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A Historical Outline of the Development of Civil Procedure in Transylvania as Part of Romania

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Abstract. The following study constitutes a historical outline of the evolution of Romanian civil procedure in the period between 1918 and 2013 from the perspective of the norms applicable in Transylvania as part of Romania. Romanian civil procedure in the period immediately after 1918 presented a diverse picture, with several procedural regimes applicable in the same country at the same time. This raised the necessity of unifying procedural norms, at first attempted by recodification and later accomplished by the extension of the Code of Civil Procedure of the Kingdom of Romania to Transylvania in 1943. As the Soviet-type totalitarian regime was consolidated in the late 1940s, a reform (much rather a recodification) of civil procedure occurred in the new spirit of the age, which, along with subsequent norms led to the reduction of judicial remedies and the introduction of a 'lay element' into the process by the presence of assessors, and it also increased the role of public prosecutors during the civil trial. Following the 1989 regime change, civil procedure in Romania at first, before a comprehensive reform, reverted to historical models, and then finally recodification was achieved.

Keywords: civil procedure, Romania, Transylvania, procedure reform, civil trial

1. Introduction

Civil procedure constitutes the basic framework for the judicial resolution of civil disputes. Therefore, it is intrinsically connected to the nature and character of private law regulation, constituting the means by which the observance of substantive rights stipulated by private law can be imposed. For this reason, the study of the development of private law cannot be envisaged without some reference to the norms of civil procedure. An example of this case is studying the development of private law in the geographic space known as Transylvania, from

the standpoint of legal history, a feat to which the authors of this issue of *Acta Universitatis Sapientiae – Legal Studies* have endeavoured.

In this paper, we shall attempt to provide an outline of the transformations to which Transylvanian civil procedure was subjected subsequent to the unification of this region with Romania. The scientific objectives we aim to achieve by this effort are multiple. Firstly, by using the developmental traits of civil procedure, we intend to exemplify the various modes for unifying the divergent systems of law which came to coexist in Romania after the political unification had occurred. Secondly, we would like to document the developmental schema of civil procedure during the period of the totalitarian, Soviet-type regime. Thirdly, we aim to demonstrate the divergent paths for the development of civil procedure taken by the Romanian legislator following the regime change in 1989, paths which have led it to attempt to reconstitute the elements of civil procedure which pre-dated the coming into power of the totalitarian regime and then to achieve an entirely new codification. Fourthly, we would like to underline similarities between the civil procedure applicable in Transylvania in 1918 and the one resulting from reform and recodification: the necessity of the parties to clarify and set forth – prior to the trial – their claims and statements of defence and the heightening of the role of attorneys-at-law during the procedure.

2. Civil Procedure in Transylvania between 1918 and 1943

Following unification, extending the public administration of the Kingdom of Romania to Transylvania and the region previously called the Partium (the regions known in Romanian as the Banat, the Crişana, and Maramureş) did not immediately result in the entry into force of the Romanian Code of Civil Procedure[1] of 1865 in these regions. Thus, in the period between 1920 and 1943, the provisions of Act I of 1911 (known as the 'Plósz' Civil Procedure after the eminent jurist Sándor Plósz) were preserved in force in Transylvania. As a significant innovation at the time – of relevance even today –, Act I of 1911 introduced a civil procedure divided into two main phases: the clarification of the procedural framework[2] and the trial itself (judicial investigation and debate on the merits), separated by the so-called procedural *caesura*, which enabled the parties to record their claims and statements of defence before the court, claims

1 Published in the Official Gazette of 9 September 1865. For the original text, see Boerescu 1865.

2 The procedural framework consists of the parties, the object, and the cause of litigation. Without knowledge of these elements as early in the procedure as possible, the court would find it difficult and time consuming to resolve the dispute brought before it, while the parties might find themselves facing a 'surprise judgement' which may either not be based on their initial claims or statements of defence or which may invoke other legal norms than what the parties have initially envisaged, thereby reducing the predictability of jurisprudence.

and statements that were then to remain substantially unaltered for the entire duration of the procedure.

