

# **Judicial Real Estate Foreclosure**

## **Abstract – PhD thesis**

This doctoral thesis analyzes a highly important judicial foreclosure procedure, both from a theoretical and practical point of view, which is inherent in the civil procedure and enforcement, real estate judicial foreclosure, respectively.

The real estate judicial foreclosure procedure is one of the most important and binding civil execution procedures known in the Romanian legal system. This procedure of judicial foreclosure, specific to indirect enforcement, is conducted by following certain rules and principles governed by the executorial procedural law, or Code of Civil Procedure, which leverages real estate property of the debtor, in order for the creditor to exercise their rights.

The real estate judicial foreclosure procedure must be carried out in full observance to the principle of legality. This principle of law implies compliance with all existing rules governing the Civil Execution Procedure by both enforcement bodies and by all participants or legal entities involved in carrying out this procedure.

The premises of this material is given by art. 812-886 of the New Code of Civil Procedure and art. 488-571 of the Code of Civil Procedure in 1865.

The chosen topic is of great importance, as the real estate judicial foreclosure procedure requires taking procedural action with serious and important implications for the bailiff, sometimes with considerable patrimonial movements and attachment orders, significant monetary value distributions, as well as addressing certain procedural situations that occur during the course of this procedure, which are to be taken when specific situations claim them, and when they are imposed to be taken for better management and exploitation of monitored properties.

Throughout the paper I made numerous references to practical situations which arose during my civil execution practice, including my own enforcements that were subject of the European Court of Human Rights and which condemned Romania for its postponement, delay and lack of support from authorities for the enforcement of certain court decisions and brought about even my deprivation of liberty as bailiff.

Also, in the content of the paper I analyzed the extensive changes that occurred as a result of the effect of the New Code of Civil Procedure on 15 February 2013, in respect to the judicial foreclosure of property, and I compared the new changes of executorial procedures with the old ones that have been repealed and were subject to the Code of Civil Procedure in 1865.

**The first chapter of the first title** deals with the fundamental rules of enforcement, therefore I analyzed the concept, role and importance of enforcement in general, referring to the definition, purpose and legal nature of enforcement, the historic landmarks and the evolution of the institution of enforcement over time, which from its

primitive and private inception, having been dominated by cruelty and revenge, has gradually become secularized and formal in character, which is what is known nowadays.

**The second chapter of the first title** is devoted to the enforcement law report covering general concepts related to existing major enforcement procedures which are covered in Book V of the Code of Civil Procedure and which are classified in two wide ranges, namely direct enforcement and indirect enforcement.

Thus, within the direct enforcement frame I identified four distinct forms of enforcement, as follows: 1) the forced surrender of movable property goods subject to the provisions of art. 892-894 Code of Civil Procedure; 2) the levy of real estate property, subject to the provisions of art. 895-901 Code of Civil Procedure; 3) enforcement of other obligations to set up or not a procedure that is subject to art. 902-913 Code of Civil Procedure; 4) enforcement of court orders relating to minors, a new distinct and welcomed procedure, designed to cover a gap in our old law, with great emotional value, which is subject to the provisions of art. 909-913 Code of Civil Procedure. The last two forms of enforcement, though they first seem as forms of the same procedures in terms of the inclusion of regulating articles, have,

however, a completely different specific character as enforcement procedures, even if we think of the object of the execution as the subject of enforcement cannot ever be made an object of enforcement.

I also analyzed and identified, within the indirect enforcement procedure, looking at both the old and the new code, the following: 1) real estate foreclosure, art. 726-779 Code of Civil Procedure; 2) execution, art. 780-793 Code of Civil Procedure; 3) pursuing benefits and income properties, art. 794-811 Code of Civil Procedure; 4) judicial real estate foreclosure, art. 812-862 Code of Civil Procedure.

In **the third chapter of the first title** I succinctly analyzed the main participants in the enforcement procedure, namely: the parties, the court of law, the bailiff, the participation and the role of the prosecutor in enforcement activities, public employment agencies as well as other participants necessary to carry out the enforcement.

