

RIGHT OF A PERSON TO OBTAIN AN INJUNCTION SOLUTIONS, THE EXAMINATION OF THE CASE BY THE COURT IN A FAIR AND PUBLIC HEARING WITHIN A REASONABLE TIME

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***Abstract:** The second component of the right to a fair trial is to examine his cause fair and public and within a reasonable time by a court as an independent and impartial, established by law, which will decide either on the infringement of the rights and obligations of civil, either on an acceptance of any charges in criminal matters directed against it. The right to a court to try the case is the right surprise to obtain an injunction solutions, the examination of the case by the department on which has referred the matter to a, an independent body, neutral and established by the law.*

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The requirement

According to the art. 14 of the Code of civil procedure, the court may not decide on an application only after the summoning or appearance of the parties if the law does not provide otherwise.

The Parties shall make known to each other and in good time, directly or through the court, as the case may be, the pleas of fact and law to substantiate his claims and defenses as well as the means of the sample which I understand to be used in such a way that each of them to be able to organize his defense.

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The parties have the obligation to present the situation in fact to which it relates claims and their defenses correctly and completely, without distorting or omits the facts which they are known. The parties have the obligation to expose a point of view of their own with the statements to the opposing party with regard to the circumstances of the relevant fact in question.

The parties shall have the right to discuss and show any question in law or in fact invoked during the process by any participant in the process, including by the court of its own motion.

The Court shall be obliged, in any process, to submit to the discussion of the Parties all applications, exceptions and circumstances in law or in fact invoked.

The Court shall establish the judgment only on grounds of fact and law on the explanations or on the means of the sample which have been the subject of, in advance of the debate contradictory.

The principle of the requirement assumes that any aspect with regard to the dispute to be put into the discussion of the parties, and the acts of the procedure and the entries of it communicated between them, in accordance with the law, in such a way as to have the opportunity to express an opinion in connection with matters of law substantially or procedural document whenever the fact in the debate. Between the principle of contradictorialitatii, the principle of the right to defense and the principle of equality between the parties in the civil process there is a relationship indissoluble, first constituting a guarantee of compliance with the other two principles.

The requirement is the principle which permit the parties of the process to participate in active mode and equal to the presentation, argumentation and proof of their rights in the course of the progress of this process, more precisely to discuss and to combat restitute made by each of them and to express their opinion on initiatives of the court in order to establish the truth and of the pronouncement of a judgment legal and stubborn things.

By virtue of the requirement, the parties shall mutually to the attention of the claims, her defenses and samples which I understand to be used in the process by applications written submissions before the court, the judgment can only be made after their legal citation during the process all parties are listened to evenly, including of the circumstances in law or in fact put in

question by the court in order to bring to light the truth in question, the approval of the samples shall be made in the public meeting after their prior discussion by the parties and the judicial decisions shall be communicated to the parties for the purpose of pursuing the legal ways of attack.

The concept of a fair trial includes the right to a contradictory, which implies the right of the parties to make known the elements that are necessary for the success of their claims, but also to take note of and discuss any document or observation of the judge presented in order to influence its decision and to put them in question.

Consecration of the manifestations of the principle of the requirement, respecting the meaning of Article 6 point 1 of the Convention are to be found and in national legislation, more precisely in regulating the article 194 on the content of the application for the nurse call in judgment, Article 200 on the verification of the application and the reconciliation, Article 205 on the purpose and achieve the contents, Article 209 on the application or counterclaim, Article 216 on the powers of the president of the board of judgment, Article 217 on the police of the meeting of the court, Article 107, of the Code of civil procedure.

Do not exist, therefore, differences of significance to the legal representative of the requirement between the provisions of the Convention and the provisions of the national law and the guarantees which the latter establishing them to ensure the requirement, are all premises that, by judgments handed down, national courts should not make a guilty of violations of the right to a fair trial, through its disregard of the principle of the requirement:

- The right to defense. The right to a fair and reasonable opportunity of any party to expose to the trial court, in conditions that not a dezavantajeze from the opposite, what is achieved by ensuring the right to defense.

The right to defense has in the Romanian right has the value of the constitutional principle, taking into account that by Article 24 paragraph 1 of the Constitution stipulates that the right to defense is guaranteed, and by paragraph 2 of the same Article provides that throughout the trial the parties have the right to be assisted by a lawyer of his own choosing or appointed "ex officio".

In a material, this right includes all the rights and illegally seizing guarantees, which provides the parties an opportunity to protect their interests and in the end he formally includes the right of the parties to hire a lawyer.

The achievement of the right to defense is guaranteed and in the way of organization and functioning of the courts, on the basis of which are the principles of legality, equality between the parties, about intruding free, pardoning, advertising, control the judiciary, imutabilitatii and active role of the court.

