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Translation from Romanian

The obsolescence of the court, the evolutions of its application in the new civil procedure code and the shortcomings of the law, pending the reform[1]

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Abstract

The respect of the equality of rights, and of the non-discrimination liability, involves taking into account the treatment provided by the law for the ones to which it is applied, throughout the period while its regulations are effective, legal treatment that cannot be different. The present paper brings into debate a very serious problem, the settlement of which consists of the analysis of the constitutionality and/or of the shortcomings of the law by reference to art. 3 of Law no. 76/2012 for the

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enforcement of Law no. 134/2010 regarding the Civil procedure code, in the context of the special obsolescence of the court, considering the provisions of art. 46 comma (1) of Law no. 10/2001 regarding the legal regime of certain immovable properties which had been abusively taken over during the period March 6 1945-December 22, 1989 (by which the suspension cannot last for an unlimited period of time, without the obsolescence to operate, according to the regulations provided by the old Civil procedure code). It shall be further checked whether the principle of non-retroactivity of the civil procedural law – in terms of the obsolescence of the civil action – is compatible with art. 6 of the CEDO convention which guarantees the right to an equitable trial, but also if the litigants who are parties to proceedings under the old law are somehow discriminated compared to those who are parties to proceedings under the new law and to whom is applied the privilege of special obsolescence within 10 years.

Results from this study that Romanian law is located on a transition phase. Reform of areas of law becomes imperative.

Keywords: reform, transition law, obsolescence, Civil procedure code, constitutionality.

Preliminaries

Pursuant to the provisions of art. 248 comma (1) of the Civ. Pr. Code since 1865, any sue petition, contestation, appeal, recourse, review, shall become obsolete by law within one year, if they have remained not worked by the party's fault. The institution of the obsolescence of the court did not exist in the regulation of the Civ. Proc. C. 1865, but this type of obsolescence was somehow provided by art. 1891 of the Civ. code of 1864[3]. We must specify the following: The civil procedure code of 1865, in its initial form, provided, at art. 257, a term of obsolescence of 2 years, and further on, through the amendments made in the year 1948 (assigning the texts a new re-numbering, so that art. 257 became art. 248)- the term was reduced to 1 year in civil matters and to 6 months in „commercial" matters and in forced execution matters (art. 389 of the Civ. Pr. c. of 1865).

3. The Civil Code was decreed on November 26,1864 enacted on December 4, 1864 and enforced on December 1, 1865. Art. 1891 provided that: *The courts initiated and slacked shall be obsoleted, in the absence of a request for pre-emption, by 30 years calculated since the latest procedural deed, whichever the prescription term of the actions following which those instances may have been initiated might be.* Law no. 394/1943 for the acceleration of the judgements in civil and commercial matters, effective since15.09.1943 until 01.03.1948, which had been abrogated by Law no. 18/1948 and replaced by the Civil Procedure Code of 1865, enshrined at art. 64: The obsolescence under the conditions provided by art. 257 of the civil procedure, operates by full law. Following the expiry of the obsolescence term, any procedural deed remains inoperative. The obsolescence may be ascertained upon request made by the party concerned or of the own motion. It may be proposed also by way of exception. The obsolescence operates also in the processes in which the procedure is made of the own motion, unless it has been insisted on the establishment of the hearing.

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The new Civil Procedure Code, hereinafter referred to as the Code, was republished in the Official Gazette, Part I no. 247 as of April 10, 2015, pursuant to art. XIV of Law no. 138 as of 2014 for the amendment and supplementation of Law no. 134 of 2010 regarding the Civil procedure code, and for the amendment and supplementation of certain connected normative deeds, published in the Official Gazette of Romania, Part I, no. 753 as of October 16, 2014, assigning to the texts a new numbering. Among the aims of the[4] elaboration of the Code have been both the modernization of the regulation of the civil legal relations and the organic and detailed regulation of the rights of the persons and of the related defence and of the matters of liabilities according to the European trends in the contracts field.

In the New Civil Procedure Code was introduced art. 423 according to which *any request addressed to a court and which has remained un-processed for 10 years shall be obsolete by law, even in the absence of reasons attributable to the party. The provisions of art. 420 apply accordingly.*

The sanction of obsolescence of the court ensures the final closure of the requests over which the courts have acquired jurisdiction and which have unreasonably remained in the records of the later for longer periods of time, without the plaintiff to have performed any step (procedural action) in order to settle the case or without the plaintiff to have shown any kind of interest as far as stage of the later is concerned.

