

21 November 2014

Legal Bulletin



Litigation

In this issue:

1. Amendments to the NCPC
 - a) Amendments relating to regularization
 - b) Amendments concerning the court clerk's hearing notes
 - c) The regulation of the means of appeal against the resolution issued by the court of appeal on the motion to stay the provisional enforcement of the judgment issued by the court of first instance
 - d) Requalification of the means of appeal
 - e) Providing the arbitral award before the court or the notary
 - f) Updating the obligation to pay an amount subject to a legal enforcement
 - g) Resolutions and written instruments that constitute enforcement orders
 - h) Acknowledgment as enforcement order
 - i) Determining the court of enforcement
 - j) Court bailiff's competence
 - k) The court bailiff's approval of the legal enforcement
 - l) Eliminating the procedure for regularization in case of challenge to enforcement
 - m) Legal status of the bail posted for the motion for provisional stay of the enforcement
 - n) Amendments to legal enforcement on immovable assets
 - o) Repealing the challenge against the adjudication deed and regulating the challenge against the tender minutes
2. Amendments to Law No. 188/2000
3. Amendments to Law No. 303/2004
4. Amendments to Law No. 554/2004
5. Amendments to Law No. 76/2012
6. Amendments to GEO No. 80/2013

Law No. 138/2014 amending and supplementing Law No. 134/2010 on the Code of Civil Procedure, and also amending and supplementing certain related legislative acts

Law No. 138/2014 amending and supplementing Law No. 134/2010 on the Code of Civil Procedure, and also amending and supplementing certain related legislative acts (“Law No. 138/2014”) was published in the Official Journal No. 753 of 16 October 2014 and became effective on 19 October 2014.

Law No. 138/2014 provides for several substantial amendments to the Code of Civil Procedure (“NCPC”), in particular with regard to verifying and regularizing claims, as well as in matters related to legal enforcement.

In addition to NCPC, Law No. 138/2014 also amends several related legislative acts, namely: Law No. 188/2000 on court bailiffs (“Law No. 188/2000”), Law No. 303/2004 on the status of judges and prosecutors (“Law No. 303/2004”), Law No. 554/2004 on administrative claims (“Law No. 554/2004”), Law No. 287/2009 on the Civil Code (“Civil Code”), Law No. 71/2011 for implementing Law No. 287/2009 on the Civil Code (“Law No. 71/2011”), Law No. 76/2012 for implementing Law No. 134/2010 on the Code of Civil Procedure (“Law No. 76/2012”), Law No. 2/2013 on certain actions for decreasing the workload of the courts of law, and on preparations for implementing Law No. 134/2010 on the Code of Civil Procedure (“Law No. 2/2013”), Government Emergency Ordinance No. 80/2013 on judicial stamp duties (“GEO No. 80/2013”) and Law No. 17/2014 on regulatory measures for the sale and purchase of extramural agricultural land and amending Law No. 268/2001 on the privatization of companies that manage agricultural lands in the public and private property of the State and establishing the State Property Agency (“Law No. 17/2014”).

This Legal Bulletin is limited to examining the main amendments to the civil procedure law and related legislation.

1. Amendments to the NCPC

a) Amendments relating to regularization

Law No. 138/2014 provides for several amendments to Article 200 NCPC which concern (i) the possibility for the panel to verify its jurisdiction in the regularization procedure and refer the case to a specialized panel, and (ii) the clarification of requirements (strictly set forth by Articles 194-197 of NCPC) the non-compliance with which may result in the annulment of the claim in the regularization procedure.

With regard to the former amendment (which regulates the possibility for the panel to verify its jurisdiction in the regularization stage), it is related to the amendment operated by Article 136 of

NCPC concerning the conflict of jurisdiction at the level of the specialized sections of the same court.

Although it may seem redundant, the latter amendment on regularization, i.e. clarifying the requirements the non-compliance with which may result in the annulment of the claim in the regularization procedure, is of particular practical relevance.

In practice, many courts used to ignore the spirit of the regulation and, failing to interpret the provisions of paras. 1 and 2 or Article 200 of NCPC in conjunction, they issued absurd solutions, annulling claims due to the non-compliance with other requirements than those strictly set forth by Articles 194 -197 of NCPC.