**Title II** was devoted to the analysis of the principles governing the entire procedure of enforcement and the organization of bailiff profession, where I analyzed: the principle of legality, the principle of availability, the principle of public order, the principle of equality before the law, the principle of the active role of the bailiff, the principle of the bailiff's professionalism, the principle of informing, the principle of immediacy, the principle of conducting the enforcement procedure in Romanian, the principle of professional secrecy, the principle of humanity.

The principle of legality, expressly provided by art. 625 Code of Civil Procedure, establishes the rule according to which the entire enforcement activity that a bailiff conducts should be done only by bailiffs in compliance with the law, the rights of the parties and other

interested people, and the carrying out of enforcement activities by other people is prohibited as per the provisions of art. 623 Code of Civil Procedure.

The principle of availability, although not acknowledged *expresis verbis*, is one of the most important principles governing the entire enforcement activity, enabling the parties to have the object of enforcement, but within the limits and conditions provided by law, judiciously determining the creditor's behavior as well as the debtor's behavior. This principle of law ultimately resulted from the entire regulation of the Code of Civil Procedure.

The principle of public order establishes the rule by which enforcement rules are previously established by law and shall apply to all cases and persons under the law, from the date they take effect until repeal.

The principle of equality before the law, established in art. 5 of Law no. 188/2000 regarding bailiffs, implies that the entire work of bailiffs is to be done according to the law, the rights and interests of the parties, interested persons irrespective of race, nationality, ethnic origin, language, creed, sex, political affiliation, property or social origin.

The principle of the active role that a bailiff plays, throughout the enforcement is established in the provisions of art. 627 Code of Civil Procedure. according to which they act in the interests of the parties, and throughout the enforcement are obliged to have an active role and

to continue by all means permitted by law to achieve full and expeditious enforcement of the obligation under the enforceable title.

The principle of professionalism requires that the entire enforcement activity, as well as the settlement of all legal executive reports that the bailiff has to set up are to be made independently, freely, without any external interference, according to the law and professional conscience.

The principle of information involves a prior notification requirement to be issued to the debtor by the bailiff, relating to the enforcement procedures that will be taken against him for failure of fulfillment of their legal obligation.

The principle of immediacy consists of the personal exercise of the obligations and professional duties with which the bailiffs were invested, in the activity of public interest.

The principle of applying the executorial procedure in Romanian, provided by art. 52 para. (2) of Law no. 188/2000 regarding bailiffs, implies that all acts done by bailiffs shall be made only in Romanian.

The principle of humanity reflects the social protection given by the state, at a certain time, to the debtor in certain urgent circumstances under which they are found, which is why the enforcement is patrimonial in character and has a personal connotation of physical restraint.

**Title III** of the thesis was reserved for the most important enforceable titles which are commonly encountered in practice, under which the creditor may request and initiate enforcement proceedings.

In this regard, the new regulation of the enforceable investment was analyzed, enforcement proceedings prior to investment being eliminated by the new Code of Civil Procedure, as it was no longer an independent procedure, required prior, self-contained, as it was in the old regulation which made the existence of this executorial formula trigger enforcement.

Currently, art. 665 para. (7) of the new Code implies that the writ of enforcement shall be applied in the final declaration of the end of enforcement. Therefore, the acquisition of any formula of enforceable title undergoing enforcement is made along with the approval of enforcement, through the same conclusion given by the enforcing court, which also gives consent over the enforcement.

As for the scope of enforceable titles, it should be noted that the Code of Civil Procedure has eliminated the concept of final judgment that was known in the procedure code of 1865, currently court decisions being: enforceable court decisions and final decisions.

The scope of enforcement titles being quite varied, I analyzed, in detail, the most important categories of enforceable titles encountered in the execution practice, i.e. arbitral court decisions, foreign court decisions, ECHR court decisions, enforcement orders under European regulations, foreign arbitral decisions, authentic notary documents, bill

of exchange, promissory note, check, bank credit agreements, legal contract, lease contract, act of adjudication, as well as the new categories of enforceable titles under the new Civil Code.

**Title IV** of the paper thoroughly analyzes the procedure of judicial foreclosure of real estate, procedure which is regulated by art. 812-862 Code of Civil Procedure.