Has been established therefore, a special obsolescence - the obsolescence of the court, which is different respect to the obsolescence of the request, due to the fact that: the obsolescence of the court intervenes as a sanction no matter which the cases which have determined the trial to remain not worked might have been, without any relation to any fault of the party; this type of obsolescence regards all the requests addressed to the court, and the term of obsolescence is of 10 years due to a more permitting system of penalties; upon the expiry of the 10 years term, the special obsolescence of the court, intervenes even in the cases when the obsolescence of the request was unable to produce effects. The institution of the special obsolescence of the court is governed by the same procedural rules regarding the invocation, the settlement and the generation of the effects as in the case of the obsolescence of the request.

4. These aspirations are included, in addition, in the explanatory memorandum which laid at the basis of the draft of this normative deed, point 1.1. specifying very clearly that *:„ The New Civil Procedure Code represents the natural continuation of the reform of the Romanian judicial system, a rational consequence of the entry into force of the new Civil Code. The procedural-civil legislation creates the framework for capitalization by way of justice of the new substantive legal rules, setting-out the bodies, the forms and the procedural means necessary for their enforcement. The substantive reform of the substantive law and the organic inter-dependency between the substantive rule and the procedural one, rendered necessary the elaboration of an appropriate legal instrument in the procedural field - the new Civil procedure code - which might assign efficiency to this reform, introducing standards which fulfil the requirements of a modern, fast, close to the litigants institution."*

1. THE SPECIAL OBSOLESCENCE OF THE COURT AND THE PROVISIONS OF ART. 46 COMMA 1 OF LAW NO. 10/2001 REGARDING THE LEGAL REGIME OF SOME IMMOVABLE PROPERTIES WHICH HAVE BEEN ABUSIVELY TAKEN OVER DURING THE PERIOD MARCH 6, 1945-DECEMBER 22, 1989[5]

The High Court of Cassation and Justice has decided [6] that the suspension of the judgement of the case pursuant to art. 47 comma (1)[7] of Law no. 10/2001, in view of the administrative settlement of the notification, shall produce its effects by the time the decision issued for the enforcement of such law remains irrevocable, being not contested by the party entitled to the return. From now on, the suspension ceases, and the obsolescence term regains its proper course, the parties involved in the judgement of the trial being bound, within the term of one year enshrined by art. 248 comma (1) of the old Civ. proc. code, to communicate to the court the res judicata of the decision by which the request for return of the immovable property in kind was settled. *The Decision no. 5632 as of December 4, 2013 delivered in the appeal by the 1st Civil Section of the High Court of Cassation and Justice having as an object the obsolescence of the appeal. The full text of this decision may be read on the official online page dedicated to the case law of the High Court of Cassation and Justice: http://www.scj.ro/1258/Jurisprudenta, link last accessed on 04.03.2017.*

Pursuant to the provisions of art. 248 comma (1) of the Civ. Pr. Code since 1865, any sue petition, contestation, appeal, recourse, review, shall become obsolete by law within one year, if they had remained unprocessed by the party's fault. We acknowledge that, pursuant to art. 250 comma (1) of the Civ. pr. c., the course of the obsolescence is suspended as long as endures the judgement suspension, ruled by the court in the cases enshrined at art. 244, and in other cases established by law, unless the suspension was not caused by the lack of insistence by the parties to the judgement. It may be asserted that the suspension has been disposed in one of the cases contemplated by the law, respectively by Law no. 10/2001, and that the existence of a reason contemplated by law is not nevertheless sufficient to suspend the course

5. Art. 46**.** - *(1) The provisions of this law are enforceable also in the case of the actions in course of judgement, the person entitled being able to choose the way of this law, waiving the judgement of the case or requesting the suspension of the case. (2) In the case of the actions formulated pursuant to art. 45 and 47, the return procedure which has been initiated under the hereby law is suspended until the settlement of those actions through a final and irrevocable judicial decision. The entitled person shall notify immediately the notified person, pursuant to art. 22 comma (1). (3) If to the entitled person has been rejected, through a final and irrevocable judicial decision, the action regarding the return in kind of the requested asset, the notification term provided at art. 22 comma (1) shall run from the date when the judicial decision remains final and irrevocable.*
6. *The Decision no. 5632 as of December 4, 2013 delivered in the appeal by the 1st Civil Section of the High Court of Cassation and Justice having as an object the obsolescence of the appeal*. The full text of this decision may be read on the official online page dedicated to the case law of the High Court of Cassation and Justice: *http://www.scj.ro/1258/Jurisprudenta*, link last accessed on 04.03.2017.
7. Currently, this article became, by re-numbering, art.46 of Law no. 10/2001.

