RESTRICTING THE RIGHT OF SECOND APPEAL ON UNFAIR TERMS LAWSUITS. AN EUROPEAN MEASURE?

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Abstract

In Romanian civil procedural law, since the regulation of unfair terms, there have been several changes regarding the remedy of second appeal in respect of claims based on the provisions of Law no. 193/2000 on unfair terms in contracts concluded between professionals and consumers. Without distinguishing between claims brought by natural persons or other bodies recognised by law as having standing in such disputes, the extraordinary remedy of second appeal is currently restricted to unfair terms.

In the course of this paper we aim to identify whether this measure is in line with European law on unfair terms and whether the measure is appropriate at national level in relation to the aims pursued by the European and national legislator when enacting legislation protecting the consumer. Also, we will analyse from a teleological point of view the regulatory changes and we will also study the way in which other European countries legislate in this area. Thus, at national level, it is necessary to identify what the legislator had in mind when taking this measure, both with regard to consumers who are natural persons and with regard to the bodies to which the law grants legal standing in such cases.

Internationally, we believe that the identification of the policies adopted on the matter will be serious grounds for validating or invalidating domestic policy. Moreover, in this way we will identify whether other European citizens have more, less or equal opportunities to remove unfair terms from the practices of sellers or suppliers.

Keywords: *second appeal, procedural remedy, unfair terms, opportunity, compliance.*

1. Introduction

With this study we intend to analyse whether or not restricting access to the procedural remedy of second appeal in Romanian civil procedural law is a measure in line with European law and whether by this measure the legislator has fulfilled the objectives pursued by the European legislator, which sought to ensure the most effective protection of consumers against unfair terms used by professionals.

The importance of the study is particularly significant in relation to the fact that such a legislative measure has had, and continues to have, a great impact on consumers, given the risk that court judgments in which the law has been misapplied will remain irrevocable. In this way, the consumer risks becoming the victim of a non-uniform practice caused by the lack of the most effective verification mechanisms recognised by the state.

With the present study we also intend to verify whether the level of importance given by the Romanian legislator to the correct and efficient application of the regulatory mechanism developed by the European Union is sufficient.

We will try to answer this question by analysing the normative process followed by the Romanian legislator, the jurisprudence of the Romanian Constitutional Court and by analysing European states legislations and their jurisprudence.

So far the problem has not been analysed by the Romanian academic literature, so the result of this study is, we believe, of major importance and can improve the existing legal situation.

2. General aspects of the architecture of the Romanian civil procedure

In the Romanian legal procedural system, the civil process, as a rule, takes place in two main stages[1].

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[1] For the distinction made between the term „phase" (in original – *fază*) of the civil process and „stage" (in original – *etapă*), see G. Boroi, M. Stancu, *Drept procesual civil*, 5th ed., Hamangiu Publishing House, Bucharest, 2020, p. 397.

The first stage is represented by the trial at first instance governed by the provisions of art. 192 *et seq.* CPC, book II, title I[2].

Once the case has been decided at first instance by a civil decision, it may be appealed to a higher court on grounds of legality or merits, because it being obvious that errors of procedure (error in procedendo) or of judgment (*error in iudicando*) must be possible to correct.

With regard to remedies, art. 456 CPC states that an appeal is an ordinary remedy, while a second appeal, an appeal for annulment and a revision are extraordinary remedies.

The difference between ordinary and extraordinary remedies is that the latter *„may be exercised only under the conditions and on the grounds expressly and exhaustively provided for by law*"[3].

As regards the ordinary appeal, the appeal provides a new trial of the case from both a merits and procedural perspective. In other words, the party concerned has the opportunity to have the judgment reviewed by a higher court with a panel of two judges[4].