Due to the continuous application of Act I of 1911, Transylvania was mostly unaffected in terms of civil procedure by the series of amendments to the Code of Civil Procedure of 1864 which occurred prior to 1925[3] (although the jurisdiction of the courts[4] was transformed by the Act of 4 August 1921). It is worthy of mention that the provisions of Hungarian civil procedure pertaining to compulsory legal representation before courts (from under which parties were exempted in lower-value litigations) were among the first norms to be repealed by the Romanian administration following unification, in 1920.[5] This measure brought civil procedure in Transylvania in line with the principle of freedom to address the court directly, present in Romanian civil procedure, but it elicited fervent protests from Romanian attorneys practising in Transylvania,[6] who viewed it as illegal and unpractical because it de-professionalizes representation during the civil trial.

Subsequently, the acts for the acceleration of trials of 1925[7] and of 1929[8] as well as Act 394 of 1943[9] – having an identical purpose of regulation – affected the rules of civil procedure in Transylvania, partly by reorganizing the subject-matter jurisdiction (jurisdiction *ratione materiae*) of the courts but especially by regulating the procedural conduct of the parties during the submission of the claim and during conducting of the judicial procedure.

The Act of 1925 aimed to emulate some elements of Hungarian civil procedure by placing emphasis on the content of the application which the claimant must submit to the court and on the statement of defence by the respondent (providing the compulsory elements of these written statements and prescribing sanctions if these elements were absent). Also, for a brief period between 1925 and 1929, compulsory representation by an attorney was reintroduced, only to be scrapped

3 These repeated modifications began a decade after the entry into force of the Code of Civil Procedure of 1865 and in large part altered its initial unitary concept and structure, placing jurisdiction *ratione materiae* in lower-value cases to justices of the peace, which had a pronounced 'popular' character (being lay judges, elected from the local – village – community), incompatible with that of a modern, independent judiciary. Other modifications performed later on substantially transformed litigious procedure in order to combat the increasing duration of trials. For details, see: Porumb 1960. 8–9.

4 See Herovanu 1932.

5 Ordinance no 4199–1920 of the *Consiliul Dirigent* (Directing Council, a body of interim government established for Transylvania after unification) of 27 February 1920. Published in the Official Gazette of the National Unification Commission in Cluj, no 9 of 21 May 1920.

6 See Mandicevschi 1921.

7 Published in the Official Gazette no 108 of 19 May 1925.

8 Published in the Official Gazette no 150 of 11 July 1929.

9 Published in the Official Gazette no 143 of 23 June 1943. On its content, see: Păduraru–Stoenescu–Protopopescu 1943.

again by the Act of 1929,[10] which further simplified the content of the application and the written statement of defence.

These later rules, beginning with the Act of 1929, have often assigned a less formal character to the procedure. However, these rules did not affect either the substance or the structure of the civil procedure or the norms of procedural conduct applicable in Transylvania.

3. Attempts to Unify and Modernize the Law of Civil Procedure

Several times treated but never cured, the increasing duration of trials became a malady of the civil process during the inter-war period. In Romania of the 1930s, the recodification of the norms of civil procedure began partly and in order to solve this problem. Another aim of this recodification was to achieve the unification of the various norms of civil procedure applicable in the several regions unified with the Old Kingdom of Romania and to thereby reduce the dizzying array of procedural systems at work in the country. The legislator's effort resulted in several proposals for the new code, of which the 1938 draft was promulgated on 8 November 1939, but it never came into force.[11]

A later draft and then as its final, reworked version, the Code of Civil Procedure of Carol II – named after the king still at the helm of the country at the time –, was inspired by the Italian Code of Civil Procedure of 1939 (known as Mussolini's Code of Civil Procedure) as well as by previous draft codes and by civil procedural law in force in Romania during the period of its development. The purpose of the recodification was defined by Minister of Justice Ion V. Gruia as – among other things – a need to develop a procedural regime qualitatively worthy to replace the Hungarian Civil Procedure of 1911, in force in Transylvania.[12] The date of 15 September 1940 was set for the entry into force of the new code, which eventually never took place.[13]

Had the Carol II Code of Civil Procedure entered into force, it would have introduced some institutions similar to the Hungarian Civil Procedure of 1911,

10 On the content of the Act of 1929, see Nádai 1935.

11 See the ministerial argumentation for the draft Code of Civil Procedure of the year 1938, Gruia 1940. 97. The text of the draft was also published in the Romanian Official Gazette no 1940/201. 3–95.