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of the obsolescence. According to the afore-mentioned provisions, it is moreover necessary that this suspension – *although enshrined by the law – be not generated by the lack of insistence by the parties to the proceedings*.

Not for last, must be taken into account also the circumstance that there are pending with the courts of law cases suspended during the years 2001-2002, which are, therefore, in suspension for over fifteen years, obviously with the infringement of the principle of celerity, a general principle regulated also by the old civil procedure code, regulation which does not include nevertheless a maximal rigorous delimited term. These situations in which are actually about 10,000 litigants are obviously, unrelated to the judgement of the case with celerity, the later having as an aim the very removal of the uncertainty in which the parties are, through the restoring as soon as possible, of the infringed rights and through the reinstatement of the lawfulness which must govern all the legal relationships in a rule of law state, which represents the guarantee of a fair trial.

2. UNCONSTITUTIONALITY RELATED ISSUES OR SHORTCOMINGS OF THE LAW?

Under the afore-described conditions, it is brought into debate a very serious problem, the settlement of which consists of the analysis of the constitutionality of art. 3 of Law no. 76/2012 for the enforcement of Law no. 134/2010 regarding the Civil procedure code, according to which *(1) The dispositions of the Civil procedure code apply only to the trials and to the forced executions initiated following the entry into force of the later. (2) The trials initiated through requests submitted, under the law, at the post office, at military units or at penitentiaries before the entry into force of the Civil procedure code remain subjected to the old law, even if they are registered at the court of law after such date.* It shall be further checked whether the principle of non-retroactivity of the civil procedural law – in terms of the obsolescence of the civil action – is compatible with art. 6 of the CEDO convention [8] which guarantees the right

8. *The Convention for the defence of human rights and of fundamental freedoms*, elaborated in the European Council, opened for signing in Rome, on November 4, 1950, became effective on September 1953. In the spirit of its authors, it is about adopting the first measures meant to ensure the collective guarantee of some of the rights listed in the *Universal Declaration of Human Rights of 1948*. The Convention enshrines, on the one hand, a series of civil and political rights and freedoms and establishes, on the other hand, a system which aims the guarantee and the compliance by the contracting states with the liabilities taken by them. By Law no.30 as of May 18, 1994, published in the Official Gazette no.135 on May 31, 1994, Romania ratified the *European Convention for the defence of the Human Rights (C.E.D.O.), as well as the additional Protocols to the later no. 1, 4, 6, 7, 9, 10*. According to the provisions of art.11 and 20 of the Constitution, the Convention and its additional Protocols have become an integrant part of the national law, having priority compared to the later, in other words, C.E.D.O. and the additional protocols have become a compulsory and priority source of national law, which, on a national level, has as an immediate consequence the enforcement of

to an equitable trial[9], but also if the litigants who are parties to proceedings under the old law are somehow discriminated compared to those who are parties to proceedings under the new law and to whom is applied the privilege of special obsolescence within 10 years. Pursuant to art. 21 of the Romanian Constitution, any person may address to justice in order to defend its legitimate rights, freedoms and interests, the parties being entitled to a fair trial and to the settlement of the cases within a reasonable time period. Introduced by the Law for the revising of the Constitution no. 429/2003, the provisions regarding the reasonable term for case settlement represents a rule which has been directly taken over from the European Convention of Human Fundamental Rights and Freedoms, which, as the very authors of the revising law have indicated at that time, was intended to represent a guarantee of the "fact that the justice, as a public service, ensures the defence of the rights and freedoms of the citizens, with the removal of any vexatious means and of any tergiversations (...), means by which are infringed the rights of the litigant and is compromised the quality of the act of justice". Similar provisions are contemplated also in Law no. 304/2004 regarding the judiciary organization, with further amendments and supplementations, which at art. 10 enshrines that all the persons are entitled to a fair trial and to the settlement of the cases within a reasonable term, by an impartial and independent court, established under the law.

The result obtained from the enforcement *strict sensu* of the legislation in force, shows a different situation in which the citizens are, according to the regulation enforceable according to the *tempus regit actum* principle, as it cannot be regarded by the courts as an infringement of the constitutional dispositions, the judges often invoking it, an example in this sense being the Constitutional Court Decision no. 1541/2010[10] which invokes the Decision no.820 of November 9, 2006, published in the

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the convention and of the protocols by the Romanian courts of law, and on an international level, the acceptance of the control provided by C.E.D.O. with regard to the national judicial decisions.

