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Considerations on legal remedies in Romanian civil proceedings

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In the system of the Romanian Code of Civil Procedure the legal remedies that can be exercised against judgements are: the appeal, the second appeal, the appeal for legal contest in annulment and review. The appeal is the only ordinary remedy, while all the others are classified as extraordinary remedies.
The reasons for which the legal remedies may be exercised vary depending on this qualification, which means that the appeal is applicable for any dissatisfaction of the parties, whereas the second appeal, the legal contest in annulment and the review may be exercised only for reasons explicitly defined by the law.
The extraordinary legal remedies cannot be exercised as long as one may lodge an appeal.
A legal remedy can be exercised against one judgement only once, if the law provides the same term of exercising the legal remedies for all existing grounds on the date of declaring that specific remedy.
The judgement is subject only to the remedies provided by the law, under the respective terms and conditions, regardless of the particulars of its statement of reasons.

1. The legal remedies provided by the law

The remedies that may be exercised against a judgement in the Romanian civil procedural law system are regulated under Title II of Book II Contentious procedure of Law no. 134/2010, the Code of Civil Procedure (CCP)[1].
After the ruling, the discontented party is acknowledged the possibility of challenging the judgement of the court. At the same time, according to art. 405 of the CCP, the nullity of a judgement may only be requested by way of the legal remedies provided by the law, unless the law expressly provides otherwise[2].
Appeals are governed by the Code of Civil Procedure, the following legal remedies being institutionalized against judicial decisions: the appeal, the second appeal, the legal contest in annulment and the review.
These legal remedies can be classified according to several criteria[3]:
According to the conditions of exercising them, the legal remedies are: *ordinary* (appeal) and *extraordinary* (the second appeal, the legal contest in annulment and the review). The ordinary legal remedy may basically be exercised by either party, in any field and for any reasons de facto and de jure. The extraordinary legal remedies may only be exercised under the conditions and for the reasons set out expressly and limiting by the law.
Depending on the court that is competent to settle them, the legal remedies are of: recast (appeal and second appeal) or of withdrawal (legal contest in annulment and review). The legal remedies of recast are those related to a court superior to the one that delivered the challenged judgement. The legal remedies of withdrawal are those that are solved by the very court that delivered the judgement under appeal.
Depending on the situation if the exercise of the legal remedy causes a new judgement on the merits of the case or not, the remedies are devolutive or non-devolutive.
The devolutive legal remedy is the one in which the boundaries of the requests at the court of first instance and the ones challenged bring about a new judgement on the merits of the case.

Non-devolutive remedies imply control over the challenged judgement, without usually causing a new judgement on the merits of the case. As a non-devolutive legal remedy we mention the second appeal as a later stage of the legal remedy, after the first appeal.
According to whether the provided time limit for filing an appeal and the exercise of the appeal itself suspend the enforcement of the disputed judgement or not, the legal remedies are either suspensive of enforcement by law (appeal, unless otherwise provided by law, for example, when exercised against judgements delivered in contestation against enforcement, lodged according to Law no. 58/1934 on bills of exchange and promissory notes), or in principle, non-suspensive of enforcement (second appeal, the legal contest in annulment and review).
The Law no. 134/2010 on the Code of Civil Procedure has changed the regulation regarding the legal remedies. Before setting separate articles for each remedy, there are provisions establishing the general framework for the exercise of legal remedies.
Each article has a title which designates the regulation it refers to. The articles devoted to the general provisions on legal remedies are contained in art. 456 - 465 of the CCP.

2. General provisions on legal remedies[4]
In this chapter there are the remedies listed, their legal nature is set and the principles of exercising the legal remedies are established.
According to art. 456 of CCP, the only ordinary legal remedy is the appeal and the extraordinary remedies are the second appeal, the legal contest in annulment and the review.
To avoid the exercise of remedies not provided by the law, art. 457 of the CCP approves the *principle of the legality of remedies*, stating that the judgement is subject only to the remedies laid down by the law, under the respective terms and conditions, regardless of the particulars of the statement of reasons.
The legality of remedies is an extremely important principle, the application of which is incontestable in any procedural system. Establishing legal remedies is a matter of general interest and concerns the determination of the procedural means that may be exercised for recasting or withdrawing a judicial decision[5].
The principle arises also from the provisions settled in art. 129 of the Romanian Constitution. This text enshrines the right of the parties and of the Public Ministry to use legal remedies, but adds that they can be exercised "according to the law". Therefore also in the jurisprudence it was stated that the *rescission of a judicial decision* may be required only within appeals governed by the Code of Civil Procedure[6].
If the party who lodges an appeal relying on wrong mentions loses the appeal or the term, shall not invoke these aspects to his favour, because the legal provision implies that the inaccurate statement in the judgement on the appeal against it has no effect whatsoever upon the right to exercise the remedy provided by the law.
If a legal remedy that is not regulated by the law is brought before the court the instance will render the decision of dismissal as inadmissible for this legal remedy, precisely based on the inexact mention in the content of the judgement concerning the applicable remedy. This is because the court is not allowed to create remedies that are not provided by the law. In this case, the judgement of the court of judicial review shall be communicated ex officio to all parties that took part in the proceedings in which the appealed decision was delivered.
The ex officio communication aims to create the possibility that starting from that date the term for exercising the legal remedy begins.
The party will be able to exercise the remedy provided by the law within the legal term for exercising it, calculated from the date of communication of the dismissal decision. Such a decision will indicate the applicable legal remedy and the time limit within which it may be exercised[7].

