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POWERS OF THE SUPREME COURT UPON CONSIDERATION OF COMPLAINTS AGAINST DECISIONS RENDERED IN THE APPELLATE CHAMBERRS IN CIVIL CASES

553.03 – CIVIL PROCEDURAL LAW

Abstract of the PhD Thesis

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CONCEPTUAL RESEARCH MILESTONES

The Topic Timeliness and Importance. The court decision is the final point of an often-arduous judicial path, whose intersections of reasoning converge towards a result that should resolve the legal relations between the parties and which, in an ideal system, would enjoy the full confidence of the judgment of a single court. Suspicions cannot be ignored and any of the litigating parties ponders, in human nature, whether there is a possibility of correcting errors that have crept into the thinking of the judge who settled the conflict. This is where the role of appeals comes in, designed to increase confidence that a greater number of judges will be able to give a fair resolution to the legal relations brought to trial, that there are more enlightened minds who can discover the truth that is hoped for. Starting from the idea that all appeals, including the appeal, represent the procedural means by which the participants in the civil process exercise their right to request, under the law, control over the court decision and its annulment if it is not in accordance with the state of fact or law resulting from the circumstances of the case, in this paper, an attempt was made to comprehensively and efficiently investigate the powers of the Supreme Court of Justice, in its capacity as the supreme court, when examining the appeal in civil proceedings against the dispositions of the courts of appeal. The most important appeal, in our opinion, through which judicial control in civil proceedings is completed. We must also point out that in the Republic of Moldova no fundamental studies have been developed dedicated to the powers of the court of appeal against the decisions given in the appeal, including considering that the relevant regulatory framework has radically changed.

The Important Scientific Problem refers to the successful implementation of the reform of the Supreme Court of Justice through the prism of its powers against civil decisions given on appeal, with the identification of real and reliable solutions in order to transform the Supreme Court of Justice into a genuine court of cassation. Last but not least, the scientific and practical analysis of the chances of the Supreme Court of Justice to transform itself into a genuine court of cassation, capitalizing on its powers exercised to examine and resolve appeals against civil decisions given on appeal.

The Goal of the Thesis consists of carrying out a complex research of the applicable normative acts, studying the doctrinal opinions, national and international judicial practice in order to examine and exhaustively interpret the way in which the grounds for filing an appeal are regulated and implicitly the powers and solutions of the court of appeal, with the identification of important elements for the correct and efficient application of the legal framework under research, to highlight the existing inconsistencies, inaccurate, deficient or incomplete regulations, as well as to formulate certain viable solutions for interpretation or legislative intervention that could be implemented by the legislator or practitioners. At the same time, updating the analysis of the legislation, doctrine and

jurisprudence, in correlation with the very recent conceptual changes of the grounds for appeal, its admissibility and partially of the solutions of the court of appeal, in the absence at the moment of a doctrinal study on this aspect and of a constant judicial practice. A goal that has conditioned an increased topicality of the problem addressed and a real challenge to minimize the indispensable problems of applying the new regulatory framework.

The Research Hypotheses according to the objectives of the research, regarding the assessment of the effectiveness of the means of defending the rights of the litigant in the exercise of the appeal against civil decisions given on appeal, was that the new amendments to the regulatory framework related to the reform of the Supreme Court of Justice and Law no. 246 of 31.07.2023, will not transform the SCJ, as the main promoters of the reform mentioned, into a true cassation court, but will abstract and make it more difficult for litigant's chance to access justice. At the same time, regarding the identification of the existing difficulties in applying the current legal framework, the research hypothesis was that with the significant expansion of the circle of subjects who would apparently be entitled to file an appeal (and revision at the same time), the similarity between the grounds for appeal and revision and, implicitly, their overlap, the introduction of new grounds for appeal, sometimes abstract and evasive, will create uncertainty and blockages in practical application. In the same vein, regarding the identification of interpretative or legislative solutions to anticipate and/or overcome existing difficulties, given the extent of recent legislative amendments that have direct repercussions on the entire object of the study, the research hypothesis was to assess the possibility of adjusting the amended legal framework, in order to return to the principle by which the court of appeal is to examine the legality of the contested dispositions, and in the event that this is not possible, to return to the previous legal framework.

Synthesis of the Research Methodology and the Justification of Chosen Research Methods. The methodology of this scientific research is based on the dialectical-materialist method, from which other particular methods are derived, used in this doctoral thesis: historical, logical-legal, logical-formal, comparative, grammatical, as well as observation, description, deduction, modeling, comparison, etc. In the development of this research, national and international normative acts were applied, with an emphasis on the provisions of the Constitution of the Republic of Moldova, the Civil Procedure Code of the Republic of Moldova, the civil procedural doctrine of the Republic of Moldova and other states, the provisions of the Decisions of the Constitutional Court of the Republic of Moldova. At the same time, judicial practice in the field is also approached, both that accumulated from the practical activity of the author and that studied on the electronic portals of the courts of the Republic of Moldova.

The Thesis Structure: from a structural point of view, the thesis contains: annotations (in three languages), list of abbreviations, introduction, 4 chapters, general conclusions and recommendations, bibliography of 166 titles, 6 annexes, 140 pages of basic text (up to Bibliography).

Scientific Novelty and Originality is argued by the existence of insufficient research on the subject in the civil procedural doctrine. The research is based on selected research methods that ensure the assessment, through a thorough and impartial approach, of the justification, correctness and fairness of the current wording of the civil procedural norms regulating the powers of the court of appeal. Following the research carried out and the analytical-interpretative approach to the regulations of the relevant regulatory framework, it was possible to develop a complex assessment of the powers of the Supreme Court of Justice; develop proposals and recommendations regarding the correct application of the relevant legal framework in practical activity: evaluate and determine, from new positions, the way of regulating the powers of the Supreme Court of Justice in the content of the Civil Procedure Code of the Republic of Moldova.

The Important Scientific Problem Which Was Solved Through the Realized Research consists in analyzing the reform of the Supreme Court of Justice from the perspective of its powers against civil decisions given on appeal, with the identification of real and reliable solutions in order to transform the Supreme Court of Justice into a genuine court of cassation. Last but not least, elucidating the issue of whether or not the chances of the Supreme Court of Justice to transform itself into a genuine court of cassation are real, capitalizing on its powers exercised to examine and resolve appeals against civil decisions given on appeal.

The Applied Value. The practical importance of this research is justified by the possibility of using the proposals and recommendations developed to improve the regulation of the powers of the Supreme Court of Justice in civil proceedings, while also being useful for the following scientific efforts to optimize the procedure for access of litigants to the court of cassation, but also to strengthen legality as the supreme principle that must be guaranteed through justice delivered by the supreme court.

The Scientific Outputs Obtained Following the Realized Scientific Research lies in determining and elucidating the shortcomings of the legal framework that regulates the powers of the court of appeal against civil decisions given on appeal, as well as the reconceptualization of this institution, which led to the clarification for theorists and practitioners in the field of law of the practical applicability of that institution.

Implementation and Approval of the Research Outputs. The research results will be used in the teaching and scientific process within the State University of Moldova. The research results are also expressed through the transfer of knowledge to the academic and scientific environment, as well as to legal practitioners, not least to the new judges of the Supreme Court of Justice who are to be

appointed in the context of the reform of this institution, who will have the difficult task of implementing the new amendments.

THESIS CONTENT

Chapter 1 "General considerations regarding the appeal and the court's solutions" contains four subchapters.