9. The judgement of the trial within a reasonable term aims at removing the uncertainty in which the parties are, through the restoring as soon as possible, of the infringed rights and through the reinstatement of the lawfulness, which must govern all the legal relationships in a rule of law state, which represents a guarantee of a fair trial. For instance, CEDO has ascertained in the case *Corabian against Romania* , the infringement of article 6 comma (1) - the right to a fair trial - from the Convention and, respectively, of art. 1 of the First Additional Protocol (the right to the peaceful enjoyment of the property) to the Convention. Another case in which has been ascertained such an infringement has been the case *Abramiuc against Romania.*

10. DECISION No.1.541 of November 25, 2010 regarding the exception of unconstitutionality of the provisions of art. II comma (4) of the Government Emergency Ordinance no. 209/2008 for the amendment of Law no.19/2000 regarding the public system of pensions and other social security rights, published in the Official Gazette no. 30 as of 13.01.2011 includes in its considerations the reference to the Decision no. 820/2006, the full text of both decisions being available on the official internet site of the Romanian Constitutional Court: https://www.ccr.ro/ccrSearch/MainSearch/SearchForm.aspx, last accessed on 04.03.2017.

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Official Gazette of Romania, Part I, no. 39 of January 18, 2007,which established that "the different situation in which the citizens are according to the regulation enforceable under the *tempus regit actum* principle cannot be regarded as an infringement of the constitutional dispositions which enshrine the equality before law and before public authorities, without privileges and discriminations". It is worth noticing that in this argumentation are motivated judicial decisions, even if the afore-mentioned decision precedes the Law no. 76/2012 for the enforcement of Law no. 134/2000 regarding the Civil procedure code.

The respect of the equality of rights, and of the non-discrimination liability, involves taking into account the treatment provided by the law for the ones to which it is applied, throughout the period while its regulations are effective, legal treatment which cannot be different.

Basically, the unconstitutionality of a text of law cannot be claimed through the bare comparison between the old regulation and the new one, nor can it apply to any kind of cases. Another decision of the Constitutional Court which is often claimed when debating the unconstitutionality of the text of law to which we are referring, is the Decision no. 1038/2010[11], but we must underline again both the fact that the decision is earlier to Law no. 76/2012 for the enforcement of Law no. 134/2010 regarding the Civil procedure code, and the fact that such decision has a different scope and refers to a case which is different in terms of the legal ground.

3. PRACTICAL APPLICATIONS

Pending with the Bucharest Court of Law, IVth Civil Section, has been identified the case file no. 730/3/2001 (96/2001), having as a scope real estate claim, suspended upon the plaintiffs' request on 29.11.2002 pursuant to art 47 (1) of Law no. 10/2001. The defendant has repeatedly attempted, the re- docketing of the case [12], facing repeated

11. The DECISION no.1.038 of September 14, 2010 regarding the exception of unconstitutionality of the provisions of art. 44 comma(1) lett.a) of Law no.303/2004 regarding the statute of judges and of prosecutors, published in the Official Gazette no. 742 as of 05.11.2010, in which case the Court has established on the grounds of the rejection of the exception, that: *"The principle of equal treatment does not mean uniformity, so that, if to equal situations must correspond an equal treatment, in the case of different situations, the legal treatment cannot be otherwise but different. The infringement of the equal treatment and of non-discrimination principle occurs when to equal cases is applied a differentiated treatment, without an objective and reasonable motivation*. "This is nevertheless the very argument which lays at the basis of the lacuna existent in the law which regulates the new special obsolescence; the full text of the decision is available on the official website of the Romanian Constitutional Court: https://www.ccr.ro/ccrSearch/MainSearch/SearchForm.aspx, last accessed on 04.03.2017.
12. In support of the assertion that leaving the case unprocessed since 29.11.2002 until now (for over 13 years) is completely unrelated to the aspiration regarding the celerity of the civil trial and moreover to the right to a fair trial, we acknowledge inclusively the provisions of art. 423 of the New Civil Procedure Code. Thus, under these legal provisions, the obsolescence of the

solutions of rejection, insufficiently motivated, especially against the background of certain suspicions that currently, most likely, the plaintiffs might be no longer alive, that their proxy has died, this being a certain fact, etc.