Art. 458 CCP states the situations in which legal remedies are applicable. In this respect, the legal remedies may only be exercised by the parties of the litigation that justify an interest, except the situation in which by law also other bodies or persons have this right.
The main and indispensable subjects of any legal remedy are the parties between which the dispute before the court arose. The conditions for the exercise of remedies are, however, different depending on the nature of the appeal. In this sense, in order to declare appeal it is enough if the party declares being dissatisfied with the judgement of the court of first instance. Conversely, in case of the extraordinary legal remedies, exercise is limited to what is strictly defined by the law[8].
The Romanian Code of Civil Procedure establishes the *principle of succession of legal remedies* and determines their order, establishing that one cannot exercise extraordinary legal remedies as long as he may exercise an appeal.
However, an exemption is allowed, according to which a decision subject to appeal and to second appeal may be challenged within the term set for exercising the appeal, directly by a second appeal, before the court that would have jurisdiction to judge the second appeal against the challenged judgement, if the parties expressly consent in written by an authentic deed or by verbal declaration given before the court whose decision is appealed and recorded in the minutes.
In this case, not all the grounds of appeal may be submitted, but only one ground, the one concerning the violation or misapplication of substantive law.
According to art. 459, paragraph 3 CCP, the possibility to simultaneously exercise several extraordinary remedies under the law is provided. These cases arise if more grounds are put forward, which do not fall strictly in only one legal remedy, but meet the conditions and reasons for the exercise of more extraordinary remedies simultaneously. In this case, preference is given to the second appeal, which shall be judged first.
Even if cumulating more extraordinary remedies is allowed, art. 460 CCP lays down the *principle of the uniqueness of the legal remedy*. In this respect, a remedy against a judgement may be exercised only once, if the law provides the same term of exercise for all the grounds existing on the date when the remedy was declared.
Per a contrario, if the law provides a different term of exercise, for certain reasons the same remedy might be pursued several times.
Due to its specificity, review may be repeatedly exercised in some cases. For example, the review may be used in case of discovery of documentary evidence withheld by the opposing party or that could not be procured for circumstances beyond the will of the parties. Basically, a second request for review is admissible for another reason, such as the conviction of a witness, judge or expert for an offense related to the case. From this point of view the provisions regarding the review do not include explicit restrictions[9].
According to the rule that an accessory claim follows the fate of the main claim, if by the same judgement also accessory claims were solved, the decision is subject as a whole to the remedy stipulated by the law for the main claim, even if the accessory motion had been exercised separately, this would have brought about another remedy and another term for the remedy to be exercised.
To ensure the uniqueness of the remedy, but also to ensure a uniform judgement, if by the same judicial decision several main or incidental claims were resolved, some of which are subject to appeal, and others to a second appeal, the decision as a whole will be subject to appeal. The judgement delivered in the appeal is subject to a second appeal.
If the decision on a main or incidental request is neither subject to appeal nor to second appeal, the solution on the other motions is subject to the remedy under the law.

By this provision one shall derogate from the rule that the accessory follows the fate of the main claim, because in this case efficiency is given to remedies stipulated for the accessory claims, which shall not follow the status of the main claims, as the latters cannot be appealed.
Another derogation concerns the term for exercising the appeal and the second appeal, in the sense that the rule that a special law derogates from the general one does not apply. Thus, in all cases where alongside with a main or an incidental motion accessory claims are solved too, or if there are motions that impose the legal remedy either of the appeal, or that of the second appeal, the term of exercising the appeal or, where appropriate, of the second appeal is that established by the general provisions of the law, even if otherwise provided by special laws.
The general term for lodging an appeal and the second appeal is of 30 days from communication, unless the law provides otherwise.
To clarify which part of the judgement is subject to a legal remedy, art. 461 CCP provides that: "The remedy is directed against the solution contained in the reasoning of the decision".
However, although it is natural that the reasoning of the decision be challenged, because it contains the solution, which is to be enforced, it is allowed to challenge only the considerations, under certain conditions. This is the case when by the reasoning of the decision the previous court included solutions of legal issues unrelated to the judgement of that case or that are wrong or include findings of fact that are detrimental to the party. For these reasons, the court upholding the appeal will remove these considerations and replace them with its own reasons, maintaining the solution contained in the challenged reasoning of the decision[10].
As an expression of the *principle of availability of the parties in civil proceedings*, a transaction is allowed right in front of courts vested with solving an appeal. Article 462 CCP allows the court vested by law with solving an appeal to take notice of the agreement of the parties on solving the dispute.
As it expresses the will of the parties and their agreement, the ruling which confirms the agreement between them can only be appealed on procedural grounds by a second appeal brought before the higher court from a hierarchic point of view. This is so even when, in the absence of the parties' agreement, the judgement could have been challenged as well by an appeal as by second appeal. We must emphasize that second appeal can also not be exercised for any reason of illegality, as required by art. 488 CCP, but only on procedural grounds that regardthe proper summoning of the parties, the composition of the court or other grounds.
After delivery of the judgement, according to the *principle of availability in civil proceedings*, the party that lost the case may adhere to the court decision. This may take two forms: either the party waives the right to exercise the remedy after the judgement, or the party waives the remedy which has already been exercised[11].
Art. 464 CCP provides the forms of acquiescence, which can be: express or implied, in whole or in part.
Acquiescence may be total or partial, reason for which, according to art. 464 CCP, it may concern, the judgement as a whole or just part of it.
A conditional acquiescence is also acceptable, but it only becomes effective if expressly accepted by the opposing party. In case of a conditional acquiescence a tacit acquiescence is not valid.
Express acquiescence needs to be made by an authentic deed or by verbal declaration before the court or by the party's representative under a special power of attorney.
Because of its specificity, tacit acquiescence can only be inferred from precise and consistent deeds or facts that express the definite intention of the party to follow the decision. Execution of the judgement before the term for lodging the appeal is such an acquiescence[12].
The measures of judicial administration as provided by art. 465 CCP will not be subject to any appeal.

The law does not specify the content of the phrase “measures of judicial administration”, but it was considered that they are aiming at preparing the judgement or the adoption of any other provisions that are not related to resolving the civil proceedings, such as those relating to the random assignment of cases, the settling of the first hearing, etc.[13].

3. General considerations concerning the appeal

The appeal is the only ordinary legal remedy regulated by the Code of Civil Procedure in Chapter II of Title II, art. 466-482. This legal remedy represents the procedural means available to the party dissatisfied with the outcome of the case in the court of first instance in civil disputes, also between professionals, through which one vests the higher court with the power of controlling the judgement of the court of first instance.

The appeal is a common and ordinary remedy, the basic principle being that a judgement, about which a party is unsatisfied with the merits of the case, or with issues of procedural nature, should usually be challenged by way of this remedy. The failure to lodge an appeal leads to the inadmissibility of other remedies.

Chapter II of Title II of the Code of Civil Procedure has proposed the establishment of a clearer distinction between the main appeal, the incidental appeal and the provoked appeal. To achieve this goal there are established special provisions for regulating each type of appeal. Thus art. 466 CCP governs the main, ordinary appeal.