In **the first chapter of the fourth title named - Generalities -** concept, purpose and role of the judicial foreclosure were firstly analyzed, which supported my pointing out that the judicial real estate foreclosure is the most important form of indirect enforcement, having as primary goal to determine the debtor who has to pay the debt and ultimately to satisfy the creditor's claim. This judicial foreclosure procedure has an important constraining role on the debtor.

**Chapter two of the fourth title** deals with the limitations of judicial real estate foreclosure on the debtor which the legislator has provided in the New Code of Civil Procedure, namely: seizure of the minor debtor or forbidden judiciary; prosecution of mortgaged real estate; seizure of real estate which are in common shared ownership; seizure of real estate based on claims that do not exceed RON 10,000 and seizure of fiduciary real estate.

**The third chapter** is reserved for the stages of the real estate judicial foreclosure, seizure procedure within which I identified *three extensive stages* to lay the ground for any seizure, namely:



1. Stage one, of start or information in launching the real estate judicial foreclosure procedure;
2. Stage two, of preservation and conservation of assets subject to seizure;
3. Stage three, of asset recovery subject to the real estate judicial foreclosure procedure.

Then, in *the first stage* I analyzed the following procedures and formalities:

- 1) the making of the request for real estate judicial foreclosure by the seizure creditor;
- 2) the recording of the request for real estate judicial foreclosure by the bailiff after completion of registration conclusion and opening or rejection of the case;
- 3) the request for a statement of approval of the real estate judicial foreclosure to the enforcement court by the bailiff;
- 4) the approval of real estate judicial foreclosure by the enforcement court's closing.

In *the second stage* the following procedures and formalities were analyzed:

- 1) the communication of the statement of approval by the bailiff of the Land Register Office in order to register the seizure of the real estate in the Land Register to the seizure creditor, as well as to the

interested persons who have made notifications prior to the start-off of the real estate judicial foreclosure;

2) the communication of the conclusion of the statement of approval of the registration by the real estate registrar to the bailiff, to the seizure creditor, as well as to the interested persons who have made notifications prior to the start-off of the real estate judicial foreclosure;

3) the assessment of the rights stated prior to the start of judicial foreclosure in the real estate registrar, the possibility of joint venture, foreclosure bids, the possibility of suspending the foreclosure solicited by the debtor, respectively;

4) the eviction of the debtor from the seized real estate and the latter's administration by the distraining administrator until assets levy.

In *the third stage* I have considered the following formalities and procedures:

1) The formalities prior to marketing for sale and the preparation of the report on the case, the building evaluation and real estate pricing subject of the seizure;

2) setting the date of sale at public auction of the foreclosed property, issuing and communication of the sales publications;

3) the sale at public auction of the foreclosed property;

4) filing the price and adjudication of sold property;

5) the registration of the successful bidder in the Land Register and his/her vesting in possession of the acquired property;

**Title V** was reserved for the procedure of issuing and distributing the financial amounts resulted from real estate judicial foreclosures whereby formalities related to the release of the financial amounts were widely debated upon, as well as the order of preference of claims, the deadline for debt securities, debt securities filing, preparation and presentation of the distribution project, the payment of the sums resulting from the foreclosure, handover of the debt securities and closure of the legal seizure as a result of performing the real estate judicial foreclosure.

Throughout the paper, numerous comparisons have been made, where I analyzed the differences between the regulations of the real estate judicial foreclosure as stipulated under the Old Code of Procedure of 1865 and the new regulations published in the New Code of Civil Procedure as well as enforcement judicial practice, thus shaping an overview of the whole procedure of real estate judicial foreclosure.

As for new formalities arising in the case of the real estate judicial foreclosure, I have expressed my own views, criticizing and arguing, sometimes, the excessive formalism that is reflected in the new Code of Civil Procedure, and the lack of legislative coherence and effectiveness, as well as the loopholes of the new legislation.

To support my statements in the paragraph above, I present, for example, several critical issues approached by me in this work.