Subsequent to the decision on appeal, the legislator also provided for the extraordinary remedy of second appeal. It is worth mentioning here the difference between appeal, appeal for annulment and revision. Thus, although all these appeals have in common their extraordinary nature, only the second appeal is a remedy of reformation, whereas the appeal for annulment and the revision are of a retractive nature. In other words, the second appeal falls within the jurisdiction of a higher court than the court which delivered a judgment in appeal, whereas in the case of the other extraordinary remedies the jurisdiction falls to the courts which delivered those judgments. These being in fact means regulated by the legislator to give the courts which have made mistakes the possibility of revising the case for reasons expressly and restrictively provided for by law.

2.1. The procedural remedy of second appeal in domestic law

The second appeal is an extraordinary remedy of appeal and of reformation, which the Romanian legislator offers the possibility of control of the solution pronounced, as a general rule, in appeal and by way of exception in the first instance.

With regard to the remedy of second appeal, the grounds for appeal are set out in art. 488 CPC. These grounds for the illegality of the contested judgment are: the composition of the court in violation of the legal provisions; the judgment was delivered by a judge other than the one who took part in the debate on the merits of the case or by a panel of judges other than the one randomly selected to decide the case or whose composition was changed in violation of the law; the judgment was delivered in violation of the public policy jurisdiction of the court, an exception raised during the proceedings under the conditions provided for by law; the judgment was delivered in excess of the court's jurisdiction; the court's judgment was delivered in breach of procedural rules, the breach of which entails the sanction of nullity; the failure to state in the grounds of the judgment the reasons on which the court based its decision or when the judgment contains contradictory reasons or only reasons extraneous to the nature of the case; the judgment was delivered in breach of the authority of *res judicata* and perhaps, the most important reason from the point of view of our analysis, the judgment was delivered in breach or misapplication of the rules of substantive law.

In fact, the ultimate purpose of the second appeal is to be found in the provisions of art. 483 para. (3) CPC, according to which the purpose of the appeal is to have the competent court examine, in accordance with the law, the conformity of the contested judgment with the applicable rules of law. We shall see in the course of the proceedings that this procedural remedy has, in principle, the same aim in the laws of foreign countries.

2.2. A brief history of the permission of second appeal in unfair terms matters

First of all, it should be noted that Law no. 193/2000[5] on unfair terms in contracts concluded between sellers and suppliers and consumers recognises the capacity to initiate legal proceedings not only for consumers

[2] Law no. 134/2010 republished in the Official Gazette of Romania no. 247/10.04.2015, available at *https://legislatie.just.ro/Public/DetaliiDocument/140271*.

[3] G. Boroi, M. Stancu, *op. cit*., p. 714.

[4] According to art. 59 para. (3) of the Law no. 304/2022 on the Judicial Organization (published in the Official Gazette of Romania no. 1104/16.11.2022), „appeals shall be heard by a panel of 2 judges and appeals by a panel of 3 judges, unless otherwise provided by law".

[5] The Law no. 193/2000 (republished in the Official Gazette of Romania, no. 543/2012) is the transposition of the Council Directive 93/13/EEC of 05.04.1993 on unfair terms in consumer contracts (OJ L 95/21.04.1993).

who are individuals but also for authorised representatives of the National Authority for Consumer Protection (ANPC) and authorised specialists of other public administration bodies or consumer associations.

The two applications, different from the perspective of their holders, have established a different regime of jurisdiction by the legislator. Thus, under art. 12 para. (1) of Law no. 193/2000, the Tribunal has jurisdiction in respect of civil actions brought by legally recognised supervisory bodies, whereas in respect of civil actions brought by natural persons, jurisdiction is determined by reference to art. 2 para. (1) CPC, which is common law in civil matters, and art. 14 of Law no. 193/2000.

In the same way, the second appeal procedure has been regulated with regard to the two access routes to court. Thus, Law no. 193/2000 imposed restrictions on the exercise of the right of appeal in cases involving legally recognised supervisory bodies or consumer associations, and CPC imposed restrictions on the exercise of the civil action by consumers.