The procedure prior to solving the appeal. This prior procedure refers to settling the court date, assuring contradiction and the right to defence at this stage.

The whole prior procedure of appeal is carried out by the court whose decision is challenged, which is the court of first instance (court of common pleas or tribunal) and not by the court of appeal.

For this reason, the appeal and, where appropriate, the reasons for lodging the appeal shall be filed with the court whose decision is appealed, under the penalty of nullity. The request shall be made in as many copies as needed for communication, except for cases in which the parties have a common representative or a party is appearing in several legal qualities, when it is done in a single copy. In all cases it is necessary that one copy is made for the court.

If the motion to appeal does not meet the requirements of the law, the president of the court or his designee who receives the appeal will determine its deficiencies and will ask the appellant to supplement or amend the motion immediately, if present and if it is possible, or in writing if the appeal was sent by mail, fax, e-mail or carrier. Supplementing or amending the motion shall take place within the appeal term. However, if the president or his designee considers that the time remaining until expiration of the appeal term is not enough, he will provide a short term, of no more than 5 days after expiration of the appeal term within which he may submit the completion or changing of the motion to appeal.

These provisions shall be applied accordingly also if the grounds of appeal are filed separately from the motion to appeal, by a separate application.

Upon receipt of the motion to appeal, respectively of the grounds of appeal, the president of the court that rendered the judgement that is challenged will order their communication to the respondent, together with the certified copies of the attached documents that were not presented in the first instance, also communicating him the obligation to file an objection within 15 days from the date of notification at the latest.

The court where the objection was lodged shall immediately communicate it to the appellant, notifying him of the obligation to file the reply to the objection within 10 days from the date of notification. The respondent will get notice of the answer to the objection from the case file.

Only after completion of the preliminary procedure will the file be referred to the court of appeal for resolving.

After expiry of the term for as well the appeal for all the parties as of the terms of 15 days for filing the objection and of 10 days for the answer to the objection, the president or his designee will forward the file to the court of appeal, together with the appeals, the objection, the answer to the objection, and the evidence of communication of these deeds.

The judgement of the appeal. The first stage in judging the appeal is the preparation of the judgement. Upon receipt of the file, the president of the court of appeal or his designee will take, by resolution, measures concerning its random distribution to a panel of judges[14].

The presiding judge sets the first hearing date, which will be no later than 60 days after the resolution of the president of the appellate court, ordering the summoning of the parties.

In urgent cases, terms may be reduced by the judge depending on the circumstances of the case.

If the defendant is domiciled abroad, the judge will set a longer term that is reasonable in relation to the circumstances of the case.

Main appeals, incidental and provoked appeals declared against one and the same judgement will be assigned to the same panel of judges. When appeals have been assigned to different panels, the last fully vested one will administratively order the referral of the appeal to the first vested panel.

The court of appeal is required to verify within the term of the appeal request, the establishing of facts and the correct application of the law to this situation by the court of first instance. The public policy grounds may also be raised ex officio.

As the appeal is an ordinary and devolutive remedy, if debates prove the need for the administration of certain evidence, the court of appeal may approve the administration of such evidence. Furthermore, the appellate court may order a new administration or supplementing the evidence presented in the court of first instance, if it considers this to be necessary for solving the case, as well as administration of new evidence proposed in the motion to the appeal or the objection to it.

Regarding the actual judgement, the appellate court shall verify, within the limits of the appeal, establishing of the facts and the application of the law by the court of first instance. The public policy grounds are the only ones that may be raised also ex officio.

The appellate court may hand down the following rulings[15]:

- *maintaining the appealed judgement;*

By rendering this solution, the court will dismiss the appeal as unfounded, after assessing the evidence and finding the challenged judgement under appeal legal and grounded.

- *upholding the appeal;*

In this case, if it finds that all objections raised in the appeal are grounded, the court will change the challenged judgement in whole. If, on the contrary, it finds that only some of the objections are pertinent, it will change the challenged judgement in part.

The court may also rule for quashing the appealed judgement if the court was not set up according to the legal provisions, or when the judgement was delivered by another judge than the one that took part in the debates on the merits of the case.

Being a court of judicial control, the solution given to the legal issues by the court of appeal, as well as the need for submission of evidence are mandatory for the judges of the merits of the case.

The mention that a judgement rendered in the appeal may be challenged by a second appeal or not is important, because not all judgements delivered in the appeal may be subject to a second appeal, but only those for which the law expressly provides also the remedy of the second appeal.

In order not to discourage the parties to exercise the remedy of the appeal, the law expressly lays down the principle of the prohibition of reformatio in peius. This principle also involves exceptions.

Thus, according to art. 481 CCP, the appellant should not be placed in a worse position as a result of filing an appeal than the one resulting from the challenged decision, unless he expressly consents to it or in the cases specifically provided by the law.
The incidental appeal and the provoked appeal. In addition to the main appeal, *the incidental* and *the provoked appeals* are ruled as varieties of the appeal.
The incidental appeal. According to art. 472 CCP, after expiry of the term for filing the appeal, the respondent is entitled, to declare an appeal in writing, within the trial in which the appeal of the counter party is to be judged, by way of his own request aiming at changing the decision of the first instance.
The incidental appeal may only be declared against the appeal submitted by the party having conflicting interests, so that the parties with similar interests in the case cannot declare an appeal one against the other.
The motion for an incidental appeal is filed by the respondent together with the objection to the main appeal, the appellant having the obligation to file an answer to the objection within 10 days of the notification. In this case also, the respondent will take notice of the answer to the objection from the case file.
Given the fact that the respondent had the opportunity to file a main appeal but did not resort to it, the law provides for a number of limitations, stating that the incidental appeal will only become effective if there will be a judgement on the merits of the main appeal.
The incidental appeal is an accessory motion that is registered to the main request of appeal, following the fate of the main motion of appeal to which it is accessory.
Precisely for this reason, if the main appellant withdraws his appeal or the appeal is dismissed as lately declared, inadmissible or on other grounds not involving judgement on the merits of the case, the incidental appeal will have no effect.
The provoked appeal. According to art. 473 CCP, in case of joinder of parties, as well as when third parties have appeared in the court of first instance, after expiry of the term for filing the appeal the respondent is entitled to declare in writing appeal against another respondent or a person who appeared in the first instance and is not a party to the main appeal, if the latter would be likely to cause consequences on his legal situation in the case.
The motion to appeal shall be filed by the respondent together with the objection to the main appeal.
The provoked appeal shall also be communicated to the respondent in this appeal, as he is obliged to submit an objection within 10 days at the longest starting from the notification. The one who exercised the provoked appeal will get notice of the objection from the case file.
The provoked appeal is also an accessory motion, and if the main appellant withdraws his appeal or if it is dismissed as lately declared, as inadmissible or on other grounds not involving judgement on the merits of the case, the incidental appeal will have no effect.
The provoked appeal is deemed to be a useful institution in cases where the first instance judgement involved more than two opposing parties or when third parties appeared in the court, because the respondent would be interested to appeal against another party than the appellant or to extend the judgement in contradiction to another party that appeared in the process in the first instance, but who has not yet acquired the procedural position of appellant.