In the subchapter *1.1. Conceptual and historical landmarks of appeal against decisions given on appeal* national and foreign doctrinal sources were analyzed in which the institution of appeal and the court's solutions were examined, as well as the legal framework that regulates them. A brief history of the institution under study is also presented and the opinions of various authors on the concept of appeal, the grounds for its declaration and the court's solutions are highlighted. The definitions offered by researchers in the field were examined in terms of common elements and those that differentiate them. Various approaches were highlighted regarding the main elements of this legal instrument, and in terms of historical evolution, it was found that all appeals, including appeal, have had a fairly active development throughout the evolution of society, of course each country adapting these mechanisms to its own needs and factual realities. Another important thesis is that the appeal refers mainly to legal issues that will evolve the law and/or contribute to the uniform interpretation of the law, with beneficial repercussions and of significant importance for the entire society. Implicitly, the appeal court is to prevent the repeated commission of judicial errors and to guide the activity of lower courts in the spirit of the law, improving the overall quality of the decisions issued.

In the subchapter *1.2. The legal seat of the institution and aspects of comparative law* the legal basis of the appeal, its grounds and the solutions of the appeal court are examined through the prism of the normative acts of the Republic of Moldova, especially the Code of Civil Procedure, but also from other jurisdictions such as the Principality of Monaco, Germany, Austria, Spain, Switzerland, Italy, Belgium, Colombia and Paraguay. In this context, the permanent evolution (of substance) of the regulation of the institution under investigation was observed, and in many situations, states, approving new laws and mechanisms for its regulation, assuming the noble goal of perfecting the respective institution in order to effectively defend fundamental human rights and freedoms, after a period of their practical application, return to regulations (principles) that were previously repealed (example Romania). This fact, we believe, once again demonstrates the complexity and importance of the institution under investigation, the multitude of aspects both doctrinal and practical, implementation level, make it an object of study (inexhaustible), a fact well outlined in our country, even during the period of the respective study. However, recently our legislator had the courage to radically modify the respective institution under investigation by modifying in volume 100% the grounds of the appeal and implicitly its admissibility, significantly affecting the limits of its judgment,

a fact that would condition as a consequence (cause - effect link) the modification of the application in practice and of the solutions of the court of appeal, or these are closely related to the grounds for cassation of decisions.

In the subchapter *1.3. Nature and legal characteristics of the appeal against decisions given on appeal* the characteristic features, substantive and formal conditions and effects of the court of appeal's solutions were identified and analyzed, including in relation to the grounds for appeal and its admissibility in light of national, foreign, international legislation, as well as doctrinal approaches, mainly the conceptual changes regarding appeal, conditioned by the adoption of Law No. 246 of 31.07.2023.

In this sense, the analysis of the doctrinal works outlined the characteristics of the appeal, namely a) appeal, a legal means available to the party to request the competent court to exercise judicial control over the jurisdictional acts; b) extraordinary appeal, being open only for the reasons limited by law, against final decisions; c) common appeal, quality manifested in two coordinates, one subjective (it is declared by the party in the usual way, without being required to have a specific quality) and the other objective (it is exercised against all substantive decisions - a fact already metamorphosed in the Republic of Moldova), d) reformation appeal (its resolution in the superior court to the one that pronounced the contested decision); e) non-devolutionary appeal (it does not aim to reanalyze the state of affairs retained by the substantive judges, but only to censure the decision in terms of legality); f) non-suspensive appeal of execution (except in cases where the suspension of the execution of final decisions operates by right, or upon request, the law allows this measure); g) subsequent appeal (omisso medio cannot be exercised, bypassing the appeal appeal, although there are exceptions in the CPC of the Republic of Moldova). Summarizing the aspects related to the legal characteristics of the appeal, a definition specific to the respective appeal was formulated as: *„a procedural mechanism of extraordinary, non-devolutionary nature, based on the limiting reasons provided by law, through which litigants request the supreme court to exercise legality control and reform the final decision, by quashing or amending it"*

In the subchapter *1.4 Conceptual changes regarding appeal, conditioned by the adoption of Law No. 246 of 31.07.2023*, As its name suggests, the conceptual amendments regarding the appeal were analyzed, which brought a number of significant amendments to the Civil Procedure Code of the Republic of Moldova, some even conceptual, respectively, elucidating the main aspects and reasoning that led the legislator to adopt the amendments. One of the aspects analyzed in the respective subchapter is the repeal of the regulations that excluded the right of the Supreme Court of Justice to raise ex officio issues related to the correct and uniform application of the legislation, as well as directly excluding the power to issue explanatory decisions, so that at the moment, having in force the provisions of art. 12^2 of the CPC, the Court can only issue Advisory Opinions, and only if

it is notified by hierarchically lower courts. Another aspect analyzed of the amendments was the exclusion of the guiding character and the fact that these advisory opinions would not be mandatory for the courts. Other significant legislative amendments analyzed were those that significantly expanded the circle of subjects who would apparently be entitled to file an appeal (and revision at the same time).

Last but not least, special attention was paid to the expansion of the limits of the appeal hearing, by granting the appeal court the right to reassess the evidence given by the first instance and the appeal court when art. 432 para. (1) letter e) of the CPC is properly invoked, here too, a new possibility of administering new evidence in the appeal was analyzed according to the rules for presenting these in the appeal court, as well as examining the appeal with the notification and hearing of the participants.

All these changes, viewed as a whole, actually constitute the opening of Pandora's box, which will transform the Supreme Court of Justice into a true trial on the merits - after appeal.

In Chapter 2 "Solutions regarding the admissibility of appeals against decisions given on appeal" an analysis of the solutions regarding the admissibility of the appeal against the decisions given on appeal was carried out, with particular attention being paid to the grounds for admissibility equivalent to the grounds for declaring the appeal against the decisions given on appeal and the repercussions of this fact on the practical application of the respective regulations, not least by attempting to identify the reasoning of the new regulations by which the legislator was guided and implicitly their shortcomings and deficiencies, elucidating the inaccuracies and omissions of interpretation and legislation, and implicitly proposing amendments.

Thus, the first new ground of inadmissibility introduced, namely the one provided for in letter e) the legal issue invoked in the appeal is not of fundamental importance for the development of jurisprudence, is at least closely related, if not similar, to the two new grounds for filing an appeal, namely those provided for in letter a) the interpretation of the law in the contested decision is contrary to the uniform jurisprudence of the Supreme Court of Justice; and respectively letter b) by admitting the appeal, the jurisprudence of the Supreme Court of Justice is changed or consolidated. In this sense, we concluded that the legislator made an attempt to "filter" possible appeals based on the grounds in letters a) and b) of art. 432 CPC, but at the same time there is no (effective) difference between this ground of inadmissibility and the two new grounds for filing an appeal.

With reference to the second new ground for inadmissibility of the appeal, namely the one provided for in letter f) the appeal is manifestly unfounded, having been analyzed, we concluded an argument that turns the entire institution of the admissibility of the appeal upside down and implicitly the direct examination of the arguments in the appeal applications. However, a simple logical exercise allows us to understand that declaring the appeal as inadmissible on that ground could in fact imply

the examination within the admissibility of the appeal of any ground for declaring it as such provided for in art. 432 CPC. The very general and abstract nature of this ground for admissibility is absolutely inexplicable, and its presence actually excludes the logic of the other grounds for inadmissibility. Apparently any appeal application, based on any circumstances, arguments and grounds could be declared inadmissible on the grounds provided for in letter f), namely the appeal is manifestly unfounded.