It should also be noted that for the analysis of the history of the restrictions of the right of second appeal in the field of unfair terms that Law no. 193 of 6 November 2000 on unfair terms in contracts concluded between professionals and consumers[6] entered into force, by reference to the provisions of art. 17 of the law[7] and art. 12 para. (1) of Law no. 24/2000, on 09.12.2000[8]. As such, at that time civil proceedings were governed by CPC 1865[9].

At the time of the coming into force of Law no. 193/2000, CPC 1865 provided for largely the same grounds of second appeal as the new regulation[10], but the second appeal was an ordinary remedy and could also be formulated in matters of unfair terms[11].

With regard to the civil actions belonging to the inspection bodies and consumer associations, between 09.12.2000[12] and 01.09.2012[13] the remedy of appeal was admitted.

With regard to claims belonging to individual consumers, initially, when CPC came into force, the legislator restricted the possibility to second appeal by reference to a value of the subject matter of the claim up to 500,000 lei. Therefore, where the value of the subject matter of the contract containing unfair terms exceeded 500,000 lei, the consumer also had the right of second appeal.

Subsequently, the value threshold was increased by art. VXIII of Law no. 2/2013[14] to the amount of 1,000,000 lei[15].

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[6] Published in the Official Gazette of Romania no. 543/03.08.2022.

[7] Art. 17 of Law no. 193/2000 states: „This Law shall enter into force 30 days after its publication in the Official Gazette of Romania, Part I. On the same date, any provisions to the contrary shall be abrogated".

[8] Law no. 23/27.03.2000 on the rules of legislative technique for the elaboration of normative acts (republished in the Official Gazette of Romania no. 260/21.04.2010).

[9] CPC of 9 September 1865 (published in the Official Gazette of Romania no. 200/11.09.1865).

[10] Art. 304 CPC 1865 provided as follows: „The quashing of a judgment may be requested: 1. when the court was not constituted in accordance with the legal provisions; 2. when the judgment was given by judges other than those who took part in the debate on the merits of the case; 3. when the judgment was given in violation of the competence of another court; 4. when the court exceeded the powers of the judiciary; 5. when, by the judgment given, the court violated the procedural forms provided for under the penalty of nullity in article 105 al. (2); 6. when the court has not ruled on a claim, has granted more than what was requested or what was not requested; 7. when the judgment does not contain the grounds on which it is based or when it contains contradictory grounds or grounds extraneous to the nature of the case; 8. when the court, by misinterpreting the legal act under judgment, has changed its nature or its clear and unquestionable meaning; 9. where the judgment is based on a legal groundlessness or was given in violation or misapplication of the law; 10. where the court did not rule on a defence or on evidence which was decisive for the outcome of the case; 11. where the judgment is based on a serious error of fact resulting from an erroneous assessment of the evidence."

[11] Through the *rejust.ro app*, an application through which citizens have access to all judgments handed down by the courts from 01.01.2011 to date, we consulted for the period 01.01.2011 - 15.02.2013 (the date on which the new CPC came into force) the number of appeals decided on unfair terms at the level of the Courts of Appeal and we found a number of 121 appeals, of which 41 were admitted. Also, as the *rejust* application does not include the decisions of the High Court of Cassation and Justice, we consulted on the Supreme Court's website, *www.scj.ro*, on 02.02.2024, the number of cases registered between 26.02.2002 (the first case registered on this subject) and 15.02.2013. We identified 72 cases.

[12] Date of coming into force of Law no. 193/2000.

[13] Law no. 193 of 6 November 2000 on unfair terms in contracts concluded between sellers or suppliers and consumers (republished in the Official Gazette of Romania no. 543/03.08.2012), provided for its entry into force within 30 days of publication in the Official Gazette. At the same time, by art. 13 para. (4) of the Law, for the first time, the second appeal procedure was restricted, the text requiring that the decision of the first instance be subject only to appeal.

[14] Published in the Official Gazette of Romania no. 89/12.02.2023.