4. The extraordinary legal remedies
1. The first extraordinary remedy is ***The Second Appeal***. It is regulated by arts. 483-502 CCP.
The second appeal is characterized as an extraordinary, common remedy, for, recast, non-devolutive and basically non-suspensive of execution.
As a rule, the second appeal must contain its grounds in the motion for a second appeal itself.
The grounds for quashing the decision are set out in art. 488 CCP, there being only eight grounds and concerning only reasons of illegality[16]:

1. the court was not set up according to the law;
This ground concerns the situation in which the judgement was rendered by a judge or a judicial assistant who was incompatible or by a smaller number of judges or by other judicial assistants than that required by law or when the court clerk was absent or the prosecutor did not attend the trial, although the law provided for the latter's obligation to submit conclusions.
The court is not set up according to the law also when the representative of the Public Ministry did not attend the trial, although the law provided for his obligation to submit conclusions.
2. the judgement was delivered by another judge than the judge who took part in the debate on the merits of the case or by another panel of judges than the one randomly set up to solve the case or whose composition was changed, in violation of the law;
This ground is intended to ensure continuity of the panel of judges, which once established can no more be changed, except in cases provided by the law. Also by virtue of continuity, it is necessary that the same judge who participated in the debates on the merits of the case also delivers the judgement in the case. This is to ensure the legality of the delivered judgement.
3. the judgement was delivered in violation of the public policy jurisdiction of another court, cited according to the law;
This ground concerns the observance of the rules concerning exclusive material and territorial jurisdiction from which there can be no derogation, neither by any party nor the court. As they are provided by mandatory rules no derogations are admitted.
However, to successfully submit this ground for quashing the decision, there is need that before declaring the second appeal, lack of jurisdiction should have been raised before the court of first instance, and the court should have erroneously dismissed the exception raised. If it was not raised at all or was raised later than the first hearing at which the parties were legally summoned, it cannot become a ground of second appeal.
4. the court acted ultra vires;
The ground at point 4 seeks to ensure observance of the principle concerning the separation of powers in a state, the judiciary not being allowed to interfere with the competencies of the other branches of government.
Ultra vires consists in the violation by judges of the principle of separation of powers in a state, in the interference with the powers of the legislative or executive branches.
5. by delivering judgement, the court violated the procedural rules whose breach brings about the sanction of nullity;
All the provisions providing for nullity bring about this ground for quashing the decision, if the court violated the rules of procedure despite these sanctions.
To submit this ground of second appeal one must distinguish between absolute and relative nullities. Absolute nullities may be invoked by any of the parties, the judge or, where appropriate, the prosecutor, at any stage of the case, unless the law provides otherwise, and therefore also in the second appeal. Relative nullities may only be invoked by the party who has an interest to invoke them, thus the party protected by the rule that was infringed, only if the respective party is not at fault for the irregularity of the act.
6. the decision does not include the reasons on which it is based or it includes contradictory reasons or only reasons that do not concern the nature of the case;
The reasoning for the decision should be stated by the court which adjudicated upon the merits of the case, showing the reasons of fact and of law which have led it to deliver the decision. The court of judicial control may adhere to the reasoning of the court of first instance, if the facts and defences brought before it have remained the same.
If case of recast, the court of appeal is required to state the reasons which determined it to change the solution of the court of first instance. The duty to state the reasons of the decision, to clearly specify them, in a compelling and relevant manner, provides a guarantee against

arbitrariness and is the only means which enables the court to exercise a real judicial control[17].
There are decisions that do not need to state the reasons, but this is an exception expressly provided by the law, such as the decision for changing venue.
7. violation of res judicata;
One of the most important effects of the judgement is the force of res judicata. Whenever courts ignore this effect res judicata has to be observed by way of recognizing the parties' possibility to challenge this violation.
8. the judgement was delivered in violation or misapplication of substantive law rules.
This last ground relates exclusively to substantive law rules, as procedural law rules can be included in the grounds for cassation at point 5.
None of the grounds for quashing the decision can be raised for the first time in the second appeal. In this sense, art. 488 paragraph (2) CCP provides that these grounds cannot be accepted unless they could not be submitted in the appeal or while judging the appeal or, although they were raised within the term, they were rejected or the court failed to rule upon them.
If due to the nature or value of the dispute, the judgement is not the subject to appeal, these reasons may be invoked, as there is no other intermediate way to raise them before the court.
As it is an extraordinary remedy, the reasoning for the second appeal must be stated within the legal term, the sanction for non-compliance with this requirement being the nullity of the second appeal.
According to art. 489 paragraph (2) CCP, the same penalty occurs if the invoked reasons do not fit into the grounds for quashing the decision provided in art. 488 CCP.
The only allowed derogation is in the case when public policy grounds are invoked. Thus, unless the law provides otherwise, the grounds for quashing the decision which are of public policy may be raised ex officio by the court, even after the expiry of the term for stating the reasoning for the decision either in the filtering procedure or by public hearing.
Although the second appeal is an extraordinary remedy, two varieties of the appeal were adopted, in addition to the main appeal, *the incidental second appeal and the provoked second appeal*.
The procedure prior to judging the second appeal. This procedure is carried out the same as in the case of the appeal, with the difference that occurs if the appeal is within the jurisdiction of the Supreme Court.
When the appeal is to be judged upon by the High Court of Cassation and Justice, the president of the court or the chairman of the department or, where appropriate, their designee, receiving the file from the court the decision of which is appealed, will take by resolution measures for randomly establishing a panel of three judges, who will prepare the file for the second appeal and will decide on the admissibility in principle of the second appeal.
Judgement of the second appeal. The main, the incidental and the provoked second appeals filed against the same decision will be assigned to the same panel. When second appeals are assigned to different panels, the last vested panel will administratively order the referral of the appeal to the first vested panel[18].
According to art. 492 paragraph (1) CCP, no new evidence can be produced before the court of second appeal, except for new documents that can be submitted, under penalty of forfeiture, together with the motion to appeal, namely together with the objection to the appeal.
If the appeal is to be resolved by public hearing, other new documents may also be submitted until o the first hearing date.