In the same vein, in the respective chapter, amendments to art. 440 para. (2) of the CPC were analyzed, and following the analysis, with reference to the aspect of the motivation of the inadmissibility rulings, it was observed that the legislator itself provided that such a ruling should contain a summary, that is, very succinctly, of the facts, reasons and grounds for inadmissibility. From the content of the respective norm, it is easy to understand that the court of appeal, when examining the admissibility of the appeal application, may limit itself to declaring the appeal inadmissible exclusively by mentioning the grounds for inadmissibility. And if this ground is the one provided for in letter f) the appeal is manifestly unfounded, it is very likely that the litigant will not understand why he did not have the opportunity to benefit from the examination of the appeal on the merits. The litigant will be left with a "declaration" by the court of appeal that the appeal is manifestly unfounded and that is all. In this regard, it was concluded that declaring an appeal inadmissible as manifestly unfounded by a summary reasoned decision (not actually motivated) is a serious violation of the rights of litigants. At the same time, through these grounds for inadmissibility, the Supreme Court of Justice itself will be tempted, if not determined, to proceed arbitrarily (unmotivated, therefore unclear for litigants) and selectively in relation to different litigants. We estimate a serious dissonance with the principle of security of legal relations, but also a substantial diminution of the chances of accessing justice and obtaining defense.

Given that the study in question was initiated and largely completed before the emergence of a judicial practice of the Supreme Court of Justice regarding the application of the new grounds for inadmissibility, however, upon completion of the work, the first conclusions of inadmissibility of appeals on the grounds provided for in art. 433 para. (1) letter f) CPC appeared, the appeal is manifestly unfounded, which unfortunately confirmed our expectations and fears. After a simple random analysis of three admissibility conclusions issued by the Supreme Court of Justice, namely, Case no. 2ra-1504/23 NR. PIGD 2-21168284-01-2ra-04102023 of December 11, 2024, Case no. 2ra-1053/24 NR. NR. PIGD 2-23068137-01-2ra-17092024 of December 13, 2024 and Case no. 2ra-1661/23 NR. PIGD 2-21170137-01-2ra-01122023 of December 11, 2024, it was found, with regret, that the part of the reasoning called "THE COURT'S MOTIVATION" is absolutely identical in the case of the three distinct cases. As a consequence, as we have already said, our fears were confirmed that in fact, the litigants were chosen with a "declaration" of the court of appeal that the appeal is

manifestly unfounded and that's it, without any proper reasoning, related to the content of the appeal request. The reaction of the SCJ is starting to be a generic, "templated" one, valid for any appeal request.

Subsequently, within the respective chapter, the grounds for declaring the appeal were analyzed according to Law No. 246 of 31.07.2023, as follows:

2.2.1. the interpretation of the law in the contested decision is contrary to the uniform case law of the Supreme Court of Justice; Analyzing in detail the respective ground, with its introduction, things have apparently been simplified to the point of absurdity. That is, even in the situation where the decision contested by appeal would be legal and well-founded, the latter can be quashed because it would contravene the interpretation of the law according to the uniform jurisprudence of the Supreme Court of Justice. And judges in the deliberation process should be guided exclusively by the practice of a higher court. The obvious question that arises is what do we do if the judge's inner conviction dictates something else, and he motivates the position strictly through the prism of the law. Or perhaps these reasonings were also the basis for the legislator when he legalized the changing practice of the Supreme Court of Justice by introducing the ground for declaring the appeal from letter b) by admitting the appeal, the jurisprudence of the Supreme Court of Justice is changed or consolidated. The answer is obvious, an uninspired legislative amendment, which will only have as consequences the distortion and abolition of the principle of legality of court decisions. In the same vein, we cannot fail to mention the fact that the Venice Commission itself, in its opinion of 21 October 2022, indicated that mandatory interpretations of the law, although they have the task of ensuring the uniform application of the law, may affect the independence of judges and the normal development of the law (para. 14-15). This apparent relief of the magistrates of the hierarchically lower courts is, however, an illusion that will remain for a long time, simply because we do not currently have a relatively consistent jurisprudence of the Supreme Court of Justice.

2.2.2. by admitting the appeal, the case law of the Supreme Court of Justice is changed or consolidated; With reference to this ground, arising from the limits of the appeal judgment, it was noted that it does not aim to correct any judicial errors manifested by the erroneous application of substantive or procedural law norms, but rather to "overturn" irrevocable decisions that were issued by panels of judges (judges directly) with the same or other "visions" of interpretation, decisions that will be overturned by (new) judges of the Supreme Court of Justice. In this context, we consider it absurd for the same panel of judges to decide to "change the jurisprudence" in similar factual and legal conditions. Another aspect that should not be neglected is that a new decision of the Supreme Court of Justice by which the "jurisprudence is changed", would condition premises for a wave of requests for review on similar files. Moreover, we consider that the respective ground for appeal actually camouflages an artificial method of reviewing final and irrevocable decisions, which in the

context of the current grounds for review is impossible. As a consequence, any decision of the Supreme Court of Justice at the present time, with the "help" of the new provisions regarding the subjects entitled to file an appeal (letter b) of art. 430 - persons who were not involved in the process but whose rights were violated) can be challenged on the grounds provided for in letter b) of art. 432 of the Civil Procedure Code, by admitting the appeal the case law of the Supreme Court of Justice is changed or consolidated. Accordingly, the Supreme Court of Justice has the possibility to admit such an appeal, and to change the case law on the respective civil case if it has "other views", i.e. on a distinct civil case. However, it is obvious that any interpretation of the law has different factual circumstances specific to the case being tried, and the determination of the applicable legal norm is equally closely linked to each separate case, an empowerment that could lead to the overturning of any decision.

2.2.3. an appeal filed late was unfoundedly admitted or an appeal filed within the deadline was rejected as being late. The new ground of appeal is directly related to the deadline for submitting the appeal and, respectively, the interpretation of the legal norms that regulate it, in the sense of qualifying the appeal as having been submitted within the deadline, a circumstance that would condition the examination of the appeal on the merits and vice versa, qualifying the appeal as having been submitted outside the appeal deadline, a fact that would condition the rejection of the appeal as being late.

Following the analysis of the respective ground, it was concluded that the respective ground for appeal, in the part related to the situation when an appeal filed within the deadline was rejected as being late, exceeds elementary legal logic. The legislator provides for an appeal against a decision that can never be adopted, because in such cases, court decisions subject to appeal are issued. We have not identified any hypothetical case in which it could be applied, and as a consequence we consider that sterile norms are to be excluded, by virtue of lege ferenda.

2.2.4. the judgment or decision concerns the rights of the person who was not involved in the process; In the analysis of the respective ground, the new phrase "refers" is what caught our attention, given its novelty both in legal doctrine and directly in the legislation of our country, considering that it is inadmissible to operate with such vague terms in legislative creation, especially with reference to the rights of the litigant, which in our opinion can only be violated or vice versa - respected and that's it. In the sense of the complexity of the analysis of the respective ground for declaring the appeal, it was considered appropriate to highlight and examine it in relation to the similar ground for review provided for in art. 449 letter. c) of the CPC. Concluding in the context of the similarity between the respective grounds for appeal and review and implicitly their overlap, given the shortcomings and inaccuracies of the new ground for appeal provided for by the legislator (abstract and evasive), it was considered imperative to abandon the respective ground by virtue of lege ferenda.