[15] For a detailed analysis of the changes to the value threshold in the field of appeal, see: G. Boroi, M. Stancu, *op. cit*., pp. 787-789; A. Dumitrescu, *Recursul în materia clauzelor abuzive*, Juridice.ro, *https://www.juridice.ro/631011/recursul-in-materia-clauzelor-abuzive.html*, last accessed on 06.02.2024.

The value threshold was subject to an exception of unconstitutionality so that, by dec. no. 369/30.05.2017[16], CCR found that the existence of a value threshold for the exercise of second appeal is incompatible with the fundamental law of the country.

In so deciding, CCR held that the establishment of a value threshold is an artificial criterion lacking objective and reasonable justification, which infringes the equality of citizens before the law.

Finally, CCR has also laid down rules regarding the freedom of the legislator to regulate in the exercise of remedies, rules from the perspective of which we will now examine the correlation of the measure we are analysing.

Thus, it has been established that the difficulty of a question of law must be determined by reference to its nature and not by reference to the value of the subject-matter of the claim and that the measure regulated must be objective and rational. Finally, the Court held that the only reason for establishing this value threshold was to relieve the congestion of the High Court of Cassation and Justice. At the same time, it was held that by restricting access to the remedy of appeal by introducing a value threshold, the provisions of art. 126 para. (3) of the Constitution[17] were infringed in cases where the second appeal falls within the jurisdiction of the Supreme Court.

Following the decision of the Constitutional Court, the Romanian legislator has chosen to completely restrict the right of second appeal in consumer protection matters, which also includes the provisions of Law no. 193/2000, through para. 49, art. I of Law no. 310 of 17 December 2018[18].

2.3. Examination of the compatibility of the measure restricting the right of second appeal in the field of unfair terms with the guidelines laid down by the Constitutional Court

As we have shown, according to the considerations of the CCR dec. no. 369/2017, considerations which according to Romanian law are binding for the future both for the legislator and for the Romanian courts, the determination of the judgments subject to second appeal must take into account the nature of the remedy of extraordinary and retraction of second appeal which has as its main object, according to art. 483 para. (3) CPC, to require the competent court to examine, in accordance with the law, the conformity of the contested judgment with the applicable rules of law. At the same time, the exclusion from this procedural remedy can be made by the legislator only by using an *objective* and *rational* justification.

We also note that, according to the Constitutional Court, the state must ensure equal protection of the rights and legitimate interests of individuals, which is similar to the principle of equivalence established in its judgments by the CJEU, a principle to which we will return in the course of this paper.

The Constitutional Court held that the only reason for establishing the value threshold was to reduce the congestion of the High Court of Cassation and Justice.

We have examined the legislative process of the Law no. 310/2018, which restricted the right of second appeal in the field of unfair terms for consumers who are individuals, but we could not identify a reasoning for the measure established by the legislator. On the contrary, during the meeting of the Chamber of Deputies on 06.06.2018[19], one member objected in the sense that an amendment was proposed, in relation to the initial proposal, to remove from the cases that cannot be subject to second appeal those relating to consumer protection claims, insurance claims, and those arising from the application of the Law no. 77/2016 on payment. The MEP said that he sees no reason why these types of lawsuits should not be subject to second appeal. He said that this was a restriction to which he had asked for clarification during the legislative process to see why this exemption had been introduced, but had not received a reply.

Therefore, the Romanian legislator has not indicated any justification for choosing to exclude the remedy of second appeal in a matter so broad, complex and of enormous interest to the European consumer.

The Constitutional Court has not defined what should be understood by objective and rational justification for the measures taken by the legislator in relation to the remedies available to litigants.

Thus, the words objective and rational have the usual meaning. We therefore consider that the measure introduced by the legislator must be determined by a specific situation that leads to its adoption and that the

[16] Published in the Official Gazette of Romania no. 582/20.07.2017.

[17] Art. 126 para. (3) of the Constitution of Romania of 21 November 1991 (republished in the Official Gazette of Romania no. 767/31.10.2003) provides that „*The High Court of Cassation and Justice shall ensure the uniform interpretation and application of the law by the other courts, according to its jurisdiction*."

