Specific matters of the judgement in first instance when the object of the trial is about the liability of manufacturer for the quality of products

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Abstract
The Civil Procedure Code is establishing the general civil litigation broad sense. Sometimes, given certain reasons, the legislature intended to derogate in part or in full from the rules of civil procedure established by the Civil Procedure Code. In this regard, special civil proceedings were created. Regarding claims for the approach of producer responsibility for the quality of the lawmaker meant to regulate the content of special laws and legal procedures derogating from the Civil Procedure Code, meaning that we remind Law no. 240/2004[1] , OG no.21 / 1992[2] , Law no. 449/2003[3] . Analyzing these procedural rules which are derogating from common law, we find that, in reality they do not constitute the real special procedures that would involve a set of rules affected a particular purpose, but are rules derogating from the Civil Procedure Code rules which governing the procedural aspects within these proceedings, as we detail in the following.
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1. Preliminary issues

Running relations between producer and consumer in relation to the sale - purchase of defective products, can lead to the emergence of disputes between the two entities, disputes which can be resolved amicably out of court, or where this is not possible, these processes will be resolved by the ordinary courts or arbitration, thus obtaining the rights and obligations of each party under the law.

2. The consumer actions against the producer

Firstly, for the consumer, the following litigation situations are possible:

-the recovery of loss which suffered as a result of the lack of product safety / non-compliance product / product failure.

Ab initio, we mention that, regardless of the cause of action (tort liability, contractual liability, tort objective) the procedural aspects are the same.

From the point of view of the objective pursued by the applicant consumer action is an action against the manufacturer in achievement[4] , because the consumer, who claims a civil right, is asking the court to obligate the manufacturer to a compensation for the damage that he suffered, the applicant seeks a judgment that if it will not be executed if the defendant voluntarily by the manufacturer will be made in enforcement.

Depending on the nature of the right that is recovered by action, this action is a personal one, as the applicant seeks the use of a right-consumer personal debt. At the same time, this action is movable personal one as it has a movable object by determining the law (a claim) [5].

Finally, depending on the procedural path chosen by part, as a rule, it is a primary action, but may include heads accessories such as costs. However, I appreciate that this may have an incidental [6] and can be made during a pending lawsuit by a third part or which is justifying its own right [7], in which case we are in the presence of an application for voluntary intervention main or only supports interests one of the original parties, in which case we are in the presence of an application for voluntary intervention accessories [8]. However, if the third part do not wish to intervene in the lawsuit between consumer and producer on his own initiative, the original claimant has the opportunity to make a claim in court [9], other persons in the conditions in which he is aware that the same food causes harm and others.

3. The jurisdiction

3.1. The material competence of the court

Since we are assuming a share in achievement, material competence is shared between the two courts, and according to article 94 paragraph 1 item 1 letter j NCPC "any other requests which have the value of up to 200,000 lei including whatever the quality of the parties, professionals or non-professionals will be solved by the first court. However, given NCPC Article 98 which states that "jurisdiction shall be determined by the value of the application shown in the main end demand" over the amount of 200,000 lei application will be resolved by the second Court, being the court with unlimited jurisdiction under Article . 95 para 1. NCPC point 1. However, if after the instance was invested intervene changes on the amount of compensation sought, so

that, in respect of new value belongs to another court jurisdiction should initially invested court retains jurisdiction in dispute [10].

3.2. The territorial jurisdiction

In terms of territorial jurisdiction is fully applicable the rule which is established in article 107 NCPC content, in the sense that, the demand is for the court where the manufacturer is domiciled, if he is a physical person and in the situation in which the producer is a legal person or a legal entity, the competence is for the court of the place where he has his headquarters.

In this matter, considering the rationale of consumer protection, the legislature intended to regulate an alternative jurisdiction. In this regard, we consider useful to analyze the applicability of these disputes, two cases of alternative jurisdiction, cases governed by Article 113, section 8 [11] and Section 9 NCPC.

As is clear from Article 113 section 8 NCPC in addition to the home or premises court defendant would be competent court in the consumer's home, covering applications performance, absolute nullity, cancellation, termination, termination or unilateral termination of the contract with a professional or claims for compensation for damages caused to consumers. Relating to the type of liability, we consider that the text is applicable on the last sentence, in the event an application is requesting compensation for the damage caused to consumers as a result of the movement of a product unsafe.

