



ORIGINAL PAPER

Bringing Justice Back In: Legislation and Case Law Evolution Concerning Partition by Court and Rule of Partition in Kind

Raluca Lucia Cismaru*

Abstract

This scientific approach will be compared in terms of the innovations brought by the new regulation regarding separation in nature relative to the old civil dispositions. Special procedure of judicial partition has generated, especially in the normative context imposed by the old Civil Code and Code of Civil Procedure, some solutions or different opinions, both in the courts and the doctrinal level. Considering these aspects, new codes regulations concerning partition, take a series of opinions and solutions, trying to simplify and clarify the procedure, for a uniform implementation of legislation and thus require a careful analysis of the impact and effects they have new regulations. Based on the concepts and theories developed in the case law and doctrine dedicated partition will formulate new concepts and theories applicable in national law. The new Civil Code regulates in detail the rules applicable to partition, putting a large extent, the views expressed in doctrine and the solutions adopted in judicial practice, but also states new principles complementing some of the newly introduced provisions in the matter of co-ownership. Analysis of the special procedure to partition in the new legislation, comparing special procedure with ordinary contentious procedure identifies novelty legislative solutions, determining the scope of these special procedures, analysis of relevant case law on the subject, developing proposals to improve the solutions of law, litigant and not only ease access to justice by providing models and applications specific to the special pleadings of partition, facilitating the access of justice seeker by providing models and applications specific to the special division procedure.

Keywords: imprescriptibility, convention to suspend partition, balancing payment, partition by court, partition in kind of the property

* Assistant Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Law Specialization, Phone 0040742808693, E-mail: ralucauciapaul@yahoo.com.

General issues concerning the concept of partition

The most frequent way, specific for the termination of co-ownership is constituted by partition. In the legal doctrine (Alexandresco, 1912: 454; Stătescu, 1967: 234; Deak, 2002: 494; Baias et al., 2012: 726), and legal practice (Supreme Court, Decision no. 384/1989, 1990: 67; Supreme Court, Decision no. 1451/1989, 1990: 72), in the absence of express legal meanings, under the old Civil Code, partition is defined as the legal procedure to end the tenancy status (ownership) by dividing nature and/or the equivalent of assets in joint tenancy, with the consequence of replacement, with retroactive effect, to individuals ideal shares, on “their exclusive rights of each co-owner on some specific assets in their materiality”.

The reference to the tenancy is justified by the fact that the old Civil Code did not regulate common property generally, but the division of the inheritance, which results in the termination of the joint tenancy and replacement of the undivided right of each co-owner having exclusive right over one or several actual properties.

The New Civil Procedure Code regulates partition as a special procedure and is stipulated by the provisions of Article 979-995, but these standards should be completed by those of the Civil Code (especially those from Articles 669 through 696) or by standards under possible special laws. For example, public notaries and notary activities Law (Law no. 36/1995), the law on mediation and the mediator profession (Law no. 192/2006). Most of the times, these provisions set rules which have been previously established by case law and doctrine. Moreover, under the New Civil Code, the rules that apply to the termination of co-ownership by partition are now those of common law; judgment of any partition suit filed is made by these standards, which apply to the partition of inheritance as well, as stipulated by Article 1143 paragraph (2) of the New Civil Code, and to condominium as well, as stipulated by Article 686 of the New Civil Code.

Partition by court – frequent modality for division

Depending on the manner in which co-owners seek partition, it may be made in two ways: conventionally, only if there is an agreement of all the co-owners expressed in the conditions directed by the law, and through the court, after one procedure prescribed by law when co-owners do not agree. To this effect, the New Civil Code lays out in Article 670 “Partition may be made amiably or by judicial order, under the law”. The provision, with priority, in the legal text of division by agreement indicates its preeminence in relation to judicial division. In fact, even in the case of the legal partition, according to Article 982 paragraph (1) of the Code of Civil Procedure, throughout the whole trial, the court will insist that the parties divide assets by agreement.