2.2.5. the judgment or decision is arbitrary or is based decisively on a manifestly unreasonable assessment of the evidence. Following a detailed analysis of the respective ground, we identified a very high risk that the category of arbitrary decisions could also include those pronounced knowingly contrary to the law - within the meaning of art. 307 of the Criminal Code. In the absence of a definition of the notion of arbitrary decision, premises are created for its abusive application, such an approach creates the risk that any decision considered by the Court to be arbitrary (in the absence of clear criteria and rules of assessment), could serve as a basis for initiating criminal prosecution under art. 307 of the Criminal Code, especially in the situation where, according to art. 445 para. (1/1) of the CPC "if the appeal is admitted under art. 432 para. (1) letter e), the panel may issue an interlocutory ruling, which it sends to the judicial inspection." Thus, it was considered that the introduction of the notion of arbitrary decision was not the most successful inspiration of the legislator, given that it is a very abstract and interpretative notion, and everything that is abstract and interpretative in many ways is very fertile ground for abuses. In the same vein, it was also concluded that such an approach would reduce to zero the independence of judges (provided for in art. 116 para. (1) of the Constitution), judges thus turning into civil servants who will obey the orders of their superiors (Opinion of the Venice Commission of 21 October 2022, para. 15). Regarding the phrase "manifestly unreasonable assessment of evidence", in the present ground, it was considered that in the previous wording of the text - arbitrary assessment of evidence (which involves violating the rules for assessing evidence provided for in art. 130 CPC) is much more successful, especially in a situation where the legislator does not define in any way the concept of "manifestly unreasonable", respectively, by virtue of lege ferenda, we consider it imperative to abandon the current wording of the respective ground and return to the previous formula.

2.2.6. the court was not constituted according to the law or the decision was rendered in violation of jurisdictional competence. In examining this ground, one of the basic conclusions was the idea that the violation of the rules on territorial jurisdiction should not be considered as an absolute ground for filing an appeal, or most often it does not influence the solution adopted by the court.

2.1.2. other grounds for admissibility of the appeal against the decisions given in the appeal.

In the respective subchapter with reference to the ground of inadmissibility a) the appeal does not fall within the grounds provided for in art. 432 paragraph (1), as mentioned in point 2.1. of this chapter, in essence it was reached the idea that this ground is similar to the previous ground of inadmissibility of the appeal provided for in the same letter a), only that the grounds in which the possible appeal is to be framed are the new ones. Thus, following a simple legal logic, we conclude that if the appellant does not frame the appeal within the grounds for declaring it in accordance with art. 432 paragraph (1) of the CPC, the appeal should be declared inadmissible.

With reference to the ground of inadmissibility provided for in letter a1) the appeal is filed against an act that is not subject to appeal, except for the cases provided for in art. 429 paragraph (5), it is obvious that the said ground is closely related to the legal framework regulating the acts of disposition that can be appealed, namely the provisions of paragraph (1) of art. 429 of the CPC which expressly provides for the acts of disposition that can be contested by appeal, namely the decisions pronounced by the courts of appeal in their capacity as courts of appeal, as well as the decisions pronounced by the courts of appeal..

With reference to the ground of inadmissibility provided for in letter b) the appeal is filed with the omission of the declaration term provided for in art. 434; This ground of inadmissibility of the appeal against the decisions of the court of appeal results expressly from the provisions of art. 434, paragraph (1) of the CPC, according to which the appeal is declared within 2 months from the date of communication of the judgment or the full decision, respectively, the appeal declared with the omission of the legal term will be inadmissible.

The ground for inadmissibility provided for in letter c) the person who filed the appeal is not entitled to file it; it is closely linked to the provisions of art. 430 which regulates the persons entitled to file an appeal against the decisions of the court of appeal. The appeal filed by other persons or with non-compliance with the conditions submitted to the appellants analyzed above is recognized as inadmissible.

With reference to the last ground of inadmissibility analyzed in this subchapter, the one provided for in letter d) the appeal is filed repeatedly after it has been examined, its essence, illustrates the aspect regarding the uniqueness of the right to challenge with an appeal a disposition act of hierarchically lower courts, respectively the appeal declared subsequently, after its examination, is to be declared inadmissible on this ground. In this way, a stability of the legal relations already judged is ensured, being applicable only in the case where the appeal has once been recognized admissible, respectively has been examined by the Supreme Court of Justice, with the adoption of a decision.

Chapter 3 „ Solutions regarding the merits of the appeal against the decisions given on appeal" was structured in 2 subchapters and includes a detailed examination of all solutions when the grounds for appeal are analyzed. Subchapter one is dedicated to the situation when the appeal is rejected, and the second - to situations when the appeal is admitted, being structured in 6 paragraphs, depending on the actions of the court after the annulment or modification of the dispositions of the hierarchically lower courts. Also in that chapter, the manner of applying the respective solutions of the court of appeal in relation to the new grounds for appeal and admissibility was anticipated. However, at the moment there is no practice in this regard, given the topicality of the new amendments, attempting to estimate the possible difficulties that may arise, in order to clarify them and respectively identify solutions.

Thus, in subchapter 3.1. *Rejection of the appeal*, initially the national and international doctrine was examined under this aspect, special attention being paid to the doctrinal views with reference to the possibility of rejecting the appeal and substituting the reasoning. At the same time, analyzing the respective possibility in the context of the existing legal framework in our country, as well as in the absence of an express basis for declaring the appeal that would provide for the proper reasoning (or lack of reasoning) of the decision, we consider that such a possibility would allow the appeal court to reject the appeal as unfounded even in the event that the criticism brought and found to be well-founded exclusively concerns the reasoning (whether it is missing or inadequate). In the same vein, although decisions are subject to appeal, without distinguishing between the different parts of them, respectively between the reasoning and the operative part, in the aforementioned situation, the appeal could be rejected, maintaining the solution in the operative part of the contested decision and the reasoning will be proceeded with, in fact or in law, if it was not motivated at all or insufficiently, or, as the case may be, the initial reasoning will be substituted with its own reasoning, if the court's reasoning is contradictory, extraneous to the case or inappropriate. Because after all, the final purpose of judging a case is its enforceable effects, inserted in the operative part. In this vein, we consider that in order to achieve procedural economy and respect the reasonable term for examining cases, including leaving no room for interpretation in the current legislation, by virtue of lege ferenda we propose to modify the content of the legal norm provided for in art. 445 letter. a) CPC, with addition including in the situation of erroneous reasoning in law, when the device is in accordance with the applicable law. In this case, the court is limited to correcting only the reasoning.

The power to reject the appeal was analyzed in detail and in light of the new grounds for declaring appeals inadmissible analyzed previously, namely: e) the legal issue invoked in the appeal is not of fundamental importance for the development of jurisprudence and f) the appeal is manifestly unfounded. The analysis of the first newly introduced ground for inadmissibility e) the legal issue invoked in the appeal is not of fundamental importance for the development of jurisprudence, as previously mentioned, leads us to the 2 grounds provided for by art. 432 of the CPC for filing an appeal, namely a) the interpretation of the law in the contested decision is contrary to the uniform jurisprudence of the Supreme Court of Justice; and b) by admitting the appeal, the jurisprudence of the Supreme Court of Justice is changed or consolidated. Thus, a simple logical exercise allows us to understand that in order to apply the ground from letter e) in order to declare the appeal inadmissible on this basis, the appellant would have to invoke some legal issues in the sense of the act contested by the appeal, and the court of appeal, after analyzing them (otherwise it is impossible), will give an assessment and will qualify them as not being of fundamental importance for the development of jurisprudence, as an effect of declaring the appeal as inadmissible. Thus, the court of appeal would have to give an assessment to the respective legal issues (as the legislator expressed it) invoked in the

appeal, and logically reject them, which means that it will proceed to examining the grounds for appeal (the interpretation of the law in the contested decision is contrary to the uniform case law of the Supreme Court of Justice).