12 Gruia 1940. 96.

13 This can be deduced from the fact that the Romanian legislator, during the comprehensive recodification of civil procedural law by means of Act 18 of 1948, did not repeal the Code of Civil Procedure of Carol II (see Act 18 of 1948, Art. VI) even though, for safety's sake, the 21st-century legislator still provided for the repeal of the Code of Civil Procedure of Carol II in the text of Act 76 of 2012 regarding the application of the new Code of Civil Procedure of the year 2010, in Art. 83, letter b).

collectively known as preclusion, which would have required the parties to present their claims and defences in a timely and complete fashion under penalty of not being allowed to invoke them later on.

4. Civil Procedure during the Soviet-Type Regime

Following the Second World War, the need in Romania for the unification of civil procedural law in the territorial sense and with respect to the content of normative acts manifested itself so acutely that the legislator did not even wait for the adoption of the Constitution drafted in the new spirit of the age: the recodification of civil procedure occurred in the first months of 1948. The 1940 (draft) Code of Carol II was removed from among the possible sources of inspiration, and a bill for the substantial amendment of civil procedure (in fact, a new draft Code of Civil Procedure to all intents and purposes) was elaborated in its place, taking into account the provisions of the Code of Civil Procedure of 1865, of the acts for the acceleration of justice, and the practice of the High Court of Cassation and Justice. The reform of civil procedural law was preceded by the transformation of the organization of the judiciary, first by Act 341 of 5 December 1947. The greatest novel element of the new system of organization – in order to subjugate justice to political power – was constituted by the introduction of popular participation in the process of rendering justice, which was later generalized by the Decree of the Presidium of the Grand National Assembly no 132 of 1949 on Judicial Organization (Art. 5). This Decree extended popular participation to all courts outside of the Supreme Tribunal, by the presence of popular assessors[14] (persons without legal training, appointed by way of political procedures) within the activity of jurisdiction. This measure was meant to imprint a 'popular' nature on the activity of courts.

> At the celebration, the president and the secretary of the Temporary Committee of the District were present, being accompanied by the judge of the District Court. The working people of Ciucsângeorgiu unanimously elected as judge the poor peasant Imre Szőcs, the village of Bancu the small craftsman Ignác Jakab, the village of Armăşeni the middling farmers Klára Adorján and András Lukács. Following the solemn election of the people's judges, the youth of the commune and the stringed instruments orchestra of Bancu village held a musical show.[15]

14 On this institution and on the main characteristics of Soviet civil procedure, see Chenoweth 1977.

15 *Népújság* 1949. Translation by the author. Unless otherwise specified in the footnotes, all translations of quotes are by the author.

Unfortunately, the Romanian legal literature has not preserved the circumstances of the amendment of the Code of Civil Procedure. An article published on 1 February 1948 in the daily newspaper *Scânteia* (The Spark), the central press body of the Romanian Communist Party, announced with some fanfare the submission of the draft amendment to the Code of Civil Procedure to the National Assembly the day before. The author of the article summarized the novelties brought by this Code, and, in addition to mentioning the unification of law, he highlighted the placement of general jurisdiction *ratione materiae* for trials in the first instance to the district courts, the introduction of the principle of party disposition in the 'socialist sense', public legal aid free of charge, and the simplification of the rules of litigious procedure.[16] The issue of 5 February 1948 of the same daily announced the beginning of the debate of the draft by the Judiciary Committee and, in addition to listing the above, stressed the simplification of the divorce procedure and the repeal of the institution of marriage dissolution by the consent of the spouses.[17]

The publication of the comprehensive amendments to the Code of Civil Procedure in the Official Gazette of Romania took place just a week later.[18] The intention of the Romanian legislator towards the acceleration of the transformation of civil procedural law was evident, and so codification was not preceded by any debate within the legal professions nor by any form of scientific publication.