Absolute exceptions may be raised also in the stage of the second appeal proceedings. Thus, according to art. 247 paragraph (1) CPC, absolute exceptions may be raised by the party or by the court at any stage of the proceedings, unless the law provides otherwise.
However, to preserve the boundaries of probation, absolute exceptions may be raised before the court of second appeal only if delivering judgement does not require producing other evidence besides the new documents.
Before the actual resolution of the appeal, where it falls within the jurisdiction of the Supreme Court, the filtering procedure of second appeals has to take place.
In this sense, art. 493 CCP provides that when the second appeal falls within the jurisdiction of the High Court of Cassation and Justice, the president of the court or the chairman of the department or, where appropriate, their designee receiving the file from the court the decision of which is appealed, will take by resolution measures to establish completely randomly a panel consisting of three judges who will decide on the admissibility of the second appeal in principle.
The report aims at establishing the admissibility in principle of the second appeal. To that end, it will check if the appeal meets the formal requirements set out subject to nullity, if the reasons given fall within those of illegality, if there are public policy grounds that can be invoked automatically or if it is manifestly unfounded. It will also show, if necessary, the jurisdiction of the Constitutional Court, of 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 in legal matters regarding the solution given in the challenged judgement.
For the preparation of the report one will consider the second appeal, the objection, the answer to the objection and the new documents produced. The report will be made by the president of the panel or he will appoint another member of the panel or the judicial assistant for this purpose.
In order for the filtering procedure of verification no to take too long, the report must be prepared within 30 days at the most from the assignment of the file. The rapporteur does not become incompatible.
Since the rapporteur only carries out a formal verification, not one on the merits of the second appeal, it is equitable that he should not become incompatible, and he may be member of the panel which effectively solves the second appeal.
After the analysis of the report by the filtering panel, the report shall be immediately communicated to the parties who may submit a written opinion on the report within 10 days from the notification. In the absence of evidence of communication of the report and before the expiration of a term of 30 days from the notification, the panel may not analyse the second appeal to find that either the appeal does not meet the legal requirements and so it has to be annulled, or that the second appeal has to be dismissed.
If there is proof of communication of the report, the filtering panel may hand down the following solutions[19]:
1. If the panel unanimously agrees that the second appeal does not meet the formal requirements, that the submitted grounds for quashing the decision and their development do not fall within those of illegality, it annuls the second appeal. This solution will be handed down whenever it finds that the submitted grounds of second appeal do not fall within those of illegality and there are not met the requirements for the automatic raise of public policy grounds, so that the unfit grounds equal a poor motivation, and the sanction is the nullity of the second appeal;
2. If the panel unanimously agrees that the second appeal is unfounded, it dismisses the appeal. This solution occurs where the grounds of appeal fall within those of illegality, but

their development determines the conclusion that the second appeal is unfounded, in the sense that the arguments raised cannot determine upholding the second appeal;
In both cases, the court shall decide by a decision stating the reasoning, which is not subject to appeal, without summoning the parties. However, the decision is to be communicated to the parties.
Because the motion for second appeal must be written by a legal professional, lawyer or legal adviser, and not personally by the party, it is absolutely imperative that the drafters know and comply with the requirements for filing a second appeal.
3. If the report shows that the appeal is admissible and all the members agree, and the legal issue arising in the second appeal is not controversial or is the subject of constant practice from the part of the High Court of Cassation and Justice, the panel may adjudicate upon the case without summoning the parties, by a final decision that is communicated to the parties. In solving the second appeal the court will take into account the points of view of the parties as stated in the solution suggested in the report;
4. Where the appeal cannot be resolved by annulment or by dismissal as unfounded, the panel will hand down a decision of admission of the second appeal in principle, without summoning the parties, and will fix a term for judgement on the merits of the second appeal, by summoning the parties.
By setting the hearing date, the filtering panel becomes competent to solve the second appeal and becomes the panel that adjudicates upon the merits of the case.
After the admission of the second appeal in principle, the actual judgement is to take place, so that the parties will have to be summoned.
According to art. 494 CCP, the procedural provisions concerning the judgement at first instance and on appeal also apply to the court of second appeal, to the extent they are not contrary to the regulations on the second appeal.
The solutions of the court of second appeal. The court of second appeal may uphold the appeal, may dismiss it or annul it or may find it is barred by limitation.
If the appeal was declared admissible in principle, the court, after checking all the submitted arguments and judging upon the second appeal, may deliver the following solutions

- *upholding the appeal;*

In case of upholding the second appeal, the judgement under appeal may be quashed, in whole or in part.
When the High Court of Cassation and Justice solves the second appeal after upholding it, according to art. 497 CCP, it quashes the appealed decision and refers the case for new judgement to the court of appeal that delivered judgement or, if the case, to the court of first instance, whose decision is also quashed.
Where the interests of the proper administration of justice so require, the case could be sent to any other courts of the same level of jurisdiction, except when the decision is quashed for lack of competence, when the case will be sent to the competent court or to other competent body with judicial activity according to the law.
It was considered that this measure may be ordered if the High Court of Cassation and Justice would find that a court is prevented, due to exceptional circumstances, to work for a longer time. The situation is similar in the case of a finding by the Supreme Court of circumstances likely to jeopardize a fair trial in the court whose decision was quashed (for example, in cases of change of venue of the civil suit for reasons of public safety). The Supreme Court may order the decision to be quashed and referred, in such circumstances, to a court of the same level of jurisdiction even without a formal request for delegation of another court or change of venue of the civil suit[20].