Thus, the only real estate judicial foreclosure onset, of the first stage of information respectively, the bailiff faces the following formalities:

1) the request for referral made by the plaintiff creditor under Art. 663 Code of Civil Procedure;

2) issue of the closure of registration and opening of proceedings as per art. 664 Code of Civil Procedure;

3) the preparation of the application under Art. 665 para. (2) Code of Civil Procedure by the bailiff requesting permission for foreclosure;

4) the delivery of the statement of approval under art. 665 para. (3) Code of Civil Procedure, by the enforcement court;

5) ordering by conclusion the updating of the claim, the interest, penalties and other amounts calculation, pursuant to Art. 628 para. (1) - (3) Code of Civil Procedure;

6) the establishment of costs of implementing the foreclosure according to art. 669 para. (4) Code of Civil Procedure;

7) if the property subject to seizure by real estate judicial foreclosure is in a judicial district other than where the execution body is established, the bailiff will require by means of a new application to the respective courts, according to art. 819 Code of Civil Procedure, a new conclusion of statement of approval related to the property under seizure within its territorial jurisdiction;

8) The execution court at the venue of the real estate in question, notified by means of such request, shall rule thus and therefore, one more conclusion, as per art. 819 relative to art. 663 and 664 Code of Civil Procedure;

9) When such eight preliminary formalities from the first phase of information have been carried out, the bailiff shall thence require, by means of a new application, the Land Register Office, however, the concluding of the statement of approval for the real estate judicial foreclosure pronounced by the enforcement court, according to art. 821 Code of Civil Procedure, to register the start-off of the seizure; 10) and after meeting these new formalities, the bailiff shall summon the debtor to meet his/her payment obligation under the enforceable title, according to art. 820 para. (1) Code of Civil Procedure.

We can say, without fear for fail, that the new real estate judicial foreclosure procedure of the debtor's assets regulated by the New Code of Civil Procedure is full of excessive formalism, inefficient and deprived of substance.

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- Code of Civil Procedure, the Romanian Magazine for Foreclosures no. 3/2010;
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7. Isnard J., Stoica A., *Executorul judecătoresc- Elementul esențial în statul de drept. Viziunea CEDO asupra rolului acestuia în cadrul executărilor în natură*.

### **C. NATIONAL AND INTERNATIONAL LEGISLATION**

- Civil Code;
- Code of Civil Procedure;
- Code of Fiscal Procedure;
- Commercial Code;
- The Constitution of Romania;
- European Convention on Human Rights;
- The Code of Civil Procedure was decreed on September 9, 1865 and enacted on September 11, 1865, implemented on December 1, 1865;

- Law no 58/1934 regarding the bill of exchange and the promissory note published in the Official Gazette, no. 100 on May 1, 1934;
- Law no. 59/1934 regarding the check, published in the Official Gazette no. 100 on May 1, 1934;
- Law no. 104/1992 was published in the Official Gazette no. 244 on October 1, 1992;
- Law no. 105/1992 regarding the regulation of private international law, published in the Official Gazette no. 245 on October 1, 1992;
- Law no. 59/1993, published in the Official Gazette no. 177 on July 26, 1993;
- Law no. 65/1993, published in the Official Gazette no 241 on October 7, 1993;
- Law no. 51/1995 on the organization and exercise of the profession of lawyer, published in the Official Gazette no. 116 on June 9, 1995;
- Law no. 17/1996, published in the Official Gazette no. 26 on February 18, 1997;
- Law no. 7/1996 Cadaster and real estate publicity law republished in the Official Gazette no. 83 on February 7, 2013;
- G.O. (*T.N.: G.O. – Government Ordinance*) regarding leasing operations and leasing companies, republished in the Official Gazette no. 9 on January 12, 2000;
- Law no. 146/1997 regarding judiciary stamp taxes, published in the Official Gazette no. 173 on July 29, 1997;