With reference to the second newly introduced ground for declaring the appeal inadmissible, the appeal is manifestly unfounded, things are even simpler in the aspect analyzed, or, it is obvious that in order to declare an appeal inadmissible on this ground, it is necessary to assess the merits of the arguments in the appeal. And other than through a procedure of analysis, research, framing the arguments and factual circumstances within the legal framework, we consider this procedure to be impossible.

Thus, in both cases it is obvious that the appeals are rejected and in no way are they declared inadmissible, because very obviously the court is obliged to assess the grounds of the appeals.

The logical question that arises with the introduction of the respective 2 grounds for inadmissibility, what is the meaning of maintaining the power to reject the appeal from the provisions of art. 445 paragraph (1) letter (a) of the CPC. Because a simple logical analysis allows us to identify only one case, when it will be hypothetically possible to apply this power, namely, in the situation where the appeal was not manifestly unfounded to be declared inadmissible, and subsequently, after passing the admissibility and examination of the merits thereof, it will be considered that it is nevertheless unfounded (but not quite manifestly) and the contested acts will be maintained (in such circumstances, the sole fault of the appeal court will be evident, which did not notice the manifest unfoundedness of the appeal at the admissibility examination phase).

Finally, in this regard, we believe that the power to reject the appeal will be applied extremely rarely, given the drastic filter established by the legislator at the admissibility phase of the appeal, and as a terminological clarification, we join those doctrinal opinions that state that the appeal is to be rejected as unfounded, and not as unfounded, the latter leading to the erroneous conclusion that the appeal could also concern the merits of the decision, contrary to the purpose of its enactment as a mechanism for controlling compliance with the law in the procedure for drafting the court decision. Rejecting the appeal as unfounded does not mean investigating the merits of the case, but rather analyzing the merits of the ground for cassation or modification that supports the appeal.

Subchapter 2 being dedicated to situations when the appeal is admitted and the contested decision is implicitly quashed, the situations were systematized depending on the court's actions after quashing or amending the dispositions of the hierarchically lower courts as follows:

3.2.1. Cancellation with the issuance of a new decision. After a detailed analysis of the essence of this power of attorney, including from a theoretical and doctrinal perspective, it became obvious that this solution (cancellation and retention of the case for trial by the supreme court) is to be applied

in the situation when the judicial error can be corrected by the court of appeal by issuing a new decision.

In this regard, we would associate the respective empowerment with each of the grounds for appeal, in order to elucidate the possibility of its application in each of the cases.

In this regard, we have come to the conclusion that in the case of the ground for appeal - the interpretation of the law in the contested decision is contrary to the uniform jurisprudence of the Supreme Court of Justice, only this empowerment (cashing and retaining the case for trial by the supreme court) is applicable. However, it is absurd to possibly find that the contested decision is contrary to the uniform jurisprudence of the Supreme Court of Justice, and possibly to remit the case for retrial, because the standardization of practice is an exclusive task of the Supreme Court of Justice. This was my opinion until the end of the research, until I identified (probably the first), the Decision of the Supreme Court of Justice of October 30, 2024, File no. 2ra-1471/23, issued following an appeal declared after September 1, 2023 (on new grounds). Thus, the Court found "a uniform jurisprudence" regarding the subject matter of the dispute, but at the same time its non-application by the hierarchically lower courts, a fact that was not notified and or invoked by the appellant, so the SCJ found "ex officio" grounds for appeal. Distinct from this fact, the Court remanded the case for retrial, a position with which we did not agree, justifying this fact with arguments.

In the case of the second ground b) by admitting the appeal, the jurisprudence of the Supreme Court of Justice is changed or consolidated, it is even more obvious that only this empowerment (cashing and retaining the case for trial by the supreme court) is admissible. Because it is absurd to possibly find that the practice of the Supreme Court of Justice must be changed, and possibly to re-refer the case for retrial. However, the standardization (if necessary, changing) of the practice is an exclusive task of the Supreme Court of Justice. In this case, we cannot but reiterate the banality of the eventual situation, when a decision is quashed having as its basis a fact (a circumstance) that appears after the issuance of the respective quashed decision (appears when the Supreme Court of Justice decides to change its practice), that is, a legal and well-founded decision (including according to the practice at the time of issuance) is quashed on a shameful basis, we would say (without the existence of a link from the hierarchically lower court). We consider this new solution of the legislator very uninspired.

In the case of the ground under letter e), the judgment or decision is arbitrary or is based decisively on a manifestly unreasonable assessment of the evidence. We start from the idea that in fact, under letter e), there are 2 grounds for admitting the appeal: the judgment or decision is arbitrary - the first case and the second - is based decisively on a manifestly unreasonable assessment of the evidence, which are not interdependent, therefore, they can exist separately.

In the first case, after a detailed analysis of the qualifier "arbitrary", we came to the conclusion that its essence is the flaw in the assessment of the factual situations reported to the legal framework, made by the judge. Thus, in the process of motivating a decision to quash the judgment on that ground, the supreme court will be obliged to argue what exactly made the judgment arbitrary. And in the process of that exercise of assessing the evidence, it is obvious that a vision of the supreme court will be shaped regarding the factual circumstances, evidence and the law applicable to the case, a position that, in light of the power of res judicata, will no longer be subject to assessment by other courts. And here we come to the conclusion that if an appeal is admitted based on the arbitrary nature of the decision, the only solution of the appeal court will be to retain the case and issue a new decision, in the event that the need to administer new evidence and/or new circumstances is not found.

In the second case, the legislator admitted the hypothesis of the existence of a manifestly unreasonable assessment of the evidence, and in no way to its insufficiency (we logically deduce that sufficient evidence was administered in order to issue a decision on the case).

Concluding this subchapter, we have come to the conclusion that the respective power of attorney to admit the appeal, the full or partial annulment of the decision of the court of appeal and the decision of the first instance with the issuance of a new decision, is to be most often used by the Court, or at least maximum effort is to be made, in the event that the judicial error can be repaired by the court of appeal, to make use of the respective power of attorney.

3.2.2. Cancellation with remand of the case for retrial in the appellate court. The analysis of the respective authorization began by identifying the situations in which hypothetically a judicial error could have been admitted in light of the same grounds for appeal. Initially, the significance of the judicial error was analyzed in detail and from a multi-faceted perspective, and finally we came to the conclusion that the respective ground for sending the case for retrial was excessively abstracted by the legislator, which implicitly grants the appellate court a wide field of interpretation and a large dose of subjectivity at the stage of examining the existence or lack of a real possibility of correcting the judicial error by the appellate court itself. Thus, we concluded that the rule should be that the appellate court should make specific use of the authorization to reexamine the merits and issue a decision in this regard, as mentioned above. And the order to send the case to the court of appeal for retrial should be an exception in the case when it is necessary to administer evidence to correctly establish the factual situation, which cannot take place in the appeal trial, in light of the provisions of art. 443 of the CPC, according to which the court of appeal verifies the legality of the contested decision, without administering new evidence.