The legality of the signifies the administration of justice in the name of the law by the courts, within the limits of the powers of which they have been conferred by the communists and the obedience of the judges only to the law, so, Article 7 of the Code of civil procedure provides that civil process shall be carried out in accordance with the provisions of law. The Judge has the duty to ensure compliance with the provisions of the law on the rights and the fulfilment of the obligations of the parties from the process.

The obligation of compliance with the law arising out of the constitutional provisions. Thus, according to Article 1(5) of the fundamental law, in Romania, the observance of the Constitution, of its supremacy and of the laws is binding and Article 124(1) and (3) of the Constitution provides that justice shall be rendered in the name of the law and judges shall be independent and subject only to the law.

Also according to Article 16(2) of the Constitution, no one is above the law. Also mention the provisions of Article 22(1) of the Code of civil procedure according to which the judge settlement of the dispute in accordance with the rules of law that are applicable to it.

The principle of the legality of it is essential in respect of both the judgment and phase forced execution.

The principle of the legality of it is essential and in the case of the exercise of the ways of attack, so, in accordance with Article 457(1) of the Code of Civil Procedure judgment it is only subject to the ways of attack provided by law, under the conditions and limits laid down by this, regardless of the particulars of the them.

The word inaccurate from the content of the judgment with respect to the path of the open attack against it has no effect on the right to exercise the appeals provided for by law.

If the department reject as inadmissible the path of unexpected attack by law, exercised by the party concerned in the light of the mention of inaccurate from the content of the judgment with regard to the way of attack, a judgment given by the judicial control instance will be notified of its own motion to all parties who took part in the trial in which the judgment was attacked. From the date of such communication begins to flow, if appropriate, the date for the exercise of the remedies available under the law.

When the Court has the retraining of the path of attack, from the date of the conclusion, for the parties to the present, or from the date of the communication of the conclusion, for the parties which was lacking, will flow a new time limit for the declaration or, as the case may be, the motivation of the path the remedies available under the law. And as regards enforcement the code of civil procedure provided for in Article 625 that enforcement shall be subject to compliance with the provisions of the law and the rights of the parties and other persons concerned.

Equality of the parties means their full equality in the reports on Thursday met with the court, but also in the relations between them by recognizing the same rights illegally seizing and imposing the same obligations so according to Article 8 of the Code of civil procedure in his civil parties is guaranteed the exercise of the rights illegally seizing equally and without discrimination.

In accordance with Article 30 of the Civil Code, race, color, nationality, ethnic origin, language, religion, age, sex or sexual orientation, opinion and personal beliefs, political affiliation, trade-union, at a social category or to a disadvantaged category, their wealth, the social origin, the degree of culture, and any other similar situation have no influence on the ability of the civil society.

Equality resulting from the idea that all human beings are equal in respect of the application of the provisions of the Romanian law. In this respect, Article 16 of the Constitution provides that "citizens are equal before the law and public authorities, without any privilege or discrimination".

The principle of equality is provided and in Article 124(2) in the Constitution, so that the justice system is unique, fair and equal for all. The principle of equality has been stated and in the content of the article 7 of the Universal Declaration of Human Rights, according to which all men are equal before the law and are without any distinction, the right to equal protection of the law. All are entitled to equal protection against any discrimination which would be in breach of the Declaration and against any incitement to such discrimination. According to Article 7 of the Law no. 304/2004, all persons are equal before the law, without any privilege or discrimination.

Justice shall be administered in equal way for everyone, without any discrimination on account of race, nationality, ethnic origin, language, religion, gender, sexual orientation, opinion, political affiliation, wealth, origin or social condition or any other discriminatory criteria. The significance of this principle is that the parties shall have the right to be heard by the same court of appeal after the same legal provisions in relation to the question deduced from the trial.

In the case law of the European Community is devoted to the principle of equality of arms that signify the equal treatment of the parties for the entire duration of the progress of this process, without that one to be favored in relation to one another. This principle requires that each party to be given the opportunity to support the question and may not be at a disadvantage in relation to its opponent, "equal" weapons to ensure a fair balance between the parties in both the processes in civil and criminal proceedings.

However, the principle does not have a scope of absolute. Equality can only be relative and must be assessed in the reasonable way (Renucci, 2009).

- Free means the obtaining of an amicable judicial authorities unconditionally pay any taxes;
- the judicial control means the possibility of verifying, by a court superior in degree, legality and an acceptance of the judgment handed down by lower courts;
- imutabilitatea signifies the impossibility of the principle of the amendment to the frame of the dispute, under the aspect of the parties, the object and the merits of law;
- The active role of the court is not a about interference in the interests of the parties, but a guarantee of respect for the rights and interests of the completion of their faces, because has the sole purpose of finding out the truth in question.

Judgment in public

The requirement according to which any person shall have the right at the trial in the public of the case, provided for by Article 6 point 1 of the Convention, advertising means the debates, which is carried out on the one hand by ensuring access to the parties to the discussions as a condition of the exercise of the rights of their illegally seizing, the right to defense and the right to a debate contradictory.