In the case, it has been ascertained that the plaintiffs have initiated the proceedings for the recovery of their asset by formulating a notification during the year 2001, and the relevant authority in the field of restitution has replied through a circular letter, saying that the real estate property could not be returned in kind, and that the complainants shall be issued instead a decision for the granting of the relative compensations. The plaintiffs did not complete other formalities, showing passivity and lack of insistence in the exercise of their legal rights, although they would have had available against the relevant authority, as the case might have been and according to the moment of the action, both an action in administrative contentious, having as a scope the binding for the issuance of the administrative deed, and an action for the binding of the authority to reply to the notification. Accordingly, the plaintiffs, throughout the case suspension term (currently the case having been suspended for 15 years), did not submit other documents on the file the settlement of which has been suspended by law. Of course, they could have filed an action in administrative contentious, pursuant to the provisions of art. 16 of Law no. 247/2005, as such provisions were effective on that date, and an action (according to their effective situation) pursuant to art. 25 comma (1) of Law no. 10/2001, under the form in which the later has been amended, provision in the sense that to the General Mayor of the Bucharest Municipality, as a representative of the unit holding the afore-mentioned real estate property, devolves the liability to express an opinion with regard to the notification, within 60 days since its registration or, as the case may be, since the date of submittal of the documents in proof, it had been taken into account that the authority did not express itself with regard to the relevant notification. This term may be calculated starting from two reference dates, according to the peculiarity of each and every case, respectively, either from the date of registration of the notification (in the situation in which all the documents-in-proof necessary to settle the notification had been submitted along with it), or from the date on which all the documents-in-proof have been submitted.

The defendant, taking into consideration the possibilities expressed by the applicable texts of law, has repeatedly formulated requests for re- docketing, for the verification of the actual situation both regarding the court file, and regarding the administrative file, all

court operates in the case of any request which has remained unprocessed for 10 years, with the consequence of the obsolescence by law even in the absence of reasons attributable to the party. It is certain that such provisions do not apply to the current litigation, but the intention of the legislator to establish a special obsolescence (called by the legislator *the obsolescence of the court*) with a 10 years term, is a further argument in support of the idea that leaving the current case unprocessed for over 13 years is inacceptable and contrary to the principle of legal certainty. *Practically, if we accepted a contrary thesis, it would mean that this case might remain pending forever.*

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of them having been rejected by the court, which preferred to maintain the suspension, without performing other checking in terms of aspects which might have been directly related to the insistence of the plaintiffs, considering that the suspension was that type of suspension which operated by law, under the afore-mentioned conditions.

On the other hand, as we have mentioned, one of the guarantees enshrined by art. 6 of the European Convention on Human Rights, is the principle of celerity of the judicial proceedings; the reasonable term imposed by art. 6 includes, within its meaning, also the length of the preliminary administrative proceedings, especially when the possibility to refer to a jurisdiction is obviously conditioned by the internal law rules and by the compulsory running of such a proceeding, as in the present case. In order to meet the reasonable deadline, the state must organize the system of its own powers, so as to answer to this requirement, despite the difficulties generated by various factors which might delay proceedings, the administrative proceedings included. Nevertheless, the parties concerned do not obtain a justification or an excuse for the lack of insistence in exercising their rights.

Moreover, it is worth mentioning that this case file falls for certain, under the scope of the Report issued by the Judicial Inspection regarding the result of the activity for the monitoring of the files older than 10 years and pending on the dockets of the courts of law during the 1st semester of the year 2015[13]*", approved during the meeting of the Section for Judges of the Superior Council of Magistracy, held on January 21, 2016*[14]. The

13. According to the communicate issued by the Superior Council of Magistracy on 22.01.2016, document which may be viewed by accessing the official website of the Superior Council of Magistracy: http://www.csm1909.ro/csm/linkuri/22_01_2016__78538_ro.htm, last accessed on 04.03.2017, *among the reasons which have determined the excessive extension of the term for the settlement of the cases, is also the change along the time of the composition of the panels of judges, the taking of several procedural cycles, the submission with delay of the technical expert reports or of a complex evidentiary basis, disclaimers of competence, changes of venue of some case files, the suspension of the judgement for extensive periods of time, the admission of the extraordinary remedies at law at a big interval of time from the date of the initial settlement of the case, the failure to perform the checking regarding the suspended files, the lack of the active role of the courts, the assignment of hearings with a long duration or with an inadequate duration considering the delay reasons, the subsequent delay of the ruling, as well as the motivation with delay of the judge decisions."The Section for Judges considers that an excessive duration of the judicial proceeding may undermine the right to a fair trial of the parties. Accordingly, these cases must benefit from greater attention by the judges, through the assignment of short terms and through the disposal of all the procedural measures which might contribute to accelerating the judgement. Starting 2012, the activity for the monitoring of the case files which are in the judicial system for over 10 years, has represented a permanent activity of the Judicial Inspection. The monitoring regards the compliance with the legal provisions regarding the settlement with celerity of the cases, in order to increase the degree of accountability of the judges", has specified the representative of the Superior Council of Magistracy.*
14. The content of this Report may be viewed online on the official website of the Judicial Inspection of the Superior Council of Magistracy: http://www.inspectiajudiciara.ro/News.aspx, at page no.3 of the box reserved to news, last accessed on 04.03.2017.