- G.O. no. 13/1998, published in the Official Gazette no. 40 on January 30, 1998;
- G.E.O. (*T.N.: G.E.O. – Government Emergency Ordinance*) no. 51/1998 regarding Recovery of State Assets, published in the Official Gazette no. 485 on December 5, 1998;
- Law no. 99/1999, published in the Official Gazette no. 236 on May 27, 1999;
- Law no. 188/1999 regarding the status of civil servants, republished in the Official Gazette no. 365/2007;
- G.O. no. 94/1999, published in the Official Gazette on August 31, 1999;
- G.E.O. no. 138/2000 on the amendment and completion of the Code of Civil Procedure, published in the Official Gazette no. 479 on October 2, 2000;
- Law no. 188/2000 regarding bailiffs was published in the Official Gazette no. 550 on November 2000;
- G.E.O. no. 18/2001 for the amendment of the Law no. 188/2000 regarding bailiffs, published in the Official Gazette no. 64 on February 6, 2001;
- G.O. no. 7/2001 regarding the income tax, published in the Official Gazette no. 435 on August 3, 2001;
- Law 10/2001 regarding the legal status of real estate unlawfully seized during the period from March 6, 1945 until December 2, 1989, published in the Official Gazette no. 279 on April 4, 2005

- G.E.O. no. 64/2001 on the amendment and completion of the Law no. 188/200 regarding bailiffs, published in the Official Gazette no. 233 on May 9, 2001;
- Law no. 333/2001 regarding some measures on the lessening of the consequences post cessation of fund unit redemption by the National Investment Fund published in the Official Gazette no. 360 of July 4;
  - Order of the Ministry Of Justice concerning the settlement of the minimum wages for the rendered services by the bailiffs, published in the Official Gazette no. 236 of May 10, 2001;
  - Law no. 469/2002 concerning some measures for the consolidation of contractual discipline, published in the Official Gazette no. 529 of July 19, 2002;
  - G.O. no 22/2002 concerning the enforcement of payment obligation of the public institutions stipulated in enforceable titles, published in the Official Gazette, no. 81 of February 1, 2002;
  - Law no. 540/2002 concerning the pensioners mutual funds published in the Official Gazette no.723 of October 3, 2002;
  - The Government Ordinance no. 92/2003 concerning the Fiscal Procedure Code, republished in the Official Gazette no. 723 of October 3, 2002;
  - The current Constitution of Romania was amended and completed by the Law of revision of the Constitution of Romania no. 429/200, published in the Official Gazette no. 758 on October 29, 2003;

- The C.E.D.O decision was published in the Official Gazette no. 1.2.45 of December 23, 2004;
- G.E.O no. 23/2004 regarding some reorganization measures of the Authority for the Capitalization of the Bank's Assets (A.V.A.B.) by merger through absorption with the Authority for Privatization and the Administration of the State's Contributions (*T.N.: A.P.A.P.S - Autoritatea pentru Privatizare și Administrarea Participațiilor Statului* ) and thus, changing its nomenclature to Authority for the Valorification of the Bank's Assets (*T.N.: A.V.A.B. - Autoritatea pentru Valorificarea Activelor Bancare*). By Governmental Resolution no. 837/ 2004 published in the Official Gazette no. 503 of June 4, 2004;
- Law no. 304/2004 concerning the judicial organization, republished in the Official Gazette no. 827 of September 13, 2005;
- Cooperation Protocol regarding the support granted by the bodies of the Ministry of Administration and Interior to the bailiffs that work for the Romanian Nation Union of Bailiffs and enforce public authority, concluded on July 2004 and published in the Bailiff's Informative Bulletin no. 1/2004;
- The Pina and Bertani and Manera and Atripaldi case against Romania resulted in the Decision of C.E.D.O (*NT: C.E.D.O. - European Court of Human Rights*) on June 22, 2004, published in the Official Gazette, no. 1245 of December 23, 2004;
- Law no 554/ 2004 regarding the contentious administrative matters published in the Official Gazette no. 1154 of December 7;