According to art. 497 CCP, where the decision was quashed because the court exceeded the boundaries of judicial power or when the authority of res judicata was violated, the claim shall be dismissed as inadmissible.
According to art. 498 CCP, where jurisdiction to solve the second appeal belongs to the tribunal or the court of appeal and the challenged decision was quashed, retrial on the merits of the case ultimately will belong to the court of second appeal, on the date on which the admission of the second appeal occurred, case in which a single decision is delivered, or on another date specified for this purpose.
The tribunal or the Court of Appeal will quash the decision and refer it to another court only once during the trial, if the court the decision of which is being appealed solved the case without referring to the merits or the judgement was delivered in the absence of the party who was illegally summoned, both for the administration of evidence and the debates on the merits. The case is to be referred to the court that delivered the quashed judgement or to another court of the same level of jurisdiction, of the same constituency, so that the case should be re-trialled.
In this case also, when the interests of the proper administration of justice so require, the case could be sent to any other court of the same level of jurisdiction, except the case where the decision was quashed for lack of competence, when the case shall be referred to the competent court or to other body of jurisdictional activity, according to the law.

- *dismissal of the second appeal*. After checking the validity of the judgement or the judgements, if the court finds that the submitted grounds of second appeal are not justified, the court of second appeal will dismiss the second appeal and will maintain the appealed solution.
- *annulment of the second appeal*. This solution can be handed down if the stamp duty was not paid in full or in part, as well as if the submitted reasons do not fall into those of illegality, which amounts to a failure to state the reasons for the decision, whose sanction is nullity.

But if the court, in developing its reasoning, may integrate it into one of the cases of art. 488 CCP, then their wrongful submission will not bring about the annulment of the appeal.

- barring the second appeal by limitation occurs if the case stood inactive for reasons attributable to the party for six months, according to art. 416 paragraph (1) CCP.

Usually, the decision must include the considerations, which will show the subject of the application and the submissions of the parties in brief, a statement of the facts retained by the court based on the procured evidence, the reasons of fact and of law justifying the solution, pointing to those for which the decision was admitted, and to those for which the parties' applications were dismissed.
Notwithstanding these requirements, the decision of the court of appeal will include within the considerations only the grounds invoked for quashing the decision and their analysis, explaining why they were admitted, or, if the case, rejected. In this way the court of second appeal shall not resume the considerations of the previous courts.
If the second appeal is rejected without being examined on the merits or if it is annulled or barred by limitation, the decision in the second appeal will include only the reasons for the solution without stating and analysing the reasons for quashing. In this case, the reasoning is restricted to the handed down solution.
2. The second extraordinary remedy is ***the legal contest in annulment***, governed by arts. 503-508 CCP.
The legal contest in annulment is an extraordinary remedy of withdrawal, which requires the very court that delivered the judgement under appeal, in the cases and under the conditions provided by the law, to annul its own decision and proceed to rendering a new judgement in the case[21].

The regulated specific grounds show that we are dealing with two kinds of legal contest in annulment: the ordinary and the special one.

The ordinary legal contest in annulment. As a principle, all final decisions may be subject to a legal contest in annulment. In this sense, art. 503 paragraph (1) CCP refers to final judgements that may be subject to a legal contest in annulment, when the appellant was not duly summoned or was also not present at court hearings when the judgement took place.

The capacity to exercise the legal contest in annulment is verified in the person of the appellant, who must justify the interest in lodging this appeal. Pursuant to art. 92 paragraph (4) CCP, the prosecutor may exercise the ordinary legal contest in annulment against a court judgement in cases concerning the defence of rights and legitimate interests of minors, of persons under interdiction and of disappeared persons, as well as in other cases expressly provided by the law.

The grounds provided by the law for the ordinary legal contest in annulment suppose that summoning is mandatorily required or that the court ordered summoning of the parties and the party was not summoned at all or summoning was not ruled for the date on which the case was heard and the solution was delivered and the party was not present.

The special legal contest in annulment. The category of judgements which may form the subject of the special legal contest in annulment is much narrower, comprising in principle judgements delivered by the courts of second appeal.

However, also those judgements of the courts of appeal may be subject to the special legal contest in annulment, which, by law, cannot be subject to a second appeal.

If the appellant has more grounds for exercising a legal contest in annulment, these must be submitted together, by a single motion, even if other grounds are submitted, a decision against which the legal contest in annulment was exercised cannot be challenged by the same party by way of a new legal contest in annulment[22].

There are four grounds for lodging a special legal contest in annulment. There may be lodged a legal contest in annulment against judgements of courts of second appeal, when:

1. the judgement in the second appeal was issued by a court in violation of the absolute jurisdiction or by violating the rules concerning the composition of the court, and although the corresponding objection was raised, the court of appeal failed to rule on it;

2. the solution given to the second appeal is the result of a material error;

This ground concerns obvious material errors connected to the formal aspects of the appealed judgement, such as the wrongful dismissal of the appeal as lately declared, the wrongful annulment of the second appeal for non-payment of the stamp duty, the wrongful annulment of the second appeal as made by a representative without capacity, which are issues for the verification of which there is no need for reviewing the merits of the case or reassessing evidence.

3. the court of second appeal, while dismissing the second appeal or upholding it in part, failed to verify one of the grounds for quashing the decision put forward by the appellant within the due term.

This ground of the special legal contest in annulment can only be invoked if the second appeal has been dismissed or upheld in part.

4. the court of second appeal did not rule on one of the declared appeals.

In this case, the court failed to rule on one of the legal remedies declared in the case[23].