With regard to the provisions of Article 113 Section 9 NCPC, the legislature provided that, in addition to the home or premises court defendant would be competent "court where the wrongful act was committed or the damage" for requests regarding taxes arising from such unlawful act. Text analysis is useful and finds full force when injury recovery is based upon the manufacturer's tort liability. In this sense, in the following question: in such a case, (when under cover of injury torts) would be competent court of the place or the damage occurred unlawful act committed with application of Article 113 section 9 NCPC? From our point of view the provisions of Section 9 Article 113 NCPC are not applicable to such an action, whereas coverage of harm arising as a result of committing an illegal act by the producer, consisting in putting into service of unsafe product, there is a law text specifically, that Article 113

NCPC pc.8 which specifically refers to "repair damaged consumer ', without distinction as to the nature of liability, contractual or tort. Therefore, in consideration of the "ubi lex non distinguit, nec nos distinguere debemus", the text of Article 113, section 8 NCPC content is applicable to both types of liability. Accordingly, Article 113 NCPC section 8, as it concerns a specialized area and exclude applicable priority item 9 concerning a common law tort, unspecialized.

The jurisdiction signal the existence of a particular legal text, namely Article 12 of Law no. 240/2004 which provides that "action to repair damages is for the trial court in whose jurisdiction the damage occurred, is situated or, where appropriate, the domicile of the defendant".

Based on this text, the question arises: beeing a special text does not apply with priority over Article 107, Article 109, Article 113 NCPC?

The legal provision lays down another jurisdiction, at least in part, for proper action which seeks compensation for losses caused as a result of circulation of an unsafe product, respectively, establishes a jurisdiction alternative, meaning court of the seat or domicile of the defendant (provided case and article 107 NCPC) or the court at the place where the damage (Article 113 Section 9 variants of the NCPC). In this text the applicability of Law nr 240/2004, in our view, will be borne in mind that, according to Article 83 lit. k) of the Law no.76 / 2012 "any contrary provisions NCPC) is repealed, even if contained in special laws". In this regard, we consider that the Article 83 Article 12 is repealed default letter k) of the Law no.76 / 2012, Whereas Article 12 of the Law nr 240/2004 contains a provision on jurisdiction contrary to article 13, section 8 NCPC [12]. So, the jurisdiction for disputes promoted by consumers against producers or, where applicable, sellers conclude that NCPC art.107-109 applicable provisions, namely Article 113 section 8 NCPC.

And in this matter, in terms of territorial jurisdiction, we consider the applicable provision on the ability of the parties to choose the competent court. This is allowed by reference to the subject of such a request or payment of a sum of money found its full force the provisions of Article 126 paragraph 1 of the NCPC.

However, the choice of jurisdiction regarding all disputes through the special aspect of this matter, the lawmaker meant to provide expressly in the wording of paragraph 2 of Article 126 NCPC a derogation on the choice of jurisdiction.

Thus, protection of consumer rights disputes in the matter, the parties may agree to choose by agreement the competent court in terms of territory, according to paragraph 2 of Article 126 NCPC, but "only after the birth of the right to compensation, any agreement to the contrary is deemed unwritten" .

Of course, this rule has a derogatory nature, which is censored the ability of the parties to establish jurisdiction of a particular court before delivery right to compensation is legislation enacted in order "to protect certain categories of persons and prevention of abuses [13]" in the case of agreements concluded with consumers, and other categories of persons mentioned in the law. In the situation in which the parties would violate the provisions of paragraph 2 of Article 126 NCPC with the consequence election court will settle the dispute before delivery is entitled to the compensation, such a clause will be deemed unwritten .[14]

4. The forms of intervention of third parties in disputes between the consumers and the producers

Regarding the participation of the third parties in litigation alleging breach of legitimate rights of consumers find their full force provisions on applications for voluntary intervention of third parties, admissible an application for voluntary intervention main under 66 art.61- NCPC, the third main intervening as reflected in Article 61 paragraph 2 NCPC [15] can claim a right for itself closely linked to the right to trial by the original applicant. In this regard, we believe that among the main claim made by the plaintiff - who report violations of the consumer by the manufacturer or other person required to respond to a legitimate right to intervene and the main voluntary third party-the consumer there is a close connection justified by the same product with different risk generated more harm consumers. In my opinion, an application to intervene in their own interests is fully admissible when another consumer who was injured in his rights by same product put in circulation by the manufacturer as the applicant, initially intervenes in the dispute between the applicant (consumer) and the defendant (producer) claiming

in turn a personal right against the manufacturer or the equivalent damage caused as a result of the circulation of a product unsafe.

The demand for voluntary intervention accessory [16], we appreciate that it is admissible in a trial pendinte between the consumer and the producer, a third party intervener it can hold, for example, a consumer association which has supported the applicant's claims –the consumer, his interest is justified by the protection of interests of other consumers who have been or could be harmed by exposure by the manufacturer of risk products on the consumer market.