As an effect of this change, the principle of party disposition in the 'socialist sense' (which in Romanian legal literature wore the same name as in the Soviet Russian legal literature, that of 'the judge's active role') and the obligation to inform litigants were introduced. By application of the first principle, Art. 129 of the Code of Civil Procedure allowed the judge to move *ex officio* to administer evidence, even in spite of the opposition of both parties, thus strengthening the judicial role in the civil process. Article 130 of the Code of Civil Procedure defined the so-called obligation of information and stipulated that judges 'shall provide active assistance to the parties in protecting their rights and interests'.[19] The legislator also crammed into this last article the requirement of determining objective (material) truth, for which the judge was obliged to strive by all means, having to avoid any mistakes in the course of this endeavour, in the spirit of socialist materialist-dialectical legal philosophy.[20]

Civil litigation, as a framework for private law litigation of the parties, was thus put in the service of mass education, the construction of the socialist conscience, the realization of popular justice, the defence of the patrimony of

16 Lupaşcu 1948. 3.

17 Modificarea Codului de Procedură civilă 1948. 3.

18 Act 18 of 1948 regarding the Modification of the Code of Civil Procedure, published in the Romanian Official Gazette no 35 of 12 February 1948.

19 Porumb 1960. 300.

20 Moldovan 1949. 974.

socialist organizations, and the defence of the rights of 'the working people', as a manifestation of the branch of public jurisdictional law.[21]

Here it is worth mentioning that, despite the content of the norms introduced to implement the active role of the judge, the Code of Civil Procedure, as amended in 1948, has retained the structural specificity of the Code in its previous form, and thus not long after its entry into force it was considered an incomplete reform, a missed opportunity for remaking Romanian civil procedure in the likeness of the new regime.[22]

Even if there were trends of simplification, the rules governing the procedure before the courts of first instance have remained fundamentally unchanged in their essential content. Zilberstein, Stoenescu, and Porumb, authorities of socialist legal literature, explained this state of affairs by showing that although the normative text previously in force was often kept, it was charged with the new socio-economic content of the socialist worldview, being destined to serve in the future for the defence and promotion of the new social order.[23]

Act 5 of 1952, by which judicial organization was reformed, abolished the courts of appeal within the Romanian system of jurisdiction and thus made it necessary to amend the Code of Civil Procedure once more. This occurred through Decree no 132 of 1952,[24] which placed general jurisdiction *ratione materiae* of the court of first instance to the people's courts (the court at the base of the jurisdictional pyramid). These could decide in any litigation for which the jurisdiction *ratione materiae* of another court has not been expressly established by law. According to the Soviet model, the ordinary, or first appeal (on the merits and on points of law), meant to subject the decision of the court of first instance to a second degree of jurisdiction, was abolished. Thus, only the second appeal (exclusively on points of law) – previously intended in most cases to submit the decision of the court of second instance to review by a court of third instance – was preserved, which, due to the nature of this appeal, could only be exercised if some grounds for quashing the decision, expressly provided by law, were present. The role of resolving these appeals on points of law – thanks to the abolition of the courts of appeal – was placed in the jurisdiction of the courts in the second

21 Hilsenrad–Stoenescu 1957. 14; Rebeca 2013. 66.

22 Moldovan 1949. 977–978.

23 Stoenescu–Zilberstein 1983. 54; Porumb 1960. 7; Cracănă 2013. 83–84. This interpretation was called by Cracănă as the 'teleocratic' interpretation of law to signal that the judge was required to interpret the law in a positive manner, according to the expectations of the powers that be and to develop his judicial practice in accordance with the implicit but predictable expectations of these powers. See Cracănă 2014. 181.

24 Stoenescu–Zilberstein 1983. 54. Unfortunately, the normative content of the decree is only found in abbreviated form in the compendiums of Romanian legal norms, usually the part reproduced there referring to the restructuring of judicial organization, the rest of the provisions being able to be reproduced only from contemporary indirect sources.

tier of the Romanian judicial hierarchy, the so-called tribunals, which previously had jurisdiction to decide during the first appeal.