This provision is the result of legal realities’ evolution since the last time it was observed that increasing differences between people often turn into court litigation; according to social customs historically established and the jurisdiction act has, sometimes, one major disadvantage of leaving one or more parties involved in a case displeased with the final decision. The consequence of this type of perception of individuals is often maintaining their state of conflict, judiciary dispute extension, due to the desire for revenge, with additional costs in time and money for both parties and for the justice system. By modernizing national legislation the parties were given one opportunity to complete disputes on the sharing of goods by mediation, by the notary procedure or before the court by the establishment of more accessible rules for settling claims division, being promoted under the principle of resolving the dispute by agreement.

Bringing Justice Back In: Legislation and Case Law Evolution

The new regulation emphasizes the active role of the judge in attempting to determine the parties to reach a settlement by agreement, a way of settling disputes which would have a positive impact on the judiciary system. Even if the agreement of the parties would be only partial, this would facilitate the course of the case, both in terms of duration of the process and of probation.

In the specialized literature (Boroi, Anghelescu and Nazat, 2013: 86-87) it was underlined that there are some particular situations in which partition by court is mandatory, as law does not allow parties to enter a voluntary partition: a) if among co-owners are minors without civil capacity of exercise (under age of 14 years) or persons under judicial interdiction or missing persons and their legal representatives or tutela Court have not consented or authorized voluntary partition, the partition will be made only by court.

Thus, in compliance with Article 674 of the New Civil Code, if among the joint tenants there are persons who lack legal competency or who have restricted legal competency and there is no authorization from the court for tutela for a voluntary partition, it shall take place solely by court; b) Considering that, in compliance with Article 648, paragraph (2) of the New Civil Code, the partition action carried out without the participation of all co-owners is fully null and void, it results that if one of the co-owners was not present or if he/she does not agree to enter a partition agreement, the party seeking division of joint property or assets should resort to partition by court; c) Another case requiring mandatory partition by court is the petition made to the court by one of the spouses for joint property's division during marriage, for reasonable grounds. Thus, for example, according to Article 358 paragraph (1) of the Civil Code, during the legal community property, joint property of the spouses may be divided, in whole or in part, by an official notary act in case of mutual agreement, or by court, in case of disagreement. In this circumstance, the court should set forth the existence of the reasonable grounds, and only subsequently it shall proceed to division of portions and their awarding (Ciobanu, Boroi and Briciu, 2011: 452; Frentiu and Baldean, 2008: 1479); d) The partition by court is also mandatory when the personal creditor of one of the spouses petitions the court for division of joint assets during marriage, in order to keep track of the assets which will be awarded in its debtor's portion.

In order to prevent or diminish the transposition to practice of inconveniences generated by the co-ownership status, the civil law giver has instituted, in the matter of co-ownership division of joint property in Article 669 of the New Civil Code, and in matters of inheritance partition by Article 1143, paragraph 1 of the same Code the imperative rule of indefeasibility of the right to seek partition. Possessed by Romanian Civil Code of 1864, the same effect was Article 728 provisions. Thus, in compliance with this provision, "termination of co-ownership by partition may be sought at all times, except for when the partition was suspended by law, legal instrument or judicial order". In turn, Article 1143 paragraph (1) of civil Code stipulates that no one can be forced to remain impartible, the inheritor may ask at any time out of the co-ownership, even when there is agreement or testamentary clauses which provide otherwise. Article 1143, paragraph (1) of Civil Code, took in one improved form, the provisions of Article 728 paragraph 1 of old Civil Code.

The doctrine was established that if the partition in the process of formulating accessories requests to this effect, some related petitions formulated within the partition action are: the ratio of donations, reduction of excessive liberalities, and payment of funeral fees regarding the defunct between heirs are subjected to extinctive prescription,

the indefeasibility of the main application for partition not expanding over these as well (Boroi et al., 2013: 540).