From the perspective forms of interference of third parties in relation to specific disputes between consumers and producers, we consider that only the complaint in the office of guarantee and the introduction of third parties should be admissible [17]. This, because the application of summons others as a form of forced entry intervention of third parties in the process, implies a third party could claim the same rights as complainant [18]. Or, the injury suffered by the consumer is personally assessed individually.

Even if there may be consumers who, after consuming the same product were injured, they could stand trial as plaintiffs, in this case there is a complicity standing, or as interveners in their own interest and not as interveners - applicants as Following applying for a lawsuit against the others, since they can not claim the same rights as the original claimant, the two applications regarding procedural independence, the outcome of a request is not likely to influence the outcome of the other application, through the personal nature of the damage suffered by each of the people who came into contact with a poor product.

We consider that an application for the detection [19] of the right holder would be inadmissible in the context of the claim would be the main applicant compensation to the producer-consumer product causing injury. This is because, for the admissibility in principle of such applications are required to be fulfilled two conditions: on the one hand, be made by the defendant in the proceedings, on the other side of the dispute to defend a real right [20]. Or, in the situation in which the dispute is the order the defendant to pay the applicant a sum of money in compensation for the damage suffered, it is apparent that the claim is a claim, something which leads to the

inadmissibility of such a request [21]. Of course, if the defendant or any party including ex officio court considers that there is no identity between the sue and the defendant as required in the report before it, can invoke a plea of lack of standing PASV defendant with the consequent dismissal of the action against promoted it as the locus against a person without passive.

In this context, we consider admissible a claim made by the defendant in warranty [22] against manufacturer in the event that the consumer would straighten an action in damages against the seller on contractual basis. The last one has the possibility of bringing a claim in guarantee against a third party, in this case the manufacturer, against which they could be drawn in the event they lost. Thus under Article 15 of Law nr.449 / 2003, "if the seller is liable to the consumer for lack of conformity resulting from an act or an omission of the manufacturer or operator of a chain of the same contract, the seller has the right to head against the charge of lack of conformity to the law. "Of course, the special law confers a right of option for the seller, in the sense of either opt for calling the manufacturer's warranty, either to promote its recourse against loss in the event of dispute promoted by the consumer. But although the special law provides, if the seller chooses to promote an action in regress after losing party manufacturer will be able to stand exceptio processus mali, with the consequent recourse if the application is rejected it will be able to demonstrate that, in event that would have been called in warranty in the dispute between the consumer and the seller had sufficient evidence as to lead to the rejection of the applicant's request. Of course, if in the action in regress manufacturer would fail to prove the existence of such means, the seller action could be admitted.

5. Derogatory aspects relating to the consumer's right of action for damages

The producer responsibility for consumer detriment as a result of the movement of a product at risk, poor or inconsistent to be engaged, whether it takes the form of contractual liability, tort or objectives. But for cases in which liability is intrinsic, being in the presence of strict liability, in particular liability under this legislature has established special limitation periods.

Thus, according to article 11 of Law nr 240/2004, "the right to sue for damages (...) is prescribed within 3 years, which run from the date on which the claimant knew or

ought to have informed the existence of damage, the defect and the identity of the manufacturer and the action for recovery of damages can not be brought after the 10th anniversary of the date on which the producer put the product into circulation. ".

Therefore, and in the case of strict liability, as for tort liability, the period in which the consumer may submit claim against the manufacturer in order to recover damages is 3 years, which term starts from the moment the consumer knew or ought to know the existence of damage, the defect and the identity of the producer.

However, if the common law the term starts from the time the injured person knew or ought to have known of the damage and the person responsible for its production, the special law introduced a third condition, namely the date of knowledge of the defect, which we highlighted in previous chapters that in this matter merges with the wrongful act.

In other words, although three are the elements that form the content of strict liability, the time at which the limitation period begins to run the consumer's right to seek redress is one, in that context, consider that you might not put in question the existence of many of limitation in relation to the time of knowing the damage, the defect and the person responsible, but since the fulfillment of the last of these, will begin to have effect the limitation period of three years.

However, the consumer's right to request the producer ordered to pay damages caused as a result of the movement of a risk product, knows limitations, in the sense that "action for recovery of damages can not be brought after the 10th anniversary of the date on which the producer put the product in circulation ".[23]

Therefore, an application for compensation after expiring the 10 years from the date the manufacturer has launched that product will attract dismiss it as inadmissible. I appreciate that the 10 years term is one of decay, which attracts the penalty of inadmissibility of an application for compensation after this time, not lateness of the application.