The drafters of Decree no 132 of 1952 already took into account the results of constitutional transformations to a totalitarian regime which occurred after 1948, and therefore they increased significantly the activity of the Public Ministry (the public prosecutors) within the civil procedure, generalizing the participation of the prosecutor and granting him de ability to make any assertions during the trial. Subsequently, Decree no 38 of 16 February 1959 extended the prosecutor's right to initiate litigation, as a rule, to all types of civil matters.[25] Functions of the prosecutor in the process – control of legality and representation of public interest – remained unchanged.

Act 58 of 1968, which replaced Act 5 of the year 1952 and which also referred in this case to judicial organization, consecrated the exceptional nature of the participation of assessors, restricting application of this institution to criminal and military courts. This way, Romanian civil procedure broke with the system of popular participation by the presence of assessors within the civil process – a mainstay of socialist totalitarian justice – and at the same time with the principle of popular jurisdiction, a measure unique at that time among the states in the region belonging to the socialist bloc.

5. Civil Procedure Following the Regime Change

5.1. Return to Previous Models of Regulation

Following the regime change, the Constitution of 1991 in its Art. 21, para. (1) ensured from the very beginning[26] the right of persons to address the courts for 'the defence of rights, freedoms, and legitimate interests', while para. (2) stated the exercise of this right as not being subject to limitation by law, consecrating the principle as an effective remedy against the violation of legitimate rights and interests. The Constitution did not provide for the possibility of appeal, through the exercise of at least one (hierarchical) appeal by which the decisions of the courts of first instance can be challenged, the consecration of the latter fundamental right being left to the practice of the Constitutional Court.[27]

25 Leş 1982. 204. The implementation of the Soviet-type model can be considered as belated in this case.

26 See Stancu 2011. 107. The author mistakenly states that this right was only provided for subsequent to the amendment of the Constitution in 2003 as a principle of civil procedure, an observation which she probably intended to make regarding the right to a fair trial, which indeed was first provided for by the amended Constitution of 2003 in its Art. 21, para. (3).

27 Decision of the Constitutional Court no 967/2012.

Act 92 of 1992 on Judicial Organization re-established the courts of appeal, reinstating the four-tier hierarchy of courts (courts of appeal were re-established, among other locations, at Braşov, Alba Iulia, Cluj-Napoca, Târgu-Mureş, Oradea, and Timişoara). In accordance with this structural transformation, Act 59 of 1993 reorganized the jurisdiction *ratione materiae* of the courts, reserving general jurisdiction to local courts (Code of Civil Procedure of 1865, Art. 1). County tribunals acquired special jurisdiction *ratione materiae* regarding certain disputes – expressly provided for by law – especially in higher-value litigations and in cases when rights in strict relation with the party's person were concerned as well as in cases of administrative litigation that did not fall within the jurisdiction of the courts of appeal. By re-establishing the courts of appeal, they became the third tier of the justice system. The jurisdiction *ratione materiae* of the courts of appeal extended to the trial of administrative litigation in the first instance if the defendant was a central government body. Besides these cases, the jurisdiction of the courts of appeal was limited to the solution of the recently reintroduced remedy of first appeal (on points of fact and of law), which could be exercised against judgments rendered in the first instance, and to resolving the second appeal (exclusively on points of law) that the former unique remedy permitted under socialist procedural law. The second appeal could be exercised against decisions rendered in the second instance, after the first appeal (reintroduced in 1993) was exercised, or against decisions not subject to first appeal.

The Supreme Court of Justice (later renamed the High Court of Cassation and Justice) has become an exclusive forum for cassation in civil litigation meant to decide – in addition to civil second appeals exercised in certain cases assigned by law to its jurisdiction – also in so-called appeals in the interest of the law (a means of unification of case-law) and in the extraordinary appeal in annulment, as the last degree of jurisdiction. These three types of procedures emphasized the exclusive role of this high forum, that of unifying jurisprudence in civil matters.