There is one exception from the indefeasible characteristic of this right, provided by Article 675 of the New Civil code “partition may be sought even if one of the co-owners has utilized the property exclusively, except for when it was subject to usucaption, under the law”. Thus, acquiring the exclusive property right by usucaption by the co-owner who owned the joint property, in its thoroughness, constitutes an absolute hindrance for the partition action exercised by the other co-owners. The simple exclusive use of the property by a sole co-owner, cannot give him/her additional rights towards the other co-owners (Atanasiu et al., 2011: 231-232).

By the same circumstance, if a part of impartible goods is acquired by inheritance by one co-owner, shared action is not extinguished by prescription, but on the grounds that it was unnecessary (Eliescu, 1966: 213). Another obstacle is the existence of a valid partition division, given the principle of binding force of agreements between the parties as provided by Article 1270 Civil Code for voluntary partition, and *res judicata* for judicial partition, as provided by Article 1001 Code of civil procedure.

We remind the fact that, in compliance with provisions of Article 669 of the New Civil Code, any of the co-owners may seek, at all times, the joint property’s partition, except for the cases when the partition was suspended by law, legal instrument or judicial order. In the doctrine (Comăniță, 2002: 24; Eliescu, 1966: 214) it was considered that a testamentary disposition by which the heirs would be forced to remain in tenancy is null and void, motivated by the imperative character of Article 728 paragraph (1) of civil Code. The solution should be identical when co-owners would decide, by one convention, to give up the right. And under the rule of the new Civil Code this solution remains topical whereas the provisions of Article 669 and 1143 paragraph (1) have also mandatory effect.

The agreements regarding the partition’s suspension are regulated by Article 672 of the New Civil Code, ruling they cannot enter for a period longer than 5 years; for buildings, an authentic form is required, following the formalities of real estate publicity to be legally binding on third parties. For movable assets, the deed should be concluded in writing, with a notarized certified date as provided by Article 678, paragraph (4) of the new civil Code). Unlike the old Civil code, the new Civil code, to avoid repeated co-owners conventions of suspension of partition, no longer restates the provision of Article 728, paragraph (2), 2nd thesis which concerned the status in which, upon the 5-year period “the agreement may be renewed”.

Thus, to the extent in which co-owners are interested, they may extend the co-ownership duration by repeated agreements, on a total period longer than five years. But the Civil Code does not cover the consequences of this possibility, meaning it has not provided the legal organisation of ownership when it is maintained for a longer period of time, either following the co-owners agreement, or as a consequence of the fact that none of them exercises the right to seek partition (AthanasIU et al., 2011: 231). This gap in the law allows us to formulate the *lege ferenda* proposal by which we deem as necessary that the legislation provide expressly the legal organisation of ownership when co-owners decide to suspend the division of co-ownership on a period longer than 5 years or none of them exercises the right to seek partition. An agreement of this type, in which it entered on an indefinite period, it would be fully void, the partition’s indefeasibility being of public order (Deak, 2002: 493).

We agree with this point of view, having regard also to the circumstance that the New Civil Code underlines a change in conception and in the subject matter of extinctive

Bringing Justice Back In: Legislation and Case Law Evolution

prescription which, although it remains a general interest institution, it protects preponderantly private interests (Nicolae, 2010: 1152-1153).

Under the old Civil Code provisions, in doctrine (Comăniță, 2002: 25) it was decided that where there is agreement to suspend partition, concluded under Article 672 Civil Code, personal creditors of the co-owner may not require separation of assets under individuals to achieve their claim. The provisions of the new Civil Code expressly resolve the situation by the provisions of Article 678 paragraph 4, under which, the conventions suspending the partition can be opposed creditors only if, before the birth of receivables acquired “certain date” (Leș, 2013: 422-423) where they were movable or immovable property and authenticated if they fulfilled the real estate advertising formalities prescribed by law.