[18] Published in the Official Gazette of Romania no. 1074/18.12.2018.

[19] The session is available at *https://www.cdep.ro/pls/steno/steno2015.stenograma?ids=7940&idm=6*, last accessed on 06.02.2024.

measure must be thought of in relation to its effects. More specifically, we consider that, depending on the situation that arises, for example congestion in a court, the legislator may justify restricting the possibility of filing a second appeal, an extraordinary remedy whose main role is to verify the correct application of the law in the resolution of a case, only by identifying rational causes that ultimately appear to be necessary and proportionate in relation to the restriction of the right of access to this remedy.

Unfortunately, we note that the legislator did not respect the transparency requirements for the regulation of the appeal remedy which will inevitably affect consumers who have brought civil actions based on Law no. 193/2000 after the change of the appeal architecture.

Further we can only speculate that the reason for restricting the procedural remedy of second appeal on unfair terms was due to the excessive burden on the Supreme Court.

In this regard, as we have shown in the content of this paper, during approximately 11 years (from 26.02.2002 to 15.02.2013) we have identified only 72 cases on the Supreme Court's docket. Of course, it is possible that our way of obtaining data is not the most accurate, but we believe that if this reason was considered by the legislator, he should have obtained accurate data on this situation. However, as we have shown, the measure was taken, in the light of the guidelines laid down by the Constitutional Court, in a totally arbitrary manner.

It should also be said that in the former second appeal architecture (since the entry into force of the new CPC), a very limited number of cases reached the Supreme Court, since in order for the High Court of Cassation and Justice to hear an appeal, the case had to have been registered with the Tribunal, since this instance heard disputes exceeding 200,000 lei, the rest of the cases falling under the jurisdiction of the district court. Therefore, the Tribunal judged at first instance, the Court of Appeal judged the ordinary appeal and finally, if the value of the claim exceeded the amount of 500,000 lei (later 1,000,000 lei) the case would be heard by the High Court of Cassation and Justice[20]. Under these circumstances, it seems that even the devolution of the supreme court was not a reason to restrict the unfair terms appeal. Moreover, it should be noted that the majority of second appeals in these matters were heard by the Courts of Appeal.

Certainly, the legislator can and should restrict the applicability of the procedural remedy of second appeal as not all cases are sufficiently important to society as a whole to go to an extraordinary remedy. In some cases it is sufficient for the litigant to have a double jurisdiction, thus ensuring judicial control of the judgment which he considers unfounded or unlawful. It should also be borne in mind that there are not enough resources to provide a third level of jurisdiction for all cases.

However, when taking a legislative measure, the legislator must carry out an objective and rational examination taking into account the necessity and consequences of the measure and determine whether the interest of the state prevails over the interest of the individual. In the case of unfair terms, we believe that this examination should be careful and transparent and should take account of the importance of the new regulatory mechanisms introduced on the European market, the interpretation and application of which raise major difficulties and require careful examination by the legislator and the judiciary, especially given that the Court of Justice of the European Union is giving new meaning to their applicability.

2.4. Examination of the compatibility of the measure under European law

CJEU has concluded in its jurisprudence[21] that it is for the domestic legal order of each Member State to lay down the procedural rules applicable to legal proceedings for the protection of the rights of citizens of the Union.

At the same time, it is particularly relevant to the present examination that the rules of national law must take account of the *principle of equivalence*, meaning that the procedural means made available to the litigant must not be less favourable in matters of unfair terms by comparison with similar domestic actions.

Therefore, we consider that the principle of equivalence will be violated if the consumer in a contract concluded with sellers or suppliers has the possibility to second appeal for violation of a legal rule of common law but this procedural remedy is restricted if his action is based on the provisions of Law no. 193/2000.