monitoring regards the compliance with the legal provisions regarding the settlement with celerity of the cases, in order to increase the degree of accountability of the judges.

We consider that the solution of keeping the case on the docket is contrary inclusively to art. 6 of the CEDO convention, which guarantees the right to a fair trial. These dispositions with value of a principle guarantee to any of the parties - therefore also to the defendant and to the intervener - and not only to the plaintiff, the right to a fair trial. But, in this case, leaving the case unprocessed for such a long period of time has actually nothing to do with the fair character of the trial, since it prejudices the sub-acquirer of the claimed asset, by the fact that the existence of the controversy pending is practically equivalent to the removal of the asset from the civil registry. As long as the ownership title upon the real estate is a litigious right, any act of disposition upon the same real estate is paralyzed.

4. CONCLUSIONS

Is it possible that the issue which makes the scope of the debate in this study, more precisely this difference of juridical treatment resulted following the modification of the civil procedure code, might not represent a constitutionality-related problem, but one of succession in time of the law which applies only for the future[15]? Is it possible that the same procedural exception might have a different legal regime of implementation? Thus, each time a new law brings modifications to the previous legal dispositions in terms of certain social relationships, all the effects generated before its entry into force can no longer be modified following the adoption of the new regulation[16].

Is has been noticed moreover also an inefficiency of the direct applicability/ implementation of the CEDO conventional provisions and case law, in the absence of

15. If the answer is yes, why did the legislator, for instance, through Law no. 202/2010 regarding certain measures for trials settlement acceleration, provide at Art. XXVI the following" *The provisions of art. 26 comma (3) of Law no. 10/2001 regarding the legal regime of some real estate property which had been abusively taken over during the period March 6, 1945—December 22, 1989, republished, further amended and supplemented, as well as with those brought through this law, by art. 132 comma (9) of Law no. 31/1990regarding trade companies, republished, further amended and supplemented, and with the ones made through this law and the ones of art. 4 comma (6) and of art. 5 commas (1) and (2) of Law no. 221/2009 regarding political convictions and the administrative measures assimilated to the later, ruled during the period March 6, 1945—December 22, 1989,further amended and supplemented, and with the ones made through this law, apply also to the trials pending at the court of first instance, unless a decision has been ruled in the case by the date of entrance into force of the hereby law?*
16. The DECISION no.1.105 of September 8, 2011 regarding the exception of unconstitutionality of the provisions of art. I point 46 of title I of Law no. 247/2005 regarding the reformation in the field of property and justice, as well as some accompanying measures, published in the Official Gazette no. 783 as of 04.11.2011; the full text of the decision is available on the official website of the Romanian Constitutional Court: https://www.ccr.ro/ccrSearch/MainSearch/SearchForm.aspx, last accessed on 04.03.2017.

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an express regulation in the case of the un-reasonability of the term for the settlement of the proceedings, argument which leads us to consider that the aspects related to the litigants' actions in the case of the excessive extension of the case settlements, is a fundamental problem of the Romanian legal system, and the problem referred to in this study, brings into the attention a requirement which is mandatory in order to guarantee the right to a fair trial.

Under this circumstance, to the extent in which the old regulation did not establish a deadline which might interrupt the effects of the obsolescence, we consider that it is both a liability of the courts of law (which must assume the important role of improving and unifying the juridical practice), and the liability of the legislator, to regulate this shortcoming of the new Civil procedure code. The legal problem results from the legislative enforcement process (being still uncertain whether by this, the equality of rights of the citizens was infringed or not), shortcoming which is self-evident, with regard to which the relevant courts have proven their inability, although, generally speaking, the judicial practice has the role to solve even such situations.