Conclusion

Given the existing consumer protection to special rules, it is natural that in disputes of this kind to be special rules relating to jurisdiction, locus or features of the forms of intervention of third parties. However, it can see that the special law sometimes

"silent" so go on to become fully applicable rules enshrined in the Code of Civil Procedure. In establishing civil procedural rule applicable to such litigation should be considered traditional contest between the general rule and the special rule. In this regard, we consider that the provisions of special laws of civil procedure mentioned above, the special rules apply with priority to the problem that regulates the scope, these rules complementing the Code of Civil Procedure (Article 2) It represents the common law, the natural complement the more special as these rules expressly sent to the Civil Procedure Code (eg Article 13 of the Law nr 240/2004).

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[1] Thus, according to the article 12 of Law nr 240/2004 " in the action for damage is competent the court in the territory where the damage occurred is situated, as appropriate, defendant";
[2] According to Article 16 para 2 of Ordinance no.21 / 1992, "Addressing the request for payment of moral damages or damages related remediation or replacement of defective products or services required by consumers or operators is for the competent court or the organism competent in mediation";
[3] According to Article 15 of Law nr.449 / 2003, "If the seller is liable to the consumer for lack of conformity resulting from an act or an omission of the manufacturer or operator of a chain of the same contract, the seller has the right to head against the charge of lack of conformity, under the law ";
[4] V.M.Ciobanu, Tratat teoretic şi practic de procedură civilă, Vol.1 , Ed. Naţional, 1997, p.291;
[5] Idem, p. 299;
[6] According to article 30 paragraph 6 NCPC. "Incidental requests are requests within a trial in progress";
[7] For example, if the applicant makes a request in damages against the manufacturer of yogurt, the intervention requests may be made by the third parties which by consuming a foodstuff have suffered damage, in which case, interlocutory applications made by, and they in turn claim their own rights against the same defendant;
[8] The accessory intervention could be formulated by the Consumer Protection Associations which would take pending trial to support consumer claims;
[9] According tothe article 68 paragraph 1 of the NCPC, "either party can sue another person who can claim on a separate application, the same rights as the plaintiff.";
[10] According to Article 106 NCPC, "the court according to the provisions on legal jurisdiction vested by the value of the application retains jurisdiction to judge even if the investiture, a change in terms of the amount of value the same object."
[11] Under Article 108 NCPC, "The application for summons against a legal person of private law and the court can make the place where she has a dismemberment unincorporated obligations to be executed in that place or that spring from dezmembrământului representative concluded by acts or acts committed in it. ";
[12] This is because the text provides consumer the court in the place as the competent court, whereas article 12 of Law no. 240/2004 regulates the court of the place of the crime;
[13] A.Constanda s.a., Noul Cod de Procedură Civilă, Comentariu pe articole., coord.G.Boroi, Vol.I, Ed. Hamangiu, 2013, p.126;

[14] According to NCPC 126 para 2 "in disputes in matters of protection of consumer rights, and in other cases provided by law, the parties may agree on the choice of court, as provided in par. (1) only after the birth of the right to compensation. Any agreement to the contrary is deemed unwritten. ";
[15] According to Article 61 para 2 NCPC, "The principal Intervention is when the intervener claims for itself in whole or in part, right before the Court or as closely associated with it.";
[16] Under the provisions of Article 61, paragraph 3 NCPC, the demand for voluntary intervention by third party accessory is when he come into the process to support or defend claims one of the original parties, the claimant or defendant;
[17] When I argue the admissibility or the inadmissibility of an intervention in view of the current civil procedural regulation requiring mandatory court issue a decision to accept in principle on all forms of assistance whether they are voluntary or forced, unlike the old regulation court ruling on admissibility in principle only voluntary intervention requests;
[18] Under article 68 paragraph 1 of NCPC, "either party can sue another person who can claim on a separate application, the same rights as the complainant";
[19] According to Article 75 NCPC, "a defendant who has a good for another or who exercise rights on behalf of another may show the same thing in whose name holds or exercises the right thing if it was sued by a person claiming a real right of the good. ";
[20] M.Tăbârcă, Drept procesual civil. Partea generală, Vol.I, Ed. Universul Juridic, 2013,p.395;
[21] In the last code "the use of this form of intervention is excluded in case of applications which exploit a personal right" - Pitesti Regional Court, dec.civ. nr.3828 / 1958 in popular Legality No.7 / 1960, p.115, quoted in M.Tăbărcă, op.cit., p.396. Referring to this solution, we consider that it is maintained in the current regulation;
[22] According to Article 72 (1) NCPC, "the interested party can call in a third party collateral against which it may proceed with a separate request warranty or compensation";
[23] 11 The second sentence of the Law nr 240/2004