By redefining the role of the prosecutor in the civil process [Art. 45, para. (1) of the Code of Civil Procedure of the year 1865], Act 59 of 1993 partially returned to the original content of Art. 45, para. (1) of Act 18 of 1948 – the law for recodifying the Code of Civil Procedure adopted in a socialist spirit – in its original form, before the inflation of the attributions of the Public Ministry (the organizational form of public prosecutors) within the civil process, which was due to amendments enacted in the 1950s. The initial norm of 1948 limited the prosecutor's participation in civil proceedings to cases where defending the interests of a minor, of an adult without the exercise of legal capacity (or with a limited exercise of legal capacity, an institution still in existence for adults in 1948) was necessary, without the possibility of initiating civil action at this initial stage of the regulation. The legislator of 1993 did not return to the norms

contained in Decree no 38 from 1959,[28] which ensured the prosecutor the right to notify the civil court of his own motion (*ex officio*) and the right to participate in any process with the purpose of general defence of public interests. The new, quite progressive norm, however, did not remain in force for long. By Decision no 1 of 4 January 1995, in which it invoked the provisions of Art. 130, para. (1) of the Romanian Constitution of 1991,[29] the Constitutional Court of Romania considered this change – which was initially meant to limit the role of the public prosecutor – to be unconstitutional. This decision set out a retrograde solution to the anomalously wide role the public prosecutor enjoyed in civil procedures under the totalitarian regime. Following this decision of the Constitutional Court, the right of the prosecutor to participate in any civil trial has retained its general character; his right to seize the court with a civil action, however, was limited to actions initiated for the defence of the rights and legitimate interests of minors, of adults lacking exercise of their legal capacity, and of missing persons.

Perhaps the most significant aspect of the comprehensive changes to the Code of Civil Procedure of 1865 was the transformation of the system of remedies. Act 59 of 1993 reintroduced the first appeal as an ordinary appeal; in cases in which it was exercised, the sentence of the court of first instance (and its underlying conclusions) was retried in a devolutive[30] manner by the court hierarchically superior to the court of first instance.

5.2. Reforming Civil Procedure

Regarding Romania, the period between 1996 and 2003 was characterized in the field of justice by increasing pressure from the European Union, which made itself felt in civil procedural law. The country report published in 1998 criticized the dysfunction of the justice system.[31] In this period, marked by the ever more serious increase in the duration of civil procedures, the second structural change occurred to the law of civil procedure, by means of Government Emergency Ordinance no 138 of 2000.[32]

28 See Leş 1982. 204.

29 According to this text: 'Within the judicial activity, the Public Ministry shall represent the general interests of the society, and defend legal order, as well as the citizens' rights and freedoms.' For this text, see in English: https://www.presidency.ro/en/the-constitution-of-romania (last accessed on: 15.10.2020).

30 An appeal is said to be devolutive if, in its judgment, the hierarchically superior court to the court of first instance cannot be limited to verifying the legality of the judgment subject to appeal but may decide on the merits of the dispute also on the basis of the facts established during the proceedings subject to appeal, by administering new evidence or by re-evaluating evidence administered before the court of first instance.

31 Ruxanda 2012. 136.

32 Boroi–Ciobanu–Marian 2001a. 3.

One of the purposes of the reform, the more proportionate distribution of jurisdictional tasks between courts at different tiers of the jurisdictional pyramid, was intended to be achieved by the legislator through reorganization of the jurisdiction *ratione materiae* of local courts and county tribunals. In this spirit, the value threshold by which this jurisdiction of the courts and tribunals was determined in litigation with an object of pecuniary value was raised from the amount of 150 million lei to the amount of 2 billion lei. The law removed the jurisdiction *ratione materiae* of the local courts for the settlement of commercial disputes in the first instance, these being attributed until reaching the value threshold of 10 billion lei to county tribunals and above this value threshold to the courts of appeal.