From a legal viewpoint, the right to seek partition is a potestative one. Although it is not an economic value in itself, it may be qualified as a patrimonial potestative right, as it is exercised in relation to a patrimonial legal situation (Nicolae, 2010: 1152-1153). Being a potestative right, it is not susceptible to an abusive exercise. Returning to the provisions of Article 673 of the New Civil Code according to which partition may be sought at all times as “the court seized with the file for partition suit may suspend the partition’s ruling for at most one year, so as not to cause serious prejudice to the interests of the other co-owners. If the danger of these prejudices is removed before the term, the court, upon demand of the interested party, shall revise the measure taken”. Interpreting this legal provision, the conclusion is that suspension of the settlement of the partition action may be ruled by the court upon request of one or more co-owners, should they provide proof as to the division from that moment would seriously prejudice their lawful interests (Baiaș et al., 2012: 729).

This solution does not remove the potestative characteristic of the right to seek partition, nor does the conclusion that it is not susceptible for abusive exercise; on the contrary, it confirms both ideas. The possibility of the court to suspend for one year the division is not an offence for misuse of law, but an enforcement of the principle of equity. This is why the suspension period of division may not be longer than one year. Otherwise said, regardless of the other co-owners’ interests, the partition shall be made. Suspension of division is not equal to the rejection of the file for partition suit. The first court shall be able to just postpone the case until the completion of one year from the date of filing the partition suit. During this period, it is obligated to administer the necessary evidence, the postponement of the solution not being equal to suspension of case settlement (Stoica, 2006: 91).

However, under procedural aspect, we think that the terminology utilized by this enactment is inadequate, as the Civil Procedure Code does not regulate an institution of “suspension of court ruling”, and if a new process institution introduction would have been intended, an adequate regulation should have been given as well. Thus, from the view point of the civil process law, it may be about either suspension of judgment, or about postponement of judgment’s rendering. As the postponement of judgment would not be an adequate measure to the situation considered by the law maker (not being a justification capable of laying conclusions on the floor, and the court to declare the debates closed, following to pronounce the order at a larger time span, without hearing the parties), it was shown that by provisions of Article 673 of the New Civil Code a particular case for optional suspension (by court) was regulated of the trial in the subject matter of partition by court (Boroi, Anghelescu and Nazat, 2013: 87).

The court of law shall have the authority to rule partition, by three concrete modalities (Pop and Harosa, 2006: 200-202) by partition in kind of the property or assets, by allotment of the joint property in exclusive ownership of one of the tenants or by sale of the property and division of the equivalent value in cash.

The rule on partition by court. Partition in kind – competitive insights

Award in kind of assets subjected to division constitutes the most important modality to shut down co-ownership by court, a modality having a principle value in the matter. Thus, as many times as possible, the court of law is obligated to resort to partition in kind of the property or of assets subjected to partition. It is the most equitable modality to ensure equality of rights for the former tenants (Supreme Law Court, Decision no. 1758/1981, 1992: 58). Also, the doctrine was unanimous on the principle of partition in kind (Ciobanu, 1996 - 1997: 343; Chirică, 1996: 222; Deleanu, 2013: 343; Leș, 1998-1999: 195).

In the New Civil Code, this principle is discussed at Article 676 paragraph 1, in which it is shown that “Partition of joint property shall be made in kind, proportionally with the share of every co-owner”. The rule expressed in the new civil code arose previously from Article 736, paragraph 1 of the Civil Code and is found also at Article 983, paragraph 2 of the new civil procedure code “The Court shall make division in kind” by forming separate portions for each tenant, adequate to the share of each one, in compliance with Article 676 paragraph 1 of the New Civil Code, having regard to the value of assets circulation subjected to division. When portions are unequal, they are completed by an amount of money.