For this reason, the amendment of Article 200 (2) of NCPC is most welcome, as it expressly provides that claims may be annulled only for the non-compliance with the requirements under Articles 194 - 197 of NCPC.

b) Amendments concerning the court clerk's hearing notes

In addition to the rights to (i) request the proofreading of the court clerk's hearing notes and (ii) obtain transcripts of hearing records, Law No. 138/2014 introduces, by amending Article 231 of NCPC, new rights in favour of the disputing parties and of the judicial control courts, meant to ensure better transparency of the legal proceedings.

More specifically, Law No. 138/2014 introduces the following new rights:

- The parties' right to obtain, after the end of the hearing, a copy of the court clerk's notes;
- The right to challenge the court clerk's notes no later than the following hearing;
- The right to obtain an electronic copy of the court hearing record;
- The right of the judicial control courts to request the court hearing records.

Several practical specifications need to be made with regard to the newly granted rights:

- The right to obtain a copy of the court clerk's notes is granted to all the disputing parties (so it is not an exclusive right of any party) and may be used by means of an application in this respect filed with the panel;
- The right to challenge the court clerk's notes may be used by means of a written application (in the absence of a specific derogation from the rule of the written form provided by Article 148 of NCPC) to be filed, under penalty of revocation of such right, before the hearing following the one during which the court clerk recorded the relevant notes;
- The right to obtain an electronic copy of the court hearing record is conditional only upon payment for the records, according to Article 231 (5) of NCPC;

- The provision of the possibility for judicial control courts to request the court hearing records is logical and welcome, since it may lead to the clarification of extremely relevant issues, with regard to the manner in which the court whose judgment was challenged observed the parties' trial rights and the rules of procedure.
- c) The regulation of the means of appeal against the resolution issued by the court of appeal on the motion to stay the provisional enforcement of the judgment issued by the court of first instance

In addition to the former regulation of NCPC, Law No. 138/2014 introduces an amendment to Article 450 according to which the resolution issued by the court of appeal on the motion to stay the provisional enforcement by the court of first instance is subject to the same means of appeals as the challenged judgment.

As a consequence, if the motion to stay the provisional enforcement was filed in the appeal stage and the judgment issued by the court of first instance may be challenged only by appeal, the resolution issued for the settlement of the motion to stay the provisional enforcement will be final.

- d) Requalification of the means of appeal

The possibility for the judicial control court to order the requalification of the means of appeal is regulated by Article 457 (4) of NCPC.

The provisions of Article 457 (3) and those of Article 457 (4) of NCPC do not overlap, as they regulate different hypotheses:

- Article 457 (3) concerns the case where a new period for filing the means of appeal begins after the means of appeal filed by the party is dismissed as inadmissible, in consideration of the inaccurate mention contained in the judgment concerning the means of appeal (e.g. the operative part provides that the judgment may be challenged by final appeal, but in reality it is subject to appeal);
- Article 457 (4) concerns the case where a new period for filing or providing grounds for the means of appeal begins after the means of appeal is re-qualified by the judicial control court.

- e) Providing the arbitral award before the court or the notary

Law No. 138/2014 amends Article 603 of NCPC, stating that, if the arbitral award refers to a dispute related to the transfer of the ownership right and/or the creation of another right *in rem* over an immovable asset, the arbitral award will be provided to the court of law or the notary public in order to obtain a court judgment or, as the case may be, an authentic notarial deed. After the verification and payment by the parties of the tax on transfer of the ownership right, the right will be recorded in the land book and the property will be transferred and/or another right *in rem* will be created on the immovable asset. If the arbitral award is enforced by legal enforcement, the

verifications will be made by the court, as part of the procedure of acknowledging the award as an enforcement order.

f) Updating the obligation to pay an amount subject to a legal enforcement

Law No. 138/2014 supplements the established possibility, which the court bailiff had in the past as well, to update the monetary principal determined by the court through the enforcement order, as Article 628 of NCPC regulates the possibility for the court of enforcement to perform such updating even if the enforcement order does not contain any interests, penalties or other amounts, but only provided that the creditor is entitled to them *ipso jure* according to Article 1535 of the Civil Code or other special legal provisions.

g) Resolutions and written instruments that constitute enforcement orders

Through the amendment operated in Article 632 (2) of NCPC, Law No. 138/2014 provides that provisional judgments are enforcement orders as well.