The reform contributed to the dynamization of the registration procedure and the verification of court applications as well as of the procedure used for designating the judge(s) who would try the case (the panel of judges), also affecting the rules on court summons and the communication of documents during litigation. Increasing the activity of the parties manifested not only in the field of particular measures. Article 129 of the Code of Civil Procedure of 1865, with reference to obligations of the parties during the trial, was reformulated during the reform, the new text providing for them – in principle – the following obligations: to monitor, assist to, and comply with the procedural obligations imposed on them and finalize the dispute; to comply with procedural obligations established by law or by the court in the order, in the conditions, in the form, and on the schedule provided; and, most significantly, to exercise their rights and fulfil their procedural obligations properly and in good faith and according to the purpose for which they are provided; to prove claims and statements of defence. Another manifestation of the reform may be considered the new detailed regulation provided for the system of appeals. In the case of many types of litigation, the first appeal was removed by the legislator from among the available remedies.[33]

The legislator relocated the second appeal among the extraordinary appeals, which can be exercised against final judgements, but the expected effect, reducing the number of cases in which second appeal was exercised, was not realized.[34] The number of grounds for the second appeal – so-called grounds for cassation, that is, for quashing the sentence – has been greatly reduced.

In order to encourage the settlement of disputes by way of extrajudicial procedures, the mandatory procedure of preventive direct conciliation in the case of commercial litigation was introduced.[35]

Following various regressions which took place over time, the next wave of civil procedural reform swept the Romanian judicial system when Act 202

33 Boroi–Ciobanu–Marian 2001b. 6.
34 Boroi–Ciobanu–Marian 2001b. 15.
35 Veress 2009. 619–624.

of 2010 on Some Measures to Accelerate the Solution of Civil Procedures was adopted. Although it was actually an amendment by which different legislative solutions in several areas were reorganized, including in the field of civil and criminal justice, the major significance of this normative act was to 'advance' the entry into force of certain measures provided in Act 134 of 2010 (the 'new' Code of Civil Procedure, which was to enter into force only on 15 February 2013) – hence the name given to Act 202 of 2010, that of 'Lesser Reform' in the Field of Justice.[36] Some solutions of this reform were, however, clearly contrary to those adopted by the new Code of Civil Procedure, the 'Lesser Reform' for this reason being widely criticized.

The main reason for which the reform was enacted was the serious criticism – quite vehemently formulated by the European Union, both before Romania's 2007 accession and after that – on the operation of the Romanian jurisdictional and court system. This criticism generally concerned slowness in resolving lawsuits and unpredictability of court decisions.[37]

In the field of the formal conditions of the written application and the written statement of defence, the 'Lesser Reform' introduced the obligation to include in these documents the information necessary to identify the parties, their representatives, and the witnesses (including their telephone number and fax or e-mail address, when available) to facilitate summoning persons to court and communication of documents, made possible by telephone or fax.[38]

For the same purpose, in the case of persons represented by an attorney or legal adviser, the law allowed the direct communication of procedural documents between these persons.[39] As a novelty: if the party took delivery of the summons personally, his/her knowledge of the subsequent trial dates set in the case was presumed absolutely and irrefutably; thus, as a rule, summons to court were no longer to be issued twice at the same stage of proceedings before the same court.[40] At the same time, in the case of establishing the trial dates, the rule allowed the setting of short trial intervals, even setting the next trial for the following day. Regarding the role of the judge, the reform has not changed the rule that he is required to participate in an active role in proposing and administering evidence with a view to establishing objective truth, but it unified the regulation of this role completing it with the obligation to attempt to reconcile the parties, even by way of proposing their participation in a mediation procedure.[41] The 'Lesser Reform' retained the possibility of proposing and administering evidence by the court *ex officio*, but it ruled out using the failure of the court to take this action

36 Tabacu 2010. 171; Veress 2011. 126–135.
37 Briciu–Ciobanu–Dinu 2010. 20.
38 Briciu–Ciobanu–Dinu 2010. 35.
39 Briciu–Ciobanu–Dinu 2010. 33.
40 Tabacu 2010. 178.
41 Briciu–Ciobanu–Dinu 2010. 48–49; Tabacu 2010. 181.

as grounds for appeal, strengthening by this measure the responsibilities of the parties in proposing evidence[42] and providing the court with the possibility to exercise its active role arbitrarily, without the possibility of judicial review.