Finally, in this regard, we have come to the conclusion that it would be welcome to limit the cases when the case is to be sent for retrial in the appellate court, namely exclusively when it is found that it is necessary to administer evidence - only for the correct establishment of the factual situation

necessary to conclude on the correct application of the law (and in no way for the purpose of proving the merits of the action itself), the appellate court being to expressly indicate what these are, and the reasoning it followed when deciding that the respective error cannot be corrected by it. In that situation, we believe that the appellate courts will also take responsibility for the repeated trial of the case and will be directed more efficiently in order to carry out a qualitative act of justice within reasonable terms.

3.2.3. Cancellation with remand of the case for retrial in the first instance. Following the analysis of the respective empowerment, including in comparison with the previous regulations, we have noticed that according to the new provisions, the legislator has expressly and exhaustively provided, without room for interpretation, the case in which the court of appeal may make use of the respective empowerment, namely only if it has found that the persons whose rights were violated by the decision have not been involved in the process.

Analyzing the new authorization, the first thing we notice is that at the moment, the court of appeal was deprived of the possibility of returning the case for retrial in the first instance if the decision was rendered in violation of jurisdictional competence, and in this regard, as mentioned above, it results that in the event of finding that violation, the court of appeal can qualify it as a judicial error with the possibility of sending the case for retrial only in the court of appeal.

With reference to the case of sending the case for retrial in the first instance provided for by the old law, namely, the case was tried in the absence of a participant in the trial who was not notified of the place, date and time of the court hearing, we note that previously this situation was conditioned by the will of the person who was deprived of the right to participate in the trial of the case, that is, only if they requested it (otherwise, obviously, the case was remanded for retrial on appeal).

In this context, with the new amendments, we note that in the situation where the case was tried in the absence of a participant in the trial who was not notified of the place, date and time of the court hearing, he may claim to be a person whose rights were violated by the decision. And as a consequence, in the context of the new amendments, the court of appeal will not have another solution than to send the case for retrial in the first instance (previously being an opportunity for the appellant). Analyzing the amendments in this regard, we do not see any reasoning behind them, only the fact that in the previous legal formula there was a possibility of making a significant procedural economy, i.e. to send the case for retrial in the court of appeal.

3.2.4. Cancellation with termination of the process or removal of the application from the list. Following the respective analysis of the power of attorney, as well as the provisions of art. 265 and 267 of the CPC, we observe a large number of factual situations that would condition the possibility of its application but which in essence should not encounter any difficulties in application. At the same time, and in another vein, following the admission of the appeal on this basis, we consider it

necessary to specify that both the decision of the appellate court and the decision of the first instance are to be canceled, which in some cases may be perfectly legal and well-founded. An example in this regard is the conclusion of a reconciliation transaction.

3.2.5. Cassation with modification of the decision of the court of appeal and/or the decision of the first instance. With reference to the respective empowerment, we would refer to points 3.1. and 3.1 of the respective chapter, in which we brought arguments and proposals of *lege ferenda*. However, we consider that in light of the new grounds for declaring appeals inadmissible, when the modification concerns exclusively the motivation, the court of appeal should reject the appeal as unfounded, with the substitution of the motivation, and in the remaining cases, it should quash the contested acts and issue a new decision.

3.2.6. Overturning the decision of the appellate court and upholding the decision of the first instance. Following the analysis of the respective empowerment, we believe that no difficulties should arise in the process of its application in practice, or, if the grounds for cassation invoked in the appeal are found to be founded exclusively with reference to the decision of the appellate court, and are not found in the decision of the trial court, the latter being legal and well-founded, the appellate court is to admit the appeal, overturn the decision of the appellate court and uphold the decision of the first instance. At the same time, the possibility of applying this empowerment was examined in light of the new grounds for appeal.

3.2.7. Cancellation with return of the appeal. In the analysis of the respective power of attorney, the provisions of art. 369 of the CPC were also analyzed, which regulate the cases in which the appellate court is to return the appeal. Because in order to apply the respective power of attorney, the appellate court would have to find the existence of at least one ground for return expressly provided by the legislator in art. 369 of the CPC, a ground that was not notified by the appellate court during the trial of the case. Thus, following the analysis, with reference to the aspect that refers to the disposition act that is to be issued following the examination of the appeal applying the power of attorney examined in this subchapter, it was mentioned that according to the provisions of art. 445 para. (3) CPC "Following the examination of the appeal, the appeal court issues a decision that remains irrevocable from the moment of issuance. The decision is considered to be issued from the moment of its placement on the website of the Supreme Court of Justice." In this context, the logic and intention of the legislator to mention in the empowerment provided for by art. 445 para. (1) letter g) CPC, the fact that after judging the appeal, the Court is entitled to admit the appeal, to quash the decision of the appeal court, with the issuance of a conclusion, is not clear. Or, in art. 445 para. (1) letter d) of the CPC for example, which provides for the power to admit the appeal, the quashing of the decision of the appellate court and the decision of the first instance, ordering the termination of the trial or the removal of the application from the list, the respective aspect was not specified,

although in similar situations, the lower courts were also to issue rulings. In another vein, given that from the analysis of the third ground for returning the appeal, provided for in letter c), we came to the conclusion that it is very likely that the appellate court would be in a situation where it would be necessary to partially quash the decision of the appellate court, namely in the part where it was set out on a new claim, not examined in the first instance, in addition to other claims that were submitted and examined in the first instance, we considered it appropriate, as a matter of law ferenda, to expressly mention the power to partially quash the decision of the appellate court in letter g) of art.445 CPC. Systematizing these two theses, by virtue of lege ferenda it was proposed to amend the content of art. 445 para. (1) letter g) CPC as follows "g) to admit the appeal, to quash the decision of the appellate court, ordering the return of the appeal application if the grounds provided for in art. 369 exist."

In Chapter 4 "The decision of the court of appeal against the decisions given on appeal and its res judicata effect" is composed of three subchapters in which the disposition issued by the court of appeal following the examination of the appeal against the decisions given in the appeal is studied in detail, its specific characteristics, the immediate content of the decision, as well as the main effects of those decisions, a separate subchapter was dedicated to one of the most important effects of the power of res judicata with a more in-depth analysis of that effect.

Thus, an essential conclusion of subchapter *4.1. General considerations*, was that the decision resolving the extraordinary appeal is intended to settle, finally, any dispute relating to the case brought to trial. It therefore has, as has been shown, a specific purpose, in principle, that of ruling on the grounds of appeal invoked by the interested party or, where appropriate, by the appeal court ex officio and of carrying out an efficient judicial review, in order to avoid the passage into the force of res judicata of an illegal decision. In the same vein, Opinion no. 11 (2008) of the Consultative Council of European Judges (C.C.J.E.) was analyzed and the most important aspects related to the quality of the act of justice were identified.

In subchapter *4.2. Content of the decision of the court of appeal against the decisions given on appeal*, the component parts of the decisions of the court of appeal and implicitly their mandatory content were analyzed, namely the introductory, descriptive, motivational and operative parts..

