AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 1 (2021), pp. 1 - 4

GENERAL CONSIDERATIONS REGARDING THE AMENDMENTS BROUGHT BY LAW 310/2018 REGARDING THE APPEAL AGAINST THE CONCLUSION OF REJECTION OF THE INTERVENTION REQUEST

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ABSTRACT

The amendments brought by Law 310/2018 for the amendment and completion of the Civil Procedure Code, regarding the appeal against the conclusion of rejection of the interventionrequest are likely to raise some issues of practical application.Although, in the statement of reasonswhich was the basis for the elaboration of the above-mentioned law, reference is made to the need to correlate the Civil Procedure Codewith the Decisions of the Constitutional Court, it should be noted that, although significantly amended, the provisions of art.64 par.3 and 4 of the Civil Procedure Code, have not been the subject ofdecisions to establish somepossible unconstitutionalities.

KEY WORDS: *admissibility, intervention, expediency*

INTRODUCTION

On 12/21/2018, entered into force Law no. 310/2018 for amending and supplementing Law no. 134/2010 on the Civil ProcedureCode, as well as for amending and supplementing other normative acts. [1,2]

In the statement of reasons that formed the basis of the aforementioned law, reference is made to the need to reconcile the texts of the law in force with the Decisions of the Constitutional Court no. 473/2013, no. 462/2014, no. 558/2014, no. 485/2015, no. 839/2015, no. 866/2015 and no. 321/2017. [3,4,5,6,7,8,9].

Given that the decisions of unconstitutionality listed above didnot target the provisions of art. 64 paragraphs 3 and 4 of the Civil Procedure Code, clearly results that the amendment of these texts was generated rather by the expediency of solving cases by blocking situations encountered in practice to delay the causes by formulating some interventionrequests.

MATERIAL AND METHOD

The materials used in writing this paper consist of normative acts, web pages, CCR jurisprudence.The methods used are legal, namely the formal method, the historical method, the comparative method, the logical and sociological method, the analytical method.The use of these methods had the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

RESULTS AND DISCUSSION

The problem of the application in time of the provisions of the civil procedure code, amended / completed by law 310/2018

Until the entry into force of Law 310/2018, the provisions of art. 64 paragraphs 3 and 4 of the Civil Procedure Codeallowed the person whose request for intervention was rejected as inadmissible, to attack it with an appeal or recourse, as the case may be.

In the sense of the old regulation until the settlement of the appeal on the conclusion of rejection of the request for intervention, the main request is suspended.The appearance of the amendments introduced by Law 310/2018 lead to the idea that the text in its initial version could be used for the abusive exercise of procedural rights in order to unjustifiably delay the cases.

In its current form, the person whose request for intervention has been rejected as inadmissible can appeal the decision only with the merits of the case.Before any other analysis, it should be mentioned that art. 64 para. 3 and 4 Civil Procedure Code, as amended by Law 310/2018 regarding the manner of exercising the appeal against the conclusion of rejection as inadmissible of the request for intervention, as well as the procedure applicable in such cases, applies only in the case of registered cases after the entry into force of the aforementioned law.This conclusion derives from the corroborated interpretation of the provisions of art. 24 and 27 Civil Procedure Code which gives relevance to the moment of starting the process and nowise to the moment of pronouncing the decision of rejection as inadmissible of the request for intervention.Thus, in the ongoing litigations on the date of entry into force of Law 310/2018, the conclusion of rejection as inadmissible is subject to appeal, or as the case may be, the recourse, with the application of the existing procedure prior to the amendment.

In case of admitting the appeal thus formulated, the provisions of art. 64 paragraphs 3 and 4 of the Civil Procedure Codestipulate that the pronounced decision is rescinded by law and the case will be re-judged by the court before which the request for intervention was formulated from the moment of discussing its admissibility in principle.

As far as we are concerned, we appreciate that for the particular situation in which the appeal formulated against the conclusion of rejection as inadmissible of the request for intervention to be admitted by the court of judicial control, the speed considered by the legislator will not be fulfilled. On the contrary, at least as regards the initial parties, the annulment of the decision that resolved the merits of the dispute between them will be such as to certainly extend the time required to obtain a final solution.

Another aspect that deserves to be mentioned is the one referring to the fact according to the provisions of ar. 65 para. 1 of the Civil Procedure Code, the intervener becomes a party to the process only after the admission in principle of his request.Not being a party to the case, the owner of request for interventionrejected as inadmissible will be able to appeal only the conclusion of rejection of his request and not the decision by which the merits of the case were resolved.Thus, in the eventuality in which the request for intervention will be considered admissible, the court of judicial control will find the decision by whichwere resolved the merits of the initial parties' as being annulled by law, even in the situation when they have expressly or tacitly agreed to this decision. [1].