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[20] Please note that in Romania there are several courts which in order of importance are: the Courts (*Judecătorii)*, the Tribunals (*Tribunale*), the Courts of Appeal (*Curți de Apel*) and the High Court Of Cassation and Justice (*Înalta Curte de Casație și Justiție*).

[21] See para. 57 of the CJEU judgment of 09.07.2020, *Raiffeisen Bank and BRD Groupe Societé Générale* (C-698/18 and C-699/18, EU:C:2020:537) and para. 35 of the Judgment of 21.04.2016, *Radlinger and Radlingerová* (C-377/14, EU:C:2016:283).

However, given that in Romanian law the rule is represented by the possibility of second appeal and the exception is represented by art. 483 para. (2) CPC, which restricts the possibility of second appeal in certain matters, we consider that the measure imposed by the legislator is at odds with the rules of European Union law.

In this regard, we note that the High Court of Cassation and Justice is currently deciding a question of law on whether a claim for freezing (stabilisation) of the exchange rate at its value at the date of conclusion of contracts between sellers and suppliers and consumers, based on the provisions of art. 970 CC 1864[22] and the CCR dec. no. 623/2016, falls within the scope of consumer protection claims and is or is not subject to second appeal[23].

Thus, depending on how the legal cause of action is established, the case may or may not be subject to second appeal depending on whether it falls under the common law or unfair terms provisions.

Further, given the purpose of this paper, we also considered it necessary to examine the legislation of other Member States of the EU in order to analyse their domestic policy on the issue under analysis.

As it has a rich history of domestic courts seeking the intervention of the CJEU in the application of the law of abusive cases, we will begin our comparative law study with the Kingdom of Spain.

In this regard, we would like to point out that our analysis will be made from the perspective of the common law on the use of remedies[24].

Thus, the civil procedural law of the Kingdom of Spain is similar to ours as regards the remedies provided by law. According to art. 455 para. 1 of Law no. 1/2000 on Civil Procedure of the Kingdom of Spain[25], as a rule, judgments handed down in all types of proceedings, final judgments and those in respect of which the law expressly provides for this remedy may be appealed. Therefore, in this legal system we also find an ordinary appeal such as the appeal which is regulated in our law system.

The third remedy is governed by the provisions of art. 477 of Law no. 1/2000[26] on Civil Procedure of the Kingdom of Spain. According to para. 1 of that article, an appeal in cassation may be brought against judgments terminating proceedings in second instance delivered by the provincial courts when, according to the law, they are required to act as a collegiate body, and against orders and judgments delivered on appeal in proceedings concerning the recognition and enforcement of foreign judgments in civil and commercial matters under international treaties and conventions, as well as under EU regulations or other international rules, when the power to appeal is recognised in the act in question.

From an interpretation of the text, it might appear that an appeal in cassation is not allowed in respect of legislation enacted on the basis of EU law unless the transposing legislation provides for an appeal in cassation.

With regard to Law no. 7/1998 of the Kingdom of Spain[27] on general conditions of contract, there is no provision for allowing the remedy of appeal in cassation.

It would therefore seem that the appeal in cassation on unfair terms would be restricted.

[22] Published in the Official Gazette of Romania no. 271/04.12.1864.

[23] See the decision initiating proceedings before the High Court of Cassation and Justice with a request for a preliminary ruling on a point of law at *https://www.scj.ro/CMS/0/PublicMedia/GetIncludedFile?id=25289*, last accessed on 07.02.2024.

[24] I have made this clarification since the judgment of 17.07.2014 in *Sánchez Morcillo and Abril García* (C-169/14, EU:C:2014:2099) was delivered on the special procedure of mortgage enforcement involving, *inter alia*, the issue of the exercise of the right of appeal against the consumer's opposition to enforcement. The Court stated that *„Article 7 para. (1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a system of enforcement such as that at issue in the main proceedings, which provides that a mortgage foreclosure procedure may not be stayed by the court of first instance, which may, in its final decision, at most, award compensation for the loss suffered by the consumer, in so far as the consumer, as the debtor pursued, cannot appeal against the decision rejecting his opposition to that enforcement, whereas the seller or supplier, as the creditor pursuing the enforcement, can bring such an appeal against the decision terminating the proceedings or declaring an unfair term unenforceable."*

[25] In original „Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil", available at *https://www.boe.es/buscar/act.php?id=BOE-A-2000-323*, last accessed on 10.02.2024.