In subchapter 4.4. dedicated to the *Force of res judicata of the decision of the court of appeal against the decisions given on appeal*, we started from the idea that the protection of civil rights and legitimate interests will be fully achieved only when the court decision becomes irrevocable and, respectively, will obtain the force of res judicata. The importance of this effect of the court decision, including the decision of the court of appeal, consists in creating a certainty of the civil circuit and at the same time, ensuring the security of legal relations, which implies that, when the courts have finally settled a matter, its finding and contestation can no longer be put into question. Subsequently, a

complex analysis of the specialized literature was carried out, with reference to the institution of the force of res judicata as a legal phenomenon, finding that it knows a variety of interpretations, both in form and content, these being analyzed in detail.

In this subchapter, the main characteristics of the decision of the court of appeal were analyzed in detail, through the power of res judicata, namely the exclusivity, incontestability, prejudiciality, bindingness and enforceability of the decision of the Supreme Court of Justice, and in the final conclusion we came to the idea that by virtue of its binding nature, in addition to the effects it generates for the parties to the case, the decision of the court of appeal establishes the duty of all persons to comply with its prescriptions.

GENERL CONCLUSIONS AND RECOMANDATIONS

In conclusion, we start from the idea that the disturbing reforms of recent times, which have inevitably affected the chance of litigants to access justice, to defend themselves from abuses and judicial errors, were very attractive to us, from the point of view of scientific analysis and forecasts/projections of the most essential and radical changes.

During the study, it was observed that from September 1, 2024, the exercise of appeal to the Supreme Court of Justice is substantially changed due to very new grounds (art. 432 CPC). The indispensable connection of the grounds for appeal with the powers of the Supreme Court of Justice (art. 445 CPC), as well as the reconceptualization of the inadmissibility of appeals (art. 433 and 440 CPC) was a real challenge for our study, which also conditioned the subsequent reconfiguration of the objectives. In the same vein, to achieve the objectives we used a fundamental, but austere doctrinal support, and this because no other state could be identified in which such grounds for appeal are legislated as a number.

In terms of the conceptual and historical landmarks of the appeal against the decisions given on appeal, we found that the respective appeal in conjunction with the powers of the appeal court, evolved from the simplest procedures for verifying the legality of the actions of the members of the company. And at the moment this evolution has led to the configuration and institutionalization of modern systems of appeals.

With reference to the conceptual changes regarding the appeal, conditioned by the adoption of Law No. 246 of 31.07.2023, the exclusion of the right of the Supreme Court of Justice to raise ex officio issues related to the correct and uniform application of the legislation, as well as the direct exclusion of the power to issue explanatory decisions, was critically analyzed.

In another vein, with a critical assessment, the analysis of the expansion of the limits of the appeal trial by granting the appeal court the right to reassess the evidence given by the first instance and the appeal court when art. 432 para. (1) let. e) of the CPC is properly invoked was also finalized. Moreover, we also reached the critical conclusion on the introduction of the possibility of reassessing the evidence in the appeal (and even presenting new evidence).

A generalized conclusion of the conceptual changes regarding the appeal, conditioned by the adoption of Law No. 246. of 31.07.2023 is that the expansion of the limits of the appeal trial, by granting the right to the appeal court to reassess the evidence, even the administration of new evidence in the appeal, according to the rules for presenting these in the appeal court, moreover the examination of the appeal with the notification and hearing of the participants in the trial (in case art. 432 para. (1)

let. b) and e) of the CPC are well-foundedly invoked, constitutes in fact the opening of Pandora's box that will transform the Supreme Court of Justice into a true trial on the merits - the third after the appeal.

So on the one hand it is declared that the supreme court tends towards the exclusive mission of a court of cassation, on the other hand some grounds of appeal allow the Supreme Court of Justice to behave as a true court of first instance. This paradox, undeclared of course, creates not only a cognitive dissonance among professionals, but also compromises the announced noble intentions, through suspicions of the execution of judicial control in an unpredictable, inexplicable, not to say selective manner.

In the separate chapter dedicated to solutions regarding the admissibility of appeals against decisions given on appeal, given that the grounds for inadmissibility were completed by the legislator, I considered it appropriate to analyze each one separately, trying to establish a system of landmarks and defining features that would individualize them, regardless of whether or not they are attractive to critics.

A separate subchapter being dedicated to the grounds of admissibility equivalent to the grounds for declaring an appeal against the decisions given in the appeal, we concluded that maintaining the respective grounds of inadmissibility, similar to those for declaring an appeal, will have the effect of nothing more than an uneven (unforeseeable) application of the institution of admissibility in conjunction with that of examining the merits of the appeal.

Having analyzed the new grounds for appeal introduced by Law No. 246 of 31.07.2023, we identified difficulties and shortcomings in the practical application of each of them, which confirmed the validity of the research hypothesis that the introduction of new grounds for appeal, which are sometimes abstract and evasive, will create uncertainty and blockages in the practical application.

With reference to the solutions regarding the merits of the appeal against the decisions given on appeal, where the legislator in the context of the new reforms was not so radical, the grounds for appeal were linked to the powers of the supreme court, so that each power of attorney passes the filter of the certainty of the formulation, the foreseeable nature of the application, the exclusive or possible connection with the new grounds for appeal, as well as the imperative or dispositive legal force or the limits of the adjudication of the appeal against the decisions given on appeal form the quintessence of this appeal and confer viability to the powers of the Supreme Court of Justice, to the extent that it will survive the tests of constitutionality and compliance with the standards of the European Union. This is a new category of appellants, as well as the administration of new evidence in the appeal, the references for retrial on appeal or on the merits, and consequently the devolutive nature of an extraordinary appeal.

The last chapter of the thesis, being dedicated to the disposition act issued by the SCJ following the examination of appeals and implicitly the power of their res judicata, analyzed the effects of the decisions of the Supreme Court of Justice on legal relations, jurisprudence throughout the system, their impact on society, but also on the career of magistrates and the independence of the judicial system, which is a current vulnerability, often analyzed from different points of view, the scientific one being last. In this vein, an attempt was made to investigate the accents and scientifically substantiate why in a modern and democratic society without the power of res judicata, the state functioning is fatally unbalanced.

Finally, we believe that this research, practically the only one of such complexity at the moment in our country with reference to the radical changes to the institution of appeal, will increase the chances of applying the new changes as effectively as possible and will reduce the risks of contradictory interpretation of the regulations related to the respective appeal and the powers of the appeal court, which will condition, why not, the possible success of the reform of the Supreme Court of Justice, which we will all be able to enjoy in the future, especially the litigants.

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ADNOTARE

Ceban Alexandru, „Împuternicirile instanței de recurs împotriva deciziilor date în apel", teză de doctor în drept, Chișinău, 2024

Structura tezei. Prezenta lucrare însumează 170 de pagini ce includ: adnotare în limbile română, rusă și engleză, lista abrevierilor, introducere, patru capitole, concluzii generale și recomandări, bibliografie ce conține 166 de titluri. Rezultatele obținute sunt publicate în 5 articole în reviste științifice și 3 articole în lucrările conferințelor științifice.

Cuvinte-cheie: proces civil, recurs, temeiuri de recursului, admisibilitate, împuterniciri a instanței de recurs, decizia instanței de recurs, puterea lucrului judecat.

Scopul general al tezei constă în realizarea unei cercetări complexe a actelor normative aplicabile, studierea opiniilor doctrinare, a practicii judiciare naționale și internaționale în vederea examinării și interpretării exhaustive a modului în care sunt reglementate împuternicirile instanței de recurs împotriva deciziilor date în apel, determinarea și elucidarea carențelor a cadrului legal respectiv.