Also, Law No. 138/2014 sets forth several clarifications to the written instruments that may constitute enforcement orders (Article 638 NCPC), as follows:

- Authentic written instruments are enforcement orders only in the cases strictly provided by law;
- Notarial deeds constitute enforcement orders only if they are issued in observance of the law.

h) Acknowledgment as enforcement order

In terms of judgments, another amendment brought by Law No. 138/2014 is in relation to maintaining the formality of acknowledgment as enforcement order only with regard to arbitral awards (Article 615 of NCPC) and the judgments of other jurisdictional bodies (Article 635 of NCPC), while court judgments may be enforced without being acknowledged as enforcement orders (Article 6401 of NCPC).

One of the main new elements introduced by Law No. 138/2014 is the amendment of the procedure of acknowledgment as enforcement order (Article 640 of NCPC):

- The claim for acknowledgement as enforcement order is solved by the district court with jurisdiction over the creditor's or the debtor's headquarters or domicile, in chambers, without summoning of parties;
- The claim for acknowledgement of arbitral awards as enforcement orders is to be filed with the tribunal within the jurisdiction of which the arbitration took place;
- The court is limited to formally checking whether or not the written instrument is compliant with the form-related requirements provided by law in order to be acknowledged as enforcement order;

- The resolution granting the claim for acknowledgement as enforcement order is final, while the judgment dismissing the claim may be appealed by the creditor, within 5 days from service;
 - The illegality of the resolution for acknowledgement as enforcement order may be claimed by the debtor only through a challenge to enforcement.
- i) Determining the court of enforcement

Through the amendment operated to Article 650 of NCPC (previously declared unconstitutional), Law No. 138/2014 regulates the general rule that the court of enforcement is the district court with jurisdiction over the debtor's headquarters or, as the case may be, domicile upon the notification of the enforcement body. Subsequently, only if the debtor's headquarters or domicile is located abroad, the court of enforcement is the district court with jurisdiction over the creditor's headquarters or domicile. Only if the creditor's headquarters or domicile is located abroad, the court of enforcement is the district court within the jurisdiction of which the court bailiff office appointed by the creditor is located. The change of the debtor's or, as the case may be, the creditor's headquarters or domicile, after the legal enforcement has been launched, does not impair the competence of the court of enforcement.

j) Court bailiff's competence

Article 651 of NCPC, as amended by Law No. 138/2014, maintains the court bailiff's competence at the level of the entire court of appeal, with the following specifications:

- In case of legal enforcement on immovable assets and in case of direct immovable enforcement, the court bailiff within the jurisdiction of the relevant court of appeal;
- In case of legal enforcement on movable assets and in case of direct movable enforcement, the court bailiff within the jurisdiction of the court of appeal where the debtor's headquarters or assets are located;
- In case of the enforcement of obligations to do and not to do, the court bailiff within the jurisdiction of the court of appeal where the acts of enforcement will be performed.

The court bailiff remains competent to continue the legal enforcement even if the debtor changed his domicile or headquarters after the enforcement or if the assets were relocated during the enforcement. The creditor may request the court of enforcement to replace the bailiff for solid reasons.

k) The court bailiff's approval of the legal enforcement

A very important amendment operated by Law No. 138/2014 concerns Article 665 of NCPC, which regulates the procedure for approval of the legal enforcement, transferred from the competence of the courts of law to the court bailiffs' competence.

The new regulation involves the following:

- The claim for legal enforcement is solved within no more than 3 days from the date on which it is filed with the court bailiff's office;
 - The court bailiff decides whether to approve the legal enforcement by a resolution, without summoning of parties. The resolution for approval of the enforcement should be grounded within no more than 7 days from issuance;
 - The court bailiff may dismiss the claim for approval of the legal enforcement on the same grounds as before the amendment of NCPC by Law No. 138/2014, with the exception of the ground provided by Article 665 (5) item 3 (i.e. if the written instrument, other than a court judgment, is not acknowledged as an enforcement order);
 - The resolution admitting or, as the case may be, dismissing the claim for approval of the enforcement may be challenged by the debtor, as well as the creditor - if the claim is dismissed, by means of a challenge to enforcement.
- l) Eliminating the procedure for regularization in case of challenge to enforcement

The amendments brought to Article 716 (1) of NCPC by Law No. 138/2014 eliminate the challenge to enforcement from the scope of claims submitted for regularization. Practically, the challenges to enforcement filed after 19 October 2014 should no longer be verified and regularized before the first hearing is scheduled.