In previous jurisprudence of the New Civil Code, it was decided that “in order to ensure full equity in the partition of a dwelling house, respectively to ensure a full balance between the share transferred and its equivalent value, the assessment should be made to the value of assets circulation in the time of partition; this solution is accepted by the doctrine, which, as a rule, accepts the theory of unpredictability, which is based upon the search of a just balance between services of parties of an agreement, under the conditions of alteration of economic circumstances” (Timisoara Court of Appeal, Decision no. 331/2009, 2009: 10).

It is obvious that the division in kind is mandatory only if the property may be divided and is easy to partition in kind. Without co-owners’ consent, the court of law may not derogate from this principle, as long as partition in kind is possible. If all co-owners agree, the court of law may allot the property to one of them or to sale. In the hypothesis in which one of them insists on making the division in kind, the court of law is obligated to resort to this partition modality.

Moreover, even in the hypothesis in which co-owners have agreed to the sale of the property, although it would have been easier to be divided in kind, to the extent to which the sale could not be made, the court shall rule, upon the request from one of co-owners, the division in kind or by allotment, as applicable, conclusion taken from provisions of Article 992 of the New Civil Procedure Code (Stoica, 2006: 102).

The main procedure in the partition by court process is composing the batches. In the literature (Comăniță, 2002: 166) in view of its importance it was appreciated that this procedure is subject to the principle of equality in nature according to which, each co-owner receive equally one batch with equal rights which are meant for him from the share mass.

Also, upon forming and awarding portions, the court shall be conditioned to take into account the agreement of parties, as well as certain factual circumstances as those

Bringing Justice Back In: Legislation and Case Law Evolution

stated by the provisions of Article 897 of the New Civil Procedure Code: laying of the share due for each tenant from the partitionable assets' patrimony, nature of these assets, domicile and occupation of parties, the fact that some co-owners, before seeking partition, have made construction, improvements upon approval from the other tenants or other such acts (The Supreme Court, Decision no. 2589/1993, 1994: 88). Please note that none of the criteria listed should be generalized, even by the larger share of one of the co-owners (Supreme Court, Decision no. 467/1982, 1980-1985: 127; Supreme Court, Decision no. 5434/2001, 2003: 59). In a decision of specific case (Supreme Court, Decision no. 1847/1981, 1981: 29), it was established that it is possible to attribute part of the building which has a lower share ownership as no criterion is decisive (Supreme Court, Decision no. 2589/1993, 1994: 88). It was believed that these criteria should have regarded not only the court of law, but also the master to whom was asked to form portions by the expertise report (Tabarca, 2013: 733).

Another equity principle that the court should observe is that according to whom forming portions and composing shares shall receive, as much as possible, in the same amount of movable, immovable, rights or debts on the same nature or value. Thus, it is inadmissible that, without tenants' consent, the court awards one or several of them all assets in kind, and others solely the compensation of equivalent value in cash of the share due, as long as it is possible to give assets in kind to each of them. The court of law shall avoid, as much as possible, excessive division of assets, preventing thus assurance of their rational exploitation. Thus, if, for instance, the joint property is a construction having title of dwelling place, the court of law should form the portions so as each of them be fit to be used as a dwelling place, even if arrangements would be needed, to the extent in which they are not expensive (Stoica, 2006: 102). Co-owners may not be obligated to receive shares of construction which, even with reasonable arrangements, would not be used according to their destination of dwelling place (Supreme Law Court, Decision no. 223/1979, 1979: 153-156). By enforcing this idea, judicial practice deemed the partition in kind of an intramuros land as impossible if, by division, it would become unbuildable (Supreme Law Court, Decision no. 419/1975, 1975: 162-174; Bucharest Law Court, Decision no. 453/1993, 1993-1997: 378-379), or of an arable land if, by division, its exploitation by agricultural mechanical means would become difficult (Appeal Court of Suceava, Decision no. 222/1999, 1999: 163).