Obiectivele tezei: analiza împuternicirilor instanței de recurs împotriva deciziilor civile date în apel în coraport cu temeiurile de admisibilitate și nemijlocit de recurs, prin prisma legislației naționale, străine, internaționale, precum și a abordărilor doctrinare, inclusiv în lumina noilor modificări a cadrului normativ conex reformei Curții Supreme de Justiție, intrate în vigoare la 18 august 2023; evaluarea eficacității mijloacelor de apărare a drepturilor justițiabilului în cadrul exercitații recursului împotriva deciziilor civile date în apel; identificarea dificultăților existente la aplicarea cadrului legal existent; identificarea unor soluții interpretative sau legislative pentru anticiparea și/sau depășirea dificultăților existente;

Noutatea și originalitatea științifică rezultă din faptul că în Republica Moldova nu au fost elaborate studii fundamentale dedicate împuternicirilor instanței de recurs împotriva deciziilor date în apel, inclusiv din considerentul că s-a schimbat radical cadrul normativ relevant.

Rezultatele obținute care contribuie la soluționarea problemei științifice importante rezidă în *determinarea și elucidarea* carențelor cadrului legal care reglementează împuternicirile instanței de recurs împotriva deciziilor civile date în apel cât și *reconceptualizarea* acestei instituții, fapt care *a condus la clarificarea* pentru teoreticienii și practicienii din domeniul dreptului *a modului de aplicabilitate în practică* a respectivei instituții.

Semnificația teoretică. Lucrarea elucidează diverse abordări doctrinare privind instituția recursului, temeiurilor de declararea și admisibilitatea acestuia și implicit împuternicirilor instanței de recurs cu eventualele soluții.

Valoarea aplicativă se exprimă prin anticiparea și totodată identificarea soluțiilor la dificultățile în aplicarea în practică a recentelor intervenții legislative în ceia ce privește temeiurile recursului și admisibilitatea acestuia.

Implementarea rezultatelor științifice. Rezultatele vor fi utilizate în procesul didactic și științific din cadrul Universității de Stat din Moldova. De asemenea, rezultatele cercetării se exprimă prin transferul cunoștințelor către mediul academic și științific, precum și către practicienii din domeniul dreptului, nu în ultimul rând noilor judecători ai Curții Supreme de Justiție care urmează a fi numiți în contextul reformării acestei instituții, în sarcina cărora va fi o misiune de loc ușoară de a implementa noile modificări.

АННОТАЦИЯ

Чебан Александр, „Полномочия Верховного суда по итогам рассмотрения жалобы на решения, вынесенные в апелляционных палатах по гражданским делам" диссертация на соискание ученой степени доктора наук. Кишинев, 2024

Структура диссертации. Данная работа состоит из 170 страниц, включающих: аннотацию на румынском, русском и английском языках, список сокращений, введение, пять глав, общие выводы и рекомендации, библиографию из 166 источников. Полученные результаты опубликованы в 5 научных работах и в 3 докладах на научных конференциях.

Ключевые слова: гражданский процесс, кассационная жалоба, основания кассационной жалобы, полномочия Верховного суда, res judicata.

Цель дипломной работы заключается в проведении комплексного исследования применимых нормативных актов, изучении доктринальных мнений, национальной и международной судебной практики с целью изучения и исчерпывающего толкования того, как регулируются полномочия апелляционного суда.

Задачи диссертации: анализ полномочиях Верховного суда по гражданским делам, в том числе с учетом новых изменений в нормативной базе, связанных с реформой Высшей судебной палаты, вступивших в силу 18 августа 2023 года; оценка эффективности средств защиты прав истца при осуществлении обжалования вынесенных в апелляционном порядке гражданских решений; выявление существующих трудностей в применении существующей правовой базы; выявления законодательных решений для преодоления существующих трудностей;

Новизна и научная оригинальность обусловлено, тем, что до сих пор в Республике Молдова не было разработано фундаментальных исследований посвященных полномочиям Верховного суда по гражданским делам.

Полученные результаты, способствующие решению важной научной проблемы, заключаются в определении и выяснении недостатков правовой базы, регулирующей полномочия суда апелляционной инстанции в отношении гражданских решений, вынесенных в апелляционном порядке, а также в переосмыслении этого института. факт, который привел к разъяснению теоретикам и практикам в области права способа применения на практике этого института.

Теоретическая значимость. Работа раскрывает различные доктринальные подходы и решения на проблемы связаны с полномочиями Верховного суда по гражданским делам.

Прикладная ценность выражается в критических взглядах на толкование и практическое применение элементов исследуемого института.

Внедрение научных результатов. Результаты используются в дидактическом и научном процессе в Государственном Университете Молдовы. Также результаты исследования выражаются через передачу знаний академической и научной среде, а также практикам в области права, не в последнюю очередь новым судьям Верховного суда, которые должны быть назначены в контексте реформы юстиции, перед которым будет стоять сложная задача по реализации новых изменений.

ANNOTATION

Ceban Alexandru „ Powers of the Supreme Court upon consideration of complaints against decisions rendered in the appellate chambers in civil cases", PhD thesis in law, Chisinau, 2024

Structure of the thesis. This work totals 170 pages that include: annotation in Romanian, Russian and English, list of abbreviations, introduction, four chapters, general conclusions and recommendations, bibliography containing 166 titles. The obtained results are published in 5 scientific papers and 3 communications at scientific conferences.

Keywords: civil process, appeal, grounds of appeal, powers of the court of appeal, supreme court, res judicata.

The general purpose of the thesis: consists in carrying out a complex research of the applicable normative acts, studying the doctrinal opinions, the national and international judicial practice in order to examine and interpret exhaustively the way in which the powers of the Supreme Court for Civil Cases.

Main objectives of the research: analysis of the powers of the Supreme Court in civil cases, including taking into account new changes in the regulatory framework related to the reform of the Supreme Court of Justice, which entered into force on August 18, 2023; assessment of the effectiveness of the means of protecting the plaintiff's rights when appealing civil decisions made in the appellate procedure; identification of existing difficulties in the application of the existing legal framework; identification of legislative solutions to overcome existing difficulties;.

The novelty and scientific originality this is due to the fact that until now in the Republic of Moldova no fundamental studies have been developed on the powers of the Supreme Court in civil cases, including considering that the relevant normative framework has changed radically.

The results obtained that contribute to solving the important scientific problem lie in determining and elucidating the shortcomings of the legal framework that regulates the powers of the court of appeal against civil decisions given on appeal, as well as the reconceptualization of this institution, which led to the clarification for theorists and practitioners in the field of law of the practical applicability of that institution.

The theoretical significance The paper reveals various doctrinal approaches and solutions to problems related to the powers of the Supreme Court in civil cases.

The applicative value is expressed in critical views on the interpretation and practical application of the elements of the institution under study.

Implementation of scientific results. The results of the research are used in the didactic and scientific process at the State University of Moldova. The results of the research are also expressed through the transfer of knowledge to the academic and scientific environment, as well as to legal practitioners, not least the new Supreme Court judges to be appointed in the context of the justice reform, which will face the difficult task of implementing the new changes.

CEBAN ALEXANDRU

POWERS OF THE SUPREME COURT UPON CONSIDERATION OF COMPLAINTS AGAINST DECISIONS RENDERED IN THE APPELLATE CHAMBERRS IN CIVIL CASES

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