In national law advertising is regulated by Article 127 from the Constitution of the "proceedings shall be public, except for the cases provided by law", Article 12 paragraph 1 of the Law no. 304/2004 "proceedings shall be public, except for the cases provided by law" and Article 17 of the Code of civil procedure stipulates that "the proceedings shall be public, except for the cases provided by law", cases of the exception to the rule of advertising shall be laid down by the law, with an indication of the criteria for the appraisal, on the basis of which the Court decides or on its own initiative the court may provide that the meeting to be held in whole or in part without the presence of the public (Article 213 of the Code of civil procedure).

In order to ensure the advertising the meeting of judgment this takes place at the headquarters of the court, during the days and at the times fixed by the court, according to the list with the processes which are discussed in that day, which will be displayed to the portal of the court and at the door of the room of the meeting at least one hour before the start of the journey. The list shall also include the hourly intervals indicative fixed for their gardens causes (Article 212 and Article 215 of the Code of civil procedure).

Advertising is a guarantee of the correctness of the impartiality of the judges and their independence, the parties may not be prevented to participate in the debate on the causes of its own, even if it has declared the secret meeting (Article 213 paragraph 3 the Code of civil procedure).

Publicity of debates do not influence, judgment the Court, which is always in the public meeting, which is expressly provided for in Article 6 point 1 of the Convention of the "judgment must be pronounced in public", but also in Article 402 of the Code of Civil Procedure "The judgment shall be delivered in open court, at the place where the were conducted the debates, by the President or by a judge of the Court of First Instance, a member of the board of judgment, which will read the original, indicating the way of attack that can be used against the decision"¹.

Reasonable period of time

Trial within a reasonable period of time has as its objective to forestall the uncertainty in which they are found the parties by re-establishing the, as soon as possible, of the rights violated and by the resumption of the legality of, which must govern all gears legal persons in a right state, what constitutes a guarantee of a fair trial.

In accordance with Article 21(3) of the Romanian Constitution, "the Parties shall have the right to a fair trial and to the solving of the causes within a reasonable period of time", in the same sense is and Article 10 of Law No 304/2004, "All persons shall have the right to a fair trial and to the solving of the causes within a reasonable period of time", reasonable time limit is provided for in Article 6 point 1 of the European Convention for the protection of human rights and fundamental freedoms".

The requirement referred to in Article 6 point 1 of the Convention that examining the case to be carried out within a reasonable period of time, you must do away on a case-by-case basis, taking into account the length of the proceedings, the nature of the claims of the parties, the behavior of the parties and the authorities, the complexity of the process, the difficulty of the discussions and the exercise of the ways of attack.

Celerity judging processes is not defined in national legislation but according to the provisions of Article 6 of the Code of civil procedure shall provide that any person has the right to

¹ Subject to the provisions of Article 396 (2), the judgment shall be delivered in open court, at the place where the were conducted the debates, by the President or by a judge of the Court of First Instance, a member of the board of judgment, which will read the original, indicating the way of attack that can be used against the decision. Article 396(2), in the case of delay, the president, once with the announcement of the deadline by which has been delayed delivery, may lay down that judgment will be done through the implementation of the solution at the disposal of the Parties through the mediation of the registry of the court.

the judgment of the case in its fair, within optimal and predictable, by an independent and unbiased judgment and established by law. To this end, the instance is obligated to provide for all measures are permitted by law and to ensure that the connected with a judgment, the provisions to be applied and in phase forced execution¹, and Article 241 of the Code of civil procedure governing to assure the celerity provides that, for the research of the process, the judge secure short terms, even from one day to another.

The trials of the process

According to the art.97 of the Rules of Procedure of the courts², the dossiers to be distributed on complete in random mode will be taken over by the Chairman or one of the judges of the panel of judgment, which will take the necessary measures in order to prepare the judgment, in such a way as to ensure the settlement of the connected with the proceedings.

In the situation in which the judges are unable to take the measures needed for the preparation of judgment, in such a way as to ensure the settlement of the connected with the causes of, they will be arranged by the president of the court or of division or by judge of service.

In accordance with the provisions of Article 5(2)(g) of the Rules of Procedure the courts, judges, among the duties of the judges is and "to solve within a reasonable period of time the causes of judicial executors", and Article 26 paragraph 1.h) provides that the president has the powers, and "pursues the solving of the causes within a reasonable period of time".

References

1. Renucci, J.-F., 2009. *Law treaty of European human rights*. Bucharest: Hamangiu Publishing House.

¹ The code of civil procedure. Article 627 - The active role of the of the bailiff in the whole course of enforcement, judicial executor he is obliged to have an active role, and by any means permitted by law, in order to achieve the four - wheel drive and connected with the obligation laid down in the executory title, subject to compliance with the provisions of the law, of the rights of the parties and other persons concerned.

² The decision no. 387/2005 of the CSM for the approval of the Rules of the courts, published in M. Of. no. 958/28.10.2005.