- m) Legal status of the bail posted for the motion for provisional stay of the enforcement

Law No. 138/2014 amended Article 718 (7) of NCPC by regulating the preservation of the amount posted for the provisional stay of the enforcement, until the settlement of the motion to stay filed as part of the challenge to enforcement. Until the settlement of the challenge, the posted bail remains preserved even if the motion for provisional stay is dismissed.

- n) Amendments to legal enforcement on immovable assets

The main amendment concerning the legal enforcement on immovable assets is the natural result of eliminating the procedure of approving the legal enforcement from the competence of the courts of law and including it in the court bailiffs' prerogatives. Under these circumstances, the full text of Articles 819 and 820 of NCPC, which regulated the registration and approval of legal enforcements on immovable assets, is amended, and further to the amendments, these articles have the following marginal names: "Informing the debtor and the third party acquirer" (Article 819) and "Informing other persons" (Article 820).

As results from these marginal names, the two articles essentially focus on the procedure for informing the debtor, the third-party acquirer and other persons on the approval of the legal enforcement by the court bailiff.

- o) Repealing the challenge against the adjudication deed and regulating the challenge against the tender minutes

Law No. 138/2014 repealed the provisions of Article 854 of NCPC, which regulated the challenge against the adjudication deed, introducing, in exchange, under Article 8471 of NCPC, the challenge against the tender minutes.

Such challenge has the following characteristics:

- The capacity to stand trial as plaintiff in filing the challenge is applicable for the debtor, the third party acquirer, the creditors, as well as any interested parties according to the land book notes;
- It may be filed within a month from the date on which the award is recorded in the land book;
- The challenge is recorded in the land book of the immovable asset;
- The court of enforcement may suspend, upon the request of the challenging party, the release or, as the case may be, the allotment of the amounts resulting from the sale of the immovable asset in the legal enforcement procedure.

2. Amendments to Law No. 188/2000

Law No. 138/2014 introduces Article 20¹ in Law No. 188/2010, which provides for the obligation to go through a mandatory two-year internship of professional training before becoming a court bailiff. The duration of the two-year internship is calculated from the execution date of the individual employment agreement with a court bailiff. The board of each court bailiffs' Chamber may approve, upon request, to decrease the internship to one year for intern court bailiffs who (i) have a remarkable professional activity, based on the results obtained at internship conferences and on the relevant court bailiff's report, and (ii) who were hired under Law No. 287/2011 on certain measures concerning the organization of the activity of enforcing the receivables belonging to loan institutions and non-banking financial institutions and which, for reasons independent of them, were not able to complete their internship.

3. Amendments to Law No. 303/2004

Law No. 138/2014 provides for new competences of intern judges, who can, in addition to the legal actions handled by Article 23 of Law No. 303/2004, rule on the following types of actions:

- Actions for protection of possession;
- Claims for alimonies;
- Claims concerning records and rectifications entered into civil status registers;
- Claims for garnishment validation;
- Claims for acknowledgement as enforcement orders;

- Claims for taking pre-trial measures;
- Payment summons.

4. Amendments to Law No. 554/2004

Law No. 138/2014 amends Articles 24 and 25 of Law No. 554/2004 and provides that:

- The enforcement of final decisions whereby public authorities are ordered to conclude, replace or amend an administrative act, issue another written instrument or perform certain administrative operations is operated willingly within the deadline provided in the judgment or, in absence, within 30 days from the date on which the judgment remains final;
- If the deadlines mentioned above are not observed, the court of enforcement, upon the creditor's request, through a final resolution issued by summoning the parties, applies to the director of the public authority or, as the case may be, the titleholder of the obligation, a 20% fine from the minimum gross salary per economy for each day of delay, which is incorporated into the State budget, and the plaintiff is ordered to pay penalties, in accordance with Article 905 of NCPC;
- If, within 3 months from the service of the resolution to apply the fine and the penalties the debtor does not fulfil the obligation provided by the enforcement order, the court of enforcement, upon the creditor's request, will determine the final amount owed to the State and the amount owed to the creditor as penalties, through a resolution issued with parties' summoning. Also, through the same judgment, the court will determine, according to Article 891 of NCPC, the indemnifications that the debtor owes to the creditor for the failure to perform the obligation in kind;
- Determining the final amount owed to the State under Article 24 (4) of Law No. 554/2004 may also be ordered upon the request of the civil enforcement department of the court of enforcement, even in the absence of the creditor's request in this respect;
- The court of enforcement is, in terms of administrative disputes, the court which solved the merits of the dispute;
- The court of enforcement applies the sanctions and penalties mentioned above without the requirement of acknowledging as enforcement order and of approving the legal enforcement.

5. Amendments to Law No. 76/2012

Surprisingly enough, one of the most significant amendments to Law No. 138/2014 in the matter of the regularization procedure was not operated directly in the NCPC, but in Law No. 76/2012. According to the new Article 121 inserted in Law No. 76/2012, the provisions of Article 200 of NCPC on the verification and regularization of a claim do not apply to procedural issues or to special

procedures, which are not compatible with these provisions. The practical implications of this amendment are the following:

- The procedure for verifying and regularizing claims should not apply to specific speedy procedures (e.g. the motions for provisional stay of the enforcement, injunction for payment, attachment and pre-trial garnishment etc.);
- Procedural issues (e.g. recusal, change of venue, stay of proceedings, obsolescence, etc.) cannot be regularized.

Furthermore, in the matter of procedural issues, Article 122, newly introduced in Law No. 76/2012, provides that the statement of defence is mandatory.

6. Amendments to GEO No. 80/2013

The first amendment to GEO No. 80/2013 concerns the payment of a fixed RON 20 stamp duty for each count of claims for acknowledgment as enforcement orders. A second amendment expressly provides that a fixed charge of RON 100 shall be paid for each ground claimed in claims to annul arbitral awards. Last but not least, as a result of repealing Article 520 (13) NCPC, a fixed stamp duty of RON 20 shall be paid for claims submitted to the High Court of Cassation and Justice and seeking preliminary rulings on the settlement of certain points of law, in accordance with Article 27 of GEO No. 80/2013.

alina.ungureanu@tuca.ro

alexandru.oana@tuca.ro

Editors

The lawyers in Țuca Zbârcea & Asociații have unrivalled experience in the practice of **Litigation and Arbitration**, dealing with contentious matters in various areas of practice. The firm's practice in litigation and arbitration has been consistently ranked first by reputed international legal publications, such as Legal 500. The firm's litigation and arbitration practice group, comprising 40 lawyers, is one of the largest in the country, advising and representing clients at all levels of the local judicial system, from the lower courts to the High Court of Justice and Cassation, as well as in special proceedings in the Constitutional Court and in international or domestic courts of arbitration. Our lawyers have an in-depth working knowledge of various arbitration procedural rules, such as Rules of Arbitration of the Court of International Arbitration of the Chamber of Commerce and Industry of Romania, ICC, UNCITRAL and ICSID and have dealt with complex substantive law issues in specific litigation circumstances. We have represented businesses, financial institutions, government agencies and individuals in a broad range of complex cases, including civil, commercial and corporate issues, joint ventures and related business disputes, intellectual property, banking and finance, tax issues, bankruptcy/liquidation and insolvency, insurance, labor, administrative law, maritime, real estate, criminal law (especially economic crimes), enforcement of domestic and foreign judgments and arbitral awards, governmental investigation, etc.



Robert Roșu
Avocat asociat
+4 021 204 88 90
robert.rosu@tuca.ro



Alina Ungureanu
Managing Associate
+4 021 204 88 90
alina.ungureanu@tuca.ro

TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro

This material is for reference only. It does not seek to provide legal advice, which may be requested according to each specific legal issue and may not be relied upon for any purposes whatsoever. For details and clarifications on any of the topics dealt in this Legal Bulletin, please do not hesitate to contact the attorneys indicated hereinabove.