 312 of the NCCP. In the same way, the Court of Appeal may pronounce in the new Code of the Civil Procedure. It may: admit, reject, terminate or expire the appeal (art. 496 para. (1) of the NCCP).

The Court of Appeal may order the admission of the appeal, by changing cassation of the judgment given earlier, and when it found that only one of the grounds of appeal is well founded, whether it was invoked by the recurring part or the High Court of its own motion.

In French Law the Court of Appeal is the only Supreme Court. Therefore, the cassation is done always with reference to the jurisdiction of the same level (*de même nature*) with the one that pronounced the cassation decision. Only in the courts of the French dominions, the cause will be sent to the same courts, composed of other magistrates. In the Italian legal system, art. 384 paragraph (2) of the Code of the Civil Procedure, it is provided that the Supreme Court of Cassation, when conceding the appeal in cassation, invalidates the sentence and send the case to the other instance (another judge), which must comply with the principle of the rule of law and other issues ruling or deciding on the basis. In Germany, as an exception to the rule of sending the case for a retrial, in the case of sending the application for review, the Court of revision, after cancellation, shall withhold from continuing when the cancellation of the assailed decision has the reason of misapplication of the law to the status quo and the cause is in the state of judging.

The adoption by the Romanian legislature of the New Code of the Civil Procedure accounted for the entire Romanian justice one step forward. The reform initiated by this new Code must lead "*to a better administration of Justice and a greater coherence and predictability of how the courts interpret and apply the law. Last but not least, there are prerequisites for resolving the causes within a reasonable period of time, and based on which, fortunately, can be achieved not only (and not so) through a suppression of the rights of appeal, but also through a more rational regulatory".* (Gheorghe Liviu Zidaru, *Noua reglementare a recursului în proiectul de lege privind Codul de procedură civilă,* in „Curierul judiciar", no. 10/2009 (Supliment), p. 32). Thanks to this new code, as well as other codes adopted by the Romanian legislation, we can talk about the possibility

of creating the preconditions for the mitigation of the causes in a reasonable time. Indeed, there are stages to go in this process, but decisive steps have been made.

Regarding the adoption of the new Code of the Civil Procedure and the news made by it in the Romanian legislation, we wanted to realize a study, prepared about the comparative between the old legislation (especially the old Code of the Civil Procedure) and the new legislation, on the one hand, but also between Romanian and international law, of the extraordinary remedy – the appeal. In the new Code of the Civil Procedure, an appeal is considered to be a tremendous remedy (art. 470-487 of the NCCP). It keeps some provisions of the old Code of the Civil Procedure (art. 299-316), but it also brings substantial changes and novelties.

Since the announcement of the project for a new Code of the Civil Procedure, the specialists in the field have made critical acclaim upon it, highlighting the positive aspects introduced by the new code, as well as minuses. The main novelties are related to: limiting the object of the appeal to the exclusion of the category of appealed decisions of some pronounced decisions for certain causes [basically, are not subject to appeal the claims provided for in article 89, point 1, lett. a)-k), art. 90 point 1, lett. d) and e), as well as other requests for cash evaluable up to 500,000 lei]; formulating and reasoning only by a lawyer or, if appropriate, by a legal advisor (provision subsequently declared unconstitutional by the Constitutional Court of Romania) - see the decision no. 462/2014 and the decision no. 485/2015 of the Constitutional Court of Romania; the conditions and the procedure for the suspension of the execution of the appealed decisions; reviewing and rethinking the reasons for the disposal and conditioning of the admissibility of these reasons should not have been put forward on the path of a recourse

or during the trial of the appeal, though there have been times invoked within, or have been rejected, the Court failed to adjudicate upon them; placing the filter procedure at the level of the High Court of Cassation and Justice, and reviewing the solutions given in the appeal, by removing the solution of the decision subject to alteration, in the event of admitting an appeal.

In this study we did not try to present all these issues, but to capture the settlement of the appeal, as an extraordinary legal remedy, in the new Code, compared to the old regulatory body in Romania, but also with other international legal systems. All the aspects presented throughout the paper showed the civil appeal, appreciating at its true value for the importance of such extraordinary law remedies, practice and jurisprudence.

The civil appeal is one of the procedural institutions, which over time has seen transformations and changes. If in the old Code of the Civil Procedure, the appeal was considered to be an extraordinary remedy, of reformation, non-devolution and non-suspensive, along with the appeal - in the new Code of the Civil Procedure, the appeal remains the only extraordinary remedy, which may be exercised by the parties or by the Public Ministry, under the conditions and for the reasons determined by law limiting illegality for "*dismantling a judicial decision handed down in appeal, without recourse and other decisions in the cases provided for by law*".