In addition, the 'Lesser Reform' expanded the number of preliminary procedures required for the filing of a civil application, under penalty of annulment of the application, without the dispute being tried in contradictory with the defendant. For cases of litigation having as their object an inheritance law dispute, it introduced the obligation to obtain the notarial minutes in advance, by which the notary attests that the resolution of the inheritance dispute in question did not take place by notarial procedure or the way such a debate was resolved during a non-contentious notarial procedure. Invoking the exception (objection) of lack of the preliminary procedure was reserved as a rule exclusively to the interested party; however, in the case of the procedure for obtaining the notarial minutes, the 'Lesser Reform' provided for the possibility of invoking this exception *ex officio* by the court.[43]

Also, when regulating peremptory exceptions, the 'Lesser Reform' – following the indications of the legal literature – introduced in the text of the law a distinction between exceptions of *public order* and those of *private order*. Exceptions of private order must be invoked by the defendant at the latest in his/her written response to the claim (the written statement of defence), while the exceptions of public order concerning exclusive territorial jurisdiction and jurisdiction *ratione materiae* must be invoked by the parties or by the court *ex officio*, at the latest at the beginning of the trial of the dispute before the court of first instance, according to the new rule (an institution called *preclusion*).[44]

5.3. Recodification of Civil Procedure

The 'new' Code of Civil Procedure of Romania entered into force on 15 February 2013, and it was built in part on the achievements of the 'Lesser Reform'. Its rules – in a relatively significant proportion – were transferred from the previous code, in some cases being corrected or updated. Among the important novelties introduced by the new Code of Civil Procedure, the introductory part, or preamble should be noted, which enumerates the principles of civil procedure, an absolute novelty in Romanian civil procedural law. We should also note the division of the structure of the civil proceedings by the introduction of a written preparatory phase, which also allows the court to order the applicant to complete or correct the application, under penalty of its annulment without trial in case of non-compliance. Finally, during the exercise of the second appeal (on points of

42 Briciu–Ciobanu–Dinu 2010. 47.
43 Briciu–Ciobanu–Dinu 2010. 43.
44 Briciu–Ciobanu–Dinu 2010. 27–31; Tabacu 2010. 183.

law), the 'new' Code of Civil Procedure reinstituted compulsory representation by an attorney. This institution was, however, later declared unconstitutional[45] by the Constitutional Court on the grounds that the expenses presupposed by this rule impede access to justice due to defects in the law pertaining to free legal aid (which, in turn, was not deemed to be contrary to the Constitution).

6. Conclusions

We have attempted in this study to demonstrate the various ways in which the unification of civil procedural norms was achieved by the Romanian legislator subsequent to the unification of the country in 1918. We have seen that at first the legislator aimed to achieve unification by drafting entirely new legislation but was forced to abandon this path, mainly due to the circumstances generated by the Second World War and the need to unify legislation. Civil procedure during the Soviet-type totalitarian regime evolved predictably according to the necessities of such a form of state organization, being characterized by court packing in the form of the presence of assessors and by the increased state supervision of court activity, owing to the wider role of public prosecutors in the civil trial and to the suppression of the first appeal on points of fact and of law. After the 1989 regime change, the development of Romanian civil procedure would take three different directions. In the beginning, the legislator aimed to restore the pre-existing procedural order while later to affect reform in order to reduce the duration of trials, in the end opting for recodifying civil procedure altogether. Finally, we should observe that the Romanian legislator, throughout some of the reforms enacted at times – perhaps inadvertently –, followed the templates of the Hungarian Code of Civil Procedure in force in Transylvania in 1918 by imposing on the parties the clarification of their claims and statements of defence in writing, the presentation of evidence in these written statements, and providing for compulsory legal representation (albeit this institution has repeatedly proven to be short-lived).

45 Decision of the Constitutional Court no 462/2014.

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*** Modificarea Codului de Procedură civilă. 1948. *Scânteia* 1037.