[26] The marginal name of the text in the original is „Motivo del recurso de casación y resoluciones recurribles en casación", while the marginal title of the remedy regulated by art. 455 of the law is „Resoluciones recurribles en apelación. Competencia y tramitación preferente".

[27] In original „Law no. 7/1998 of 13 April 1998 on general conditions of contract", available at *https://www.boe.es/eli/es/l/1998/04/13/7/con*, last accessed on 10.01.2024.

However, the Tribunal Supremo of the Spanish Republic accepts in principle the appeal in cassation in the matter of unfair terms[28] as it results from the judgments of this court no. 20/10.01.2024[29], no. 16/09.01.2024[30] and no. 1797/20.12.2023[31].

In Spanish civil procedural law, too, the main role of the appeal in cassation is to ensure compliance with the rules of substantive and procedural law and the formation of a unified jurisprudence.

In conclusion, the Spanish legislator has understood to allow the third cycle of verification of the judgment on unfair terms to be carried out regardless of the actions available to consumers who are individuals or other bodies recognised by law as having this prerogative.

As far as French law is concerned, the French Republic has a rich history of unfair terms[32]. Thus, the concept of unfair terms has its origin in the Law no. 78-23/10.01.1978 on the protection and information of consumers of products and services[33]. The concept was subsequently incorporated into Community law by Council Directive 93/13/EEC of 5 April 1993. The transposition of this Directive is now included in the Consumer Code[34]. There are no special rules restricting the remedies provided for by the French legislator in the Consumer Code.

In terms of civil procedure, according to art. 527 of the French Civil Procedure Code[35], the ordinary remedies are appeal and opposition[36] and the extraordinary remedies are third-party opposition[37], appeal for revision[38] and appeal in cassation.

According to art. 580 of the French Civil Procedure Code, extraordinary remedies are admissible only in the cases provided for by law.

The extraordinary remedy similar to the second appeal in Romanian civil procedural law is found in the French Civil Procedure Code in art. 604 *et seq.*[39]. According to art. 604, in French law, an appeal to the Court of Cassation is aimed at censuring the non-compliance of the contested judgment with the rules of law.

In this regard, we note that the aim pursued by the French legislator is the same as regards the regulation of this legal provision. Also, according to art. 605 of the French Civil Procedure Code, an appeal in cassation is available only against judgments given at last instance.

The French legislator did not restrict the procedural remedy of second appeal[40] as our legislator did, but it established a rather serious fine of up to 10,000 euros for abusive exercise of the appeal[41], as opposed to the fine of up to 1,000 lei that can be imposed by the Romanian judge in accordance with art. 187 para. (1) point 1 CPC.

In conclusion, the Romanian legislator's vision on second appeal is not shared by some of other European states.

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[28] The case law of the Spanish Supreme Court can be consulted at *https://www.poderjudicial.es/*.

[29] Available at *https://www.poderjudicial.es/search/sentencias/Clausulas%20abusivas/21/AN#*, last consulted on 10.02.2024.

[30] Available at *https://www.poderjudicial.es/search/documento/AN/10763674/Clausulas%20abusivas/20240118*, last consulted on 10.02.2024.

[31] Available at *https://www.poderjudicial.es/search/sentencias/Clausulas%20abusivas/21/AN#*, last consulted on 10.02.2024.

[32] See M. Samuel Vitse, *Contentieux des clauses abusives: illustration d'un dialogue des juges*, in Recueil annuel des Études 2022, p. 9, *https://www.courdecassation.fr/files/files/Publications/Etude%20annuelle/2022_06_24_CCAS_RecueilEtude2022_web.pdf#page=8&zoom=100,0,0*, last consulted on 17.02.2024.