- G.E.O no. 190/2005 on the implementation of measures that are mandatory in the European integration process, published in the Official Gazette no. 1.179 of December 28, 2005;
- Law no. 248/2005 regarding the free circulation of Romanian citizens abroad, published in the Official Gazette, no. 682 of July 29, 2005 with its subsequent amendments and additions;
- G.E.O no. 99/2006 regarding credit institutions and the capital adequacy, published in the Official Gazette no. 1.027 of December 27, 2006;
- Law no. 459/2006 on the amendment and the completion of the Civil Procedure Code was published in the Official Gazette, no. 994 of December 13, 2006;
- Law no. 278/2006 for the amendment and the completion of the Criminal Code, and also for the amendment and completion of other laws published in the Official Gazette, no. 601 of July 12, 2006;
- G.E.O no. 144/2007 on the amendment and completion of Law no. 188/2000 concerning bailiffs, published in the Official Gazette no. 880 of December 21, 2007;
- Decision XXXVIII/2007, published in the Official Gazette no. 764 on November 12;
- The current Civil Code was ratified on the basis of Law no. 287/2009 and published in the Official Gazette no. 511 of July 24, 2009;
- Decision 4/2009 published in the Official Gazette no. 381 on June 4, 2009;

- Decision no 31/2009 published in the Official Gazette no. 111 on February 18, 2010;
- G.E.O no. 42/2009 on the amendment of the Civil Procedure Code was published in the Official Gazette no 324 on May 15, 2009;
- Law no. 93/2009 on non-banking financial institutions, published in the Official Gazette no. 259 of April 21, 2009;
- Law no. 202/2010 on some measures for the acceleration of the settlement of trials was published in the Official Gazette, no. 714 of October 26, 2010;
- Working procedures developed by the Ministry of Administration and Interior and the General Inspectorate of the Romanian Police on support granted to bailiffs and other similar parties (PRO - PS / POP 31) of September 13, 2010;
- Law no. 263/2010 concerning the unitary system of public pensions published in the Official Gazette, no. 852 of December 20, 2010;
- Law no. 287/2011 regarding some measures for organizing the enforcement activities of the receivables belonging to credit institutions and non-banking financial institutions, published in the Official Gazette, no. 894, December 16;
- Law no. 71/2011 on the enforcement of the Law no. 287/2009 concerning the Civil Code, published in the Official Gazette, no. 409 of June 10, 2011;



- The Certificated Bailiff Register for 2011 was approved by Decision no. 16 of February 18, 2011, published in the Official Gazette no. 194 of March 21, 2011;
- Law no. 151/2011 regarding the approval of the G.E.O no. 144/2007 for the amendment para. (1) to art. 37 of the Law no. 188/2000 concerning bailiffs, published in the Official Gazette, no. 493 of July 11, 2011;
- Law no. 154/2011 for the completion of Law no. 188/2000 regarding bailiffs, published in the Official Gazette, no 510 of July 19, 2011;
- Law no. 287/2011 on some measures for organizing the enforcement activities of the receivables belonging to credit institutions and non-banking financial institutions, published in the Official Gazette, no. 894, December 16, 2011;
- Law no. 76/2012 for the enforcement of Law no. 134/2010 concerning the Civil Procedure Code was published in the Official Gazette no. 365 on May 30, 2012;

## **D. VOLUMS OF CONGRESSES, CONFERENCES,**

### **SEMINARS**

1. *Principalele raporturi execuționale existente în dreptul românesc. Privire comparativă cu dispozițiile Legii nr. 134/2010 privind Noul Cod de procedură civilă*, the article contains some critical notes to the new provisions of procedure regulated by Law no.

- 134/2010 regarding the New Code of Civil Procedure, The Romanian Magazine for Foreclosure, no. 3/2010, Tereacă C.T.;
2. *Activitatea de executare silită și rolul executorului judecătoresc*, RES no. 2/2005, Tereacă C.T.;
  3. *Natura juridică a executării silite de drept comun*, RRES, no. 2/2010, Tereacă C.T.;
  4. *Executarea silită între mica reformă și marea reformă prevăzută de Noul Cod de procedură civilă*, in the volume of the International Conference “The Bailiff Between Active Role and Jurisdiction Body”, Tereacă C.T.;
  5. *Principalele titluri executorii*, Acta Universitatis Lucian Blaga no.1/2010, Tereacă C.T.;
  6. *Executarea silită între mica reformă și marea reformă prevăzută de Noul Cod de procedură civilă*, in the volume of the International Conference “The Bailiff Between Active Role and Jurisdiction Body”, Tereacă C.T.;
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  8. *Articolul Președintelui Uniunii Internaționale a Executorilor Judecătorești și ai Ofițerilor Justiție (U.I.H.J.)*, The Magazine for Foreclosures no. 1/2004, Jacques Isnard;
  9. *Existența și funcționarea Corpului Executorilor Bancari și ai altor categorii de executori în România în paralel cu instituția*