Another possible problem generated by the new amendments is the one referring to the fact that, not being a party to the process, the holder of the request for intervention rejected as inadmissible will not be notified of the decision.It remains for the doctrine or jurisprudence to tell us what is the term for declaring the appeal for the holder of the rejected request for intervention and what is the beginning moment of this term.

However, being of strict interpretation, we appreciate that the resolution of all possible procedural situations to be made legislatively and not left on the shoulders of jurisprudence.We appraise that it would have been necessary to expressly mention the fact that not only the rejection decision of the request for intervention as inadmissibleis

communicated to the signatory party but also the solution pronounced in the case or, in the event that it contains personal data at least a document showing that the dispute has been resolved and that the decision was initially communicated to the parties at a certain date.

Another problem that could be generated by Law 310/2018 for amending and supplementing the Civil Procedure Code, regarding the appeal against the conclusion of rejection of the request for intervention, is given by a possible non-correlation between the provisions of art. 64 para.3 Civil Code. and the provisions of art. 63 paragraph 2 of the same normative act [2].

Practically, as long as the conclusion of rejection of the request for intervention as inadmissible can only be attacked with the merits, it means that this appeal does not regulate the situation of the accessory intervener who can register his request for intervention even in extraordinary appeals.Given that the decision by which the court of judicial control resolves the appeal is strictly motivated based on the analysis of criticisms of illegality and does not evoke the merits, it means that a request for ancillary intervention registered in this extraordinary appeal will be resolved by an unsustainable conclusion to be attacked.The situation is largely identical in the case of the other extraordinary means of appeal, respectively in case of revision and annulment appeal.

Another aspect worth notingis the one about the factthat the legislator did not understand that in the code of civil procedure to indicate explicitly and concretely whether the conclusion by which the court has ruled on the admissibility in principle on the request for intervention can be attacked only by its holder or by the parties in the case file.The clarification would have been necessarythe more so as there are concrete situations in which, for various reasons, there is the possibility that at least part of the file, if not all, may have an interest in solving the request for intervention together with the action that forms the object of the file.In such a situation, the decision pronounced in thewould also become mandatory for the intervener, who would no longer be able to later promote, separately, a new action against one or all of the parties to the original case.

Of course, the problem stated in the previous paragraph could be somehow deduced from the analysis / interpretation of articles 61-67 of the Civil Code, but we appreciate that, at least for reasons of accessibility, it would have been necessary for this clarification to have been made expressly by the legislator.

CONCLUSIONS

The amendments and completions brought to the Civil Procedure Codeby Law no. 134/2010 denotes a concern and a legitimate interest on the part of the legislator to reconcile the provisions of the Civil Procedure Codewith the jurisprudence of the Constitutional Court on the one hand, and on the other hand, an attempt to reduce the parties' possibilities to delay the solving of cases and to thus impair the speed that must govern the civil procedure. Even if the purpose of the amendments has been largely achieved, we appreciate that Law 310/2018 has a series of shortcomings both in terms of terminology and the possibility of generating effects contrary to those desired.

In terms of terminology, the provisions of art. 64 para. 3 does not explicitly mention whether the conclusion by which the court resolves the request for intervention can be appealed both by the parties in the case and by the holder of the request for intervention or, on the contrary, only by the latter.The lack of such specifications obliges to the analysis and interpretation of the general conditions for exercising the civil action.

The modification brought to the procedure of exercising the appeal against the conclusion by which instantly ruled on the admissibility in principle of the intervention may be able to generate a completely unfavorable situation to the initial parties which in a possible situation where as an effect of admitting the appeal formulated by intervener against the conclusion by which the request was rejected as inadmissible, they will be forced to resume

the process as an effect of the legal annulment of the decision pronounced in the case. Another possible deficiency of the current regulation is related to the lack of any mentions regarding the possibility of the intervener whose request was rejected in principle, to get acquainted with the date of pronouncing the decision on the merits.In the conditions in which the request for intervention was rejected, the intervener does not acquire the quality of party in the file nor the legitimacy necessary to appeal the merits.Thus, if the initial parties agree to the decision, the intervener is deprived of the possibility to appeal the conclusion, this becoming unappealable with retroactive effect. Another shortcoming of the current regulation is related to the fact that no distinction is made between the different legal regime of the main intervention and the accessories.If in the case of the main intervention the rule is that it can be done only before the first instance and before the closing of the debates on the merits, in the case of the accessory intervention, this can be done even during the trial, even in extraordinary appeals that do not evoke merits.The non-evocation of the merits in the extraordinary means of appeal raises the problem of applicability of the text of the law that regulates the possibility to appeal the pronounced conclusion on the admissibility of the request for intervention.

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