[33] In original - Loi nº 78-23 du 10 janvier 1978 sur la protection et l'information des consommateurs de produits et de services.

[34] For the matter of unfair terms in French law, see the provisions of art. L. 212-1, L 212-2, R212-1, R 212-2, R 212-3, R212-4, R 212-5, R 822-18, R822-19, R822-20, R822-21 R822-28 R822-29 R822-30 R822-31, R822-32, L241-1, L 241-1-1,L 241-2, L241-2-1 of the Consumer Code, *https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006069565/2024-02-17/*, last accessed on 17.02.2024.

[35] *https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070716/LEGISCTA000006117240/#LEGISCTA000006117240*, last accessed on 17.02.2024.

[36] The opposition is governed by art. 571 of the French Civil Procedure Code, which states that it seeks the withdrawal of a default judgment, and is therefore a remedy for procedural defects.

[37] According to art. 582 of the French Civil Procedure Code, the opposition of a third party aims at retracting or reforming a judgment against the third party.

[38] This procedural remedy is governed by art. 593 and art. 594 of the French Civil Procedure Code and appears as an appeal similar to the extraordinary remedy of revision provided for in art. 509 CPC.

[39] The appeal is called „le pourvoi en cassation".

[40] See the analysis of the appeals lodged by the French Court of Cassation - of 12 July 2023, no. 22-17.030 (*https://www.legifrance.gouv.fr/juri/id/JURITEXT000047852589?init=true&page=1&query=22-17.030&searchField=ALL&tab_selection=all*) and the decision of 28.06.2023, no. 21-24.720 (*https://www.legifrance.gouv.fr/juri/id/JURITEXT000047781156?init=true&page=1&query=21-24.720&searchField=ALL&tab_selection=all*), last accessed on 17.02.2024.

[41] See art. 623, section 628 of the French Civil Procedure Code.

3. Conclusions

In conclusion, in our opinion, the measure restricting the right of second appeal in the field of unfair terms is at odds with the national constitutional standards of the state and does not appear to be in line with the policies implemented by other EU countries in this field. Thus, European consumers who are citizens of Romania are disadvantaged in relation to European citizens of other states, and there is a possibility that, as far as the former are concerned, their cases will be definitively settled by misapplying the provisions of consumer protection legislation.

Therefore, *de lege ferenda*, we believe that the Romanian legislator should allow, once again, the right of second appeal in cases based on the rules set out in Law no. 193/2000 on unfair terms in contracts concluded between sellers or suppliers and consumers, a measure that would help increase their level of protection. It should be borne in mind that, in the case of actions brought by ANPC or other bodies recognised by law as having standing in such cases, the stakes are even higher as the impact of the actions is much more widespread, affecting other contracts to which consumers are party and in which they have not taken legal action.

Future research activities in this area should include the study of the legislation of other member states, in order to reinforce or invalidate some of the conclusions drawn from the present study. Analysis of these laws and their case law would also lead to the identification of other objectives that should be pursued in order to reinforce the ultimate aim of establishing rules on unfair terms, namely to remove unfair terms and prevent their occurrence in contracts between sellers or suppliers and consumers.

Finally, we would like to point out that in an area where the principles of Romanian procedural law and even of substantive law have been partially rewritten, the importance of sanctioning and preventing the use of unfair terms in consumer contracts has been emphasised, in which there have been dozens of referrals to the CJEU, the High Court of Cassation and Justice to issue preliminary rulings and appeals in the interest of the law, referrals to the Constitutional Court to verify the conformity of national rules and court practices with the fundamental law, given that a large number of these cases were due to a lack of understanding of the purpose of the national and/or European legislator, or to the need to fill in legislative gaps and to remove the non-uniform practices that had arisen, the restriction of the right of appeal in this area is, in our view, inappropriate.

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