In previous jurisprudence of the New Civil Procedure Code it was decided that "by awarding the building to the defendant, the courts deemed he is the most entitled to receive the property by taking into consideration certain elements of assessment in his favour, and that the apartment in which he lived, at the sixth floor is damaged from earthquakes, that the elevator shows permanent deficiencies and that his wife- suffering from a heart condition should avoid physical effort and that he donated to the plaintiff his share of half of the other inheritance property, the vehicle, under the condition that he may keep the house. Such criteria, if real, may be considered, but do not have to be taken as a rule, following to be confronted with criteria called down by the plaintiff, if they are acknowledged by evidence, such as the fact she utilized the house after the author's death, that she executed a series of improvements on the building and of enhancement of its degree of comfort, that she paid all taxes and maintenance fees and that she has no other dwelling houses as a personal property" (Supreme Court of Justice, Panel of 7 judges, Decision no. 25/1994, 1994: 65).

These criteria should all be considered, at the same time or just some of them, so as not to infringe the co-owners' rights, to meet their actual needs and so, that the partition

be equitable. Mostly award batching criteria are jurisprudential created outlined before adopting new regulations. Thus, it was decided that for choosing the co-owner that is to be assigned with a specific lot it needs to consider a number of criteria (Supreme Court, Decision no. 399/1970, 1969-1975: 220; Supreme Court, Decision no. 1203/1971, 1971: 116; Supreme Court, Decision No. 1287/1978, 1978: 34; Supreme Court, Decision no. 23/1979, 1979: 135, Supreme Court, Decision no. 467/1982, 1980-1985: 129), such as for example, undivided share of mass, batch composition, nature of the goods, sealing needs and/or spiritual, co-owner possibility of purchasing other goods of the kind subject to partition, investments by some communicants goods from batch composition.

Under the circumstance in which the portions awarded in kind to co-owners are not equal from a value point of view, the difference shall be compensated by an amount of cash called balancing payment, which shall be paid by those tenants who have received portions of a higher value (Supreme Court, Decision no. 1022/1979, 1979: 67). So, if equitable partition is not possible, which covers fully the right of each co-owner, the inequality between the right due and the assets received is completed, in compliance with Article 983 paragraph 3 of the Civil procedure Code, by a compensation in cash.

Each tenant shall be forced to pay in title of balancing payment the difference between the value due, according to his/ her share, and the value of the assets he/she has received; thus, the legal practice has decided that if improvements have been made to the co-owned building solely by one of the co-owners, to whom it was ruled that should be awarded in property, the value of the balancing payment shall be determined by relating the share of the property right to the circulation assets value of the building as it was on the date of purchasing (Court of Appeal of Bucharest, Decision no. 185/2007, 2007: 734).

In practice (Supreme Court, Decision no. 1590/1989, 1990: 56), under the old regulations applicable to the new provisions, it was decided that, if more of the co-owners are required to pay any compensation, between them there is not a passive solidarity, motivated by the fact that, according to Article 1041 of the old Civil Code, solidarity between debtors is not presumed, but must be stipulated by law or agreement between parties. Currently, the legal and jurisprudential solution remained topical, as the provisions of Article 1041 of the old Civil Code were taken over by Article 1445 of the current Civil Code. Not far, there is no legal provision regarding the solidarity between co-owners liable to pay any compensation. In contrast, the co-owner liable to pay any compensation due to interest from the due date until payment in accordance with Article 1535 and according to previous practice enforced with the new Civil Code (Supreme Court, Decision guidance no. 3/1968, 1968: 13-14) it was decided that the interest shall be payable from the date of application for summons.

A mention should be made that the finality of partition (that of determining the termination of co-ownership status) is not made if the court, upon request, awards the property to several co-owners. The sole difference, as opposed to the situation prior to filing for partition action, consists in the increase of shares to fall upon them. The joint property continues to exist in the relations between them (Atanasiu et al., 2011: 232).