The decisions of appellate courts that are not subject to a second appeal may be challenged by way of a legal contest in annulment, however, on the following grounds: the judgement in the appeal was issued by a court in violation of the absolute jurisdiction or by violating the rules concerning the composition of the court, and although the corresponding exception was raised, the court of appeal dismissed it or failed to rule on it; the judgement of the appeal is

the result of a material error; the appellate court did not rule on one of the submitted appeals lodged in the cause.
According to art. 505 CCP, the legal contest in annulment is to be lodged with the court whose decision is challenged.
If there are submitted grounds that impose different jurisdictions, competence extension does not operate, but each will have to be solved by the court competent for a certain ground.
The time limit within which the legal contest in annulment is to be lodged is the same, regardless if we are in the presence of an ordinary or special legal contest in annulment. The legal contest in annulment may be lodged within 15 days from the notification of the decision, but no later than one year from the date when the decision became final.
The grounds for filing the legal contest in annulment are to be stated within 15 days from the date on which the applicant was notified of the decision, under the penalty of nullity of the decision. The sanction of nullity in case of failure to state the grounds within the appropriate term is fit to emphasize the nature of the legal contest in annulment as an extraordinary remedy.
By way of a legal contest in annulment one may require annulment of the decision and retrial of the case under legal conditions or completion of the judgement[24].
The legal contest in annulment shall be solved immediately and with priority, according to the procedural provisions applicable to the judgement resulting in the challenged decision.
The objection is mandatory and shall be lodged with the case file at least 5 days before the first hearing. To assure celerity, the appellant will take notice of its contents from the case file.
The court may uphold or dismiss the contestation. If the ground for filing the legal contest in annulment is well argued, the court will issue a single decision by which it will annul the appealed decision and solve the case. If, however, solving the case on a same date is not possible, the court will issue a judgement for annulling the appealed judgement and set a date for solving the case by a new judgement. In the latter case, the decision for annulment may not rightfully be appealed separately, because it has the character of an interim judgement.
The judgement in the legal contest in annulment is subject to the same remedies as the challenged judgement. Therefore, if the appealed judgement could have been challenged by an appeal and by a second appeal, then the judgement in the legal contest in annulment can also be challenged both by an appeal and a second appeal. Otherwise, it may only be challenged by either an appeal or by a second appeal.
3. *The Review* is provided in arts. 509-513 CCP and is the last extraordinary remedy, based on 11 grounds.
Review is the legal remedy of which the subject is the motion, usually submitted to the court that issued the challenged judgement in order to withdraw it, due to an involuntary error committed in its pronouncement.
Considering the features, the review is an extraordinary remedy of withdrawal, common and non-suspensive of execution.
As a rule, those judgements on the merits or referring to the merits are subject to review, according to art. 509 CCP, if one of the grounds referred to in section 1-11 is met.
The grounds for lodging a review. The grounds for lodging a review are the following[25]:
1. the court ruled on things that were not requested or did not rule upon a thing which was requested or it gave more than it was requested;
This ground for review concerns three cases:

- the court ruled *extra petita*, it decided on matters that were not requested. This ground for review concerns rulings on grounds that were not asked, and thus the solving by the decision of a non-submitted request. The motion for review, however, is not admissible when the court, under the law, had to judge also upon claims that were not raised.

- the court ruled *minus petita*, it did not rule on a requested claim. The court failed by mistake to rule on a demand or on a request with which it was legally vested.
- the court ruled *plus petita*, it gave more than was requested. *Plus petita* rulings of the court should not only be seen quantitatively, but also qualitatively. One cannot invoke *plus petita* when in the legal circumstances imposed by the nature of the dispute, the court grants more than it was asked.

2. the object of the case is not in being;

This ground for review may only be submitted if the applicant has requested a single complaint ruling; the object in dispute was a certain and determined good, and the debtor was ordered by court judgement to deliver the respective good to the creditor; the good perished after the judgement was delivered and the specific performance of the obligation is no longer possible.

3. a judge, witness or expert, who took part in judging the case, was convicted with a final decision for an offense concerning the case or if the judgement was delivered based on a document declared false during or after the judgement, when those circumstances have influenced the outcome of the case. When the offense cannot be ascertained by a criminal judgement, the court of review will first rule incidentally on the existence or non-existence of the invoked infraction. In the latter case, the person charged with committing the offense in the judgement will also be summoned for the court hearing;

The first case provided by the law concerns the existence of a final judgement of conviction of the judge, witness or expert, for infractions relating to the case. The review will be admissible only if the offense committed by the judge, witness or expert was crucial for the judgement under review.

For the situation in which the judgement was delivered on the basis of a document declared false during or after judgement, the following conditions should be met: the document declared false supposes the condition of a finding that the document is false by court decision; a finding that the document is false may result from the statement of reasons of the decision as well as from the considerations of the acquittal; by "false document" declared during or following the judgement we should understand not only the document that was declared false with the establishment of an infraction, but also the one whose content does not correspond to reality, even when the operation of altering reality does not amount to a crime; the court of review will have to check itself the reason why the altering of the truth by the document was not discovered up to the review; the legal provision relating to a document declared false envisages the declaration by a court other than that in which the document is used is pending; in case of the document declared false, to uphold the claim for review, the document declared false must have influenced the decision[26].

4. a judge was disciplinarily sanctioned by a final ruling for exercising his function in bad faith or gross negligence, if these circumstances have influenced the outcome of the case.

In this case, the judge was disciplinarily sanctioned by a final ruling for exercising his function in bad faith or gross negligence. Disciplinary sanctions are to be applied by the Superior Council of Magistracy (article 101 of Law no. 303/2004, republished).

5. after delivery of the judgement there was discovered new written evidence withheld by the opposing party or that could not be produced due to a circumstance beyond control of the parties;

This ground for review concerns the case of discovery of written evidence.

6. the judgement on which the challenged judgement is based was quashed, annulled or changed;

The court based the decision whose review is required on another court judgement that has been quashed or amended. This decision must have been decisive for the judgement the review of which is required.

7. the state or other public legal persons, minors and persons under judicial interdiction or under curatorship were not defended at all or were cunningly defended by those charged to defend them;
This ground of review is considered an expression of the principle of the right of defence and at the same time a guarantee of the exercise of this right.
8. there are adverse final judgements, delivered by courts of the same level or of different levels, in violation of res judicata of the first judgement;
The basis of this ground of review therefore is res judicata. Although the res judicata objection has an absolute character and may be submitted by the court ex officio, it may sometimes happen that, in a same case, two different courts or even the same court, in different files, deliver contrary judgements, so that each party may rely on the judgement that it finds favourable[27].
9. the party was prevented from appearing in court and informing the court about it, in circumstances beyond control;
In order to submit this ground of review the following conditions need to be met: the party has been duly summoned to appear in court, or otherwise the party cannot resort to review but to the legal contest in annulment, the duly summoned party must have been prevented by circumstances beyond his will to appear in court and to inform the court about it. These two conditions must be met cumulatively, whether and to what extent that circumstance was beyond the party's will remains a question of fact, at the court's sovereign discretion; the party has the duty, in submitting this ground for review, to produce evidence in support of the assertion that he was prevented by circumstances beyond his will to appear in court and to inform the court about it[28].
10. the European Court of Human Rights found a violation of fundamental rights or freedoms due to a court ruling, and the serious consequences of the violations continue to occur;
The essential condition for submitting this ground is the finding by the European Court of Human Rights of a violation of fundamental rights or freedoms by a court ruling.
11. after the judgement has become final, the Constitutional Court ruled on the objection raised in the case, declaring the provision that was the subject of the objection as unconstitutional.
The review of a judgement on this ground involves two essential requirements. The first concerns the final character of the judgement for which review is sought. If the decision of unconstitutionality occurs before the judgement becomes final, the solution of the Constitutional Court may be invoked in the court proceedings before the court of first instance or, as appropriate, before the court of judicial review[29].
The second prerequisite concerns the admission of the objection of unconstitutionality raised in the case, by declaring the provision that was the subject of the objection as unconstitutional[30].
By exception, decisions that do not concern the facts of the case may also be subject to review in the following cases:

- a judge who took part in the judgement was sentenced by final judgement for an infraction relating to the case.
- a judge was disciplinarily sanctioned by final judgement for exercising his function in bad faith or gross negligence, if these circumstances have influenced the solution of the case;
- the state or other public law persons, minors and persons under judicial interdiction or under curatorship were not defended at all or were cunningly defended by those charged to defend them;
- there are adverse final judgements, delivered by courts of the same level of jurisdiction or of different levels, in violation of res judicata of the first judgement;

- the party was prevented from appearing in court and from informing the court about it, in circumstances beyond the control of the party;
- the European Court of Human Rights found a violation of fundamental rights or freedoms due to a court ruling, and the serious consequences of the violations continue to occur.

Judgement of the application for review. The application for review is to be submitted as a rule before the court the decision of which is subject to review. Being a judgement on the merits of the case or which refers to the background of the case, the court may either be the court of first instance, the court of appeal or even the Supreme Court.

When there are adverse final judgements, delivered by courts of the same level or of different levels, in violation of res judicata of the first judgement, the motion to review will be lodged with the court of higher jurisdiction than the court that delivered the first judgement. If one of the courts of second appeal is the High Court of Cassation and Justice, the motion to review shall be solved by that court.

Should one submit grounds that impose different jurisdictions, there will not be a prorogation of jurisdiction, but each court will solve a motion according to its jurisdiction.

Judgement procedure. According to art. 513 CCP, the motion to review shall be solved according to the procedural provisions applicable to the judgement the outcome of which is the challenged judgement. This means that, depending on the judgement, the rules of the court of first instance, of the appeal or of the second appeal shall be applied.

The objection is mandatory and shall be lodged at least five days before the first hearing. The applicant will take notice of the content of the answer from the case file.

Only that evidence may be proposed and procured that is necessary to prove the invoked ground of review. Debates are limited to the admissibility of the review and the facts on which it is based.

The court may uphold or dismiss the motion to review. If it upholds the motion to review, it will change the challenged judgement in whole or in part, and in case of adverse final judgements, it will cancel the latter judgement. There will be a mention of the judgement in the review procedure down on the page of the original of the reviewed decision.

The judgement on the review underlies the legal remedies provided by the law for the reviewed decision.

If the motion has been requested for adverse rulings, the remedy is the second appeal. If the review has been solved by one of the departments of the High Court of Cassation and Justice, the second appeal shall be judged upon by the Panel of 5 judges.

5. Conclusions

We consider the new regulations on legal remedies by Law no. 134/2010, Code of Civil Procedure, to be positive and able to contribute to the encouragement of exercising legal remedies, according to a clearly defined order, with the observance of the principle of legality and with the goal to avoid the exercise of extraordinary remedies which unduly extend disputes.

The Code of Civil Procedure has radically changed the whole perspective on the matter, its provisions aiming to meet the current goals, such as the access of individuals to simpler and more accessible resources and procedural forms, but also the acceleration of the whole procedure.

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[1] Law no. 134/2010 published in ”Monitorul oficial al României”, part I, no. 545 of August 3, 2012, as subsequently amended and modified.

[2] C. Roşu, *Drept procesual civil. Partea specială conform noului Cod de procedură civilă, Edition 5*, C. H. Beck, Bucharest, 2014, 1.
[3] I. Deleanu, *Tratat de procedură civilă, vol. II*, Servo-Sat, Arad, 2004, 126 et seq.
[4] C. Roşu, *Dispositions generales relatives a l'exercice des voies de recours dans le nouveau Code de procedure civile*, Curentul Juridic no. 2 (53)/2013, XVI, 133-140.
[5] I. Leş, *Noul Cod de procedură civilă. Comentariu pe articole*,C. H. Beck, Bucharest, 2013, 612.
[6] Idem, 612.
[7] I. Deleanu, *Tratat de procedură civilă, vol. II*, Universul Juridic, Bucharest, 2013, 148.
[8] I. Leş, *op. cit*., 613.
[9] Idem., 618.
[10] C. Roşu, *Drept procesual civil, op. cit*., 7.
[11] Idem, 8.
[12] Ibidem.
[13] I. Leş, *op. cit*., 621.
[14] C. Roşu, *Drept procesual civil, op. cit.*, 25.
[15] Idem, 26.
[16] Idem, 38.
[17] I. Deleanu, *op. cit.*, 2004, 375.
[18] C. Roşu, *Drept procesual civil, op. cit.*, 47.
[19] Idem, 49.
[20] I. Leş, *op. cit*., 706.
[21] G. Boroi, D. Rădescu, *Codul de procedură civilă comentat şi adnotat*, Editura All, Bucharest, 1994, 522.
[22] I. Deleanu, *op. cit.*, 2013, 321.
[23] S. Spinei, *Reglementarea contestaţiei în anulare în noul Cod de procedură civilă*, in Dreptul no. 1/2013, 64.
[24] Idem, 66.
[25]C. Roşu, *Drept procesual civil, op. cit.*, 67.
[26] I. Deleanu, *op. cit*, 2004, 458.
[27] G. Boroi, D. Rădescu, *op. cit.*, 567.
[28] I. Deleanu, *op. cit.*, 2004, 469.
[29] I. Les, *op. cit*. 749.
[30] Ibidem.