*executorului judecătoresc, în contradicție cu doctrina Uniunii Europene în materia executării silite, R.E.S. no. 2/2005, Mihai D.;*

10. The official speech of Leo Netten, the President of the International Union of Bailiffs and Judicial Officers in Paris, on November 28th 2011, on the adoption of the legislative proposal PL-X no. 687/2010, regarding certain measures for organizing the enforcement activity of the receivables belonging to credit institutions and non-banking financial institutions, which became Law no. 287/2011 on measures for organizing the enforcement activity of the receivables belonging to credit institutions and non-banking financial institutions, published in the Official Monitor, no. 894, on December 16th 2011.

## **E. JUDICIAL PRACTICE**

1. The inspection report of the Ministry of Justice no. 11, of October 14, 2005 that reveals the fiscal authorities' unwillingness to perform enforcement and waive the privilege conferred by the law, in this case by the Financial Administration, which preferred to remove these specific dispositions included in the law of the Fiscal Procedure Code.
2. The decision in Ruianu case against Romania, published in the Official Gazette. No. 1139 of December 2, 2004;

3. The decision in Pini, Bertani, Manera and Atripaldi case against Romania, published in the Official Gazette. No. 1245 of December 23, 2004;
4. The decision in Sabin Popescu case against Romania, published in the Official Gazette. No. 770 of August 24, 2005, the decision in Sandor case against Romania, published in the Official Gazette. No. 1048 of November 25, 2005;
5. The Constitutional Court Decision No. 458 of March 31, 2009, published in the Official Gazette. No. 256 of April 17, 2009, was issued as a result of the acceptance of the plea of unconstitutionality raised by SC Thyssenkrupp Bilstein Compa SA (Joint Stock Company) Sibiu ThyssenKrupp Bilstein Suspension GmbH and ThyssenKrupp AG in the case file 4858/306/2007 of the Court in Sibiu. The author of the unconstitutionality exception invoked constitutional violation of Art. 1 The Romanian State, Art. 21 Access to justice, Art. 44 The right to private property and Art. 126 Courts/ Judiciary authorities, with reference to Art. 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the right to a fair trial, as well as Art. 1 of Protocol No. 1 to the Convention regarding the right to private property.
6. The Cooperation Protocol regarding the support structures granted by the Ministry of Administration and Interior to the bailiffs of the Romanian National Union of Bailiffs in the practice of public authority concluded in July 2004 and published in the Informative Report of Bailiffs No. 1/2004;

7. Pini and Bertani and Manera and Atripaldi case against Romania embodied in the ECHR Decision of June 22, 2004, published in the Official Gazette. No. 1245 of December 23, 2004, which were based on foreclosures performed by us based on enforcement files 1404/2001, 1405/2001, 1406/2001 and 1407/2001 and pending before our office in Brasov, concerning the returning of adopted minor children in the custody of their foster parents, foreign citizens.

8. Working procedures developed by the Ministry of Administration and Interior and the General Inspectorate of Romanian Police on support granted to bailiffs and other similar parties (PRO - PS / POP 31) of 13 September 2010 and entered into force on 27 September 2010, which stipulated that police bodies have no prerogatives whatsoever to that effect.

9. 5th District Court Bucharest Civ. Sent. No. 4781/2002, in M. Tăbăraș, appeal against enforcement. Judicial Practice Compendium, All Beck Publishing, Bucharest, 2005;

10. The Supreme Court Civil Chamber, Decision No. 633/1969, Compendium of Court Decisions 1969;

## **F. SITES**

- <http://www.uihj.com/>.
- National Union of Bailiffs in Romania:  
[http:// www.executori.ro/](http://www.executori.ro/)
- <http://eur-lex.europa.eu/>

- [www.cdep.ro/](http://www.cdep.ro/).
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