Conclusions

We cannot state that the new regulations are absolute novelty; on the contrary, the New Civil Code solely creates the legislative framework of certain rules used for a long time by the constant legal practice or the result of massive proposals of *lege ferenda*. It is true, setting forth new directions in certain situations was required, so the law maker has made the alterations needed, i.e. for the regulation of rules applying to the termination

Bringing Justice Back In: Legislation and Case Law Evolution

of co-ownership by partition, which have become common law, applying also for inheritance partition, as provided by Article 1143, paragraph (2) of the New Civil Code, as well as for condominium, as stipulated by Article 686 of the New Civil Code. In the New Civil Code it is expressly provided, by Article 669, the rule according to which, the termination of co-ownership by partition may be made at all times, except for when the partition was suspended by law, legal instrument or judicial rule.

Thus, this juridical text gives two rules applicable to partition: the first imperative rule concerns the fact that the right to seek partition is indefeasible, partition being sought as long as the co-ownership lasted. The second rule concerns the fact that partition may be sought at all times, without needing a minimum duration of co-ownership. Award in kind of assets subjected to division constitutes the most important modality to shut down co-ownership by court, a modality having a principle value in the matter. Thus, as many times as possible, the court of law is obligated to resort to partition in kind of the property or of assets subjected to partition. It is the most equitable modality to ensure equality of rights for the former tenants.

Acknowledgement

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699 co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

References:

- Alexandrescu, D. (1912). *Explicațiunea teoretică și practică a dreptului civil român*, Bucharest: Atelierele grafice Socec & Co., Soc. Anom., volume 3, part II.
- Perju, Pavel (1995). Sinteză teoretică de practică a instanțelor judecătorești din circumscripția Curții de Apel Suceava în materia dreptului procesual civil. *Revista Dreptul*, no. 1, 76-92.
- Atanasiu, A. G., Dimitriu, A. P., Dobre, A. F., Dumitru, D. N., Georgescu-Banc, A., Ionescu, R. A., Paraschiv, M., Pădurariu, I., Pipera, M., Pipera, P., Rățoi, A. S., Slujitoru, A. I., Sorescu, I., Șerban, M., Uluitu, G. A., Vaduva, C. M. (2011). *Noul Cod Civil. Note. Corelații. Explicații*, Bucharest: C. H. Beck Publishing House.
- Baias, F. A., Chelaru, E., Constantinovici, R., Macovei, I. (2012). *Noul Cod Civil. Comentariu pe articole*, Bucharest: C. H. Beck Publishing House.
- Boroi, G., Matei, O. S., Costanda, A., Negrila, C., Danaila, V., Teohari, D.N, Raducan, G., Gavris, D. M., Pancescu, F. G., Eftimie, M. (2013). *Noul Cod de Procedură Civilă. Comentariu pe articole*, volume 2, Bucharest: Hamangiu Publishing House.
- Boroi, G., Angheliescu, C. A., Nazat, B. (2013). *Curs de Drept Civil. Drepturile reale principale*, Bucharest: Hamangiu Publishing House.
- Chirică, D. (1996). *Drept Civil. Succesiunile*, Bucharest: Lumina Lex Publishing House.
- Ciobanu, V. M., Boroi, G., Briciu, T. C. (2011). *Drept procesual civil. Curs selectiv. Teste grilă. 5th edition*, Bucharest: C. H. Beck Publishing House.
- Ciobanu, V. M., (1996, 1997). *Tratat teoretic și practic de procedură civilă*, Bucharest: National Publishing House.
- Comăniță, G. (2002). *Partajul judiciar*, Bucharest: Lumina Lex Publishing House.
- Deak, F. (2002). *Tratat de drept succesoral*, 2nd edition, Bucharest: Universul Juridic Publishing House.
- Deleanu, I. (2013). *Tratat de procedură civilă*, vol. II, Bucharest: Universul Juridic Publishing House.

Raluca Lucia CISMARU

- Eliescu, M. (1966). *Transmiterea și împărțea moștenirii în dreptul RSR*, Bucharest: Academia Republicii Socialiste Romania.
- Frențiu, G. C., Băldean, D. L. (2011). *Codul de procedură civilă comentat și adnotat*, Bucharest: Hamangiu, Publishing House.
- Law no. 36/1995 published in the Official Gazette no. 72 of February 4th, 2013, as subsequently amended.
- Law no. 192/2006, published in the Official Gazette no. 441 of May 22nd, 2006 and was subsequently amended.
- Leș, I. (1998-1999). *Principii și instituții de drept procesual civil*, Vol. II, Bucharest: Lumina Lex Publishing House.
- Leș, I. (2013). *Noul Cod de procedură civilă. Comentariu pe articole*, Bucharest: Hamangiu Publishing House.
- Nicolae, M. (2010). *Tratat de prescripție extinctivă*, Bucharest: Universul Juridic Publishing House.
- Pop, L., Harosa, L. M. (2006). *Drept civil. Drepturile reale principale*. Bucharest: Universul Juridic Publishing House.
- Stătescu, C. (1967). *Drept civil*, Bucharest: Didactică și Pedagogică Publishing House.
- Stoica V., (2006). *Drept civil. Drepturile reale principale*, Vol. 2, Bucharest: Humanitas Publishing House.
- Supreme Law Court (1968). Hotărâri judecătorești în materie civilă, Decision no. 3/1968. In the *Collection of Decisions*.
- Supreme Law Court (1979). Hotărâri judecătorești în materie civilă, Decision no. 23/1979, Reports of Decisions in 1979. In the *Collection of Decisions*.
- Supreme Court of Justice (1994). Panel of 7 judges, Decision no. 25/1994. *Buletin de jurisprudență*.
- Supreme Law Court (1979). Hotărâri judecătorești în materie civilă, Decision no. 223/1979. In the *Collection of decisions 1979*.
- Supreme Law Court (1990). Hotărâri judecătorești în materie civilă, Decision no. 384/1989 in Law no. 3/1990.
- Supreme Law Court (1970). Hotărâri judecătorești în materie civilă, Decision no. 399/1970. In the *Jurisprudența Înaltei Curții Supreme de Justiție 1969-1975*.
- Supreme Law Court (1975). Hotărâri judecătorești în materie civilă, Decision no. 419/1975. *Collection of decisions by years 1957*.
- Supreme Law Court (1982). Hotărâri judecătorești în materie civilă, Decision no. 467/1982. *The Directory of civil judicial practice of the Supreme Court and other courts in the years 1980-1985*.
- Supreme Law Court (1971). Hotărâri judecătorești în materie civilă, Decision no. 1203/1971. In *Rapoartele deciziilor*.
- Supreme Law Court (1978). Hotărâri judecătorești în materie civilă, Decision no. 1287/1978. In *Rapoartele deciziilor*.
- Supreme Law Court (1990). Hotărâri judecătorești în materie civilă, Decision no. 1451/1989. *Dreptul*, no. 4/1990.
- Supreme Law Court (1990). Hotărâri judecătorești în materie civilă, Decision no. 1590/1989. *Law*, no. 5/1990.
- Supreme Law Court (1981). Hotărâri judecătorești în materie civilă, Decision no. 1874/1981, Reports of Decisions in 1981.
- Supreme Court of Justice (1994). Hotărâri judecătorești în materie civilă, Decision no. 2589/1993. *Law*, no. 8/1994.
- Supreme Law Court (2003). Hotărâri judecătorești în materie civilă, Decision no. 5434/2001. *Pandectele Române*, no. 4/2003.

Bringing Justice Back In: Legislation and Case Law Evolution

Tabarca, M. (2013). *Drept procesual civil*, Vol. 2, Bucharest: Universul Juridic Publishing House.

Timișoara Court of Appeal (2009). Hotărâri judecătorești în materie civilă, Decision no. 331/2009. *Săptămâna Juridică*, no. 11/2009.

Article Info

Received: February 20 2015

Accepted: March 25 2015
