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Violation of the Principle of Equality of the Parties in Proceedings Where the State is the Debtor

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Abstract: A civil or administrative litigation case does not end with the pronouncement of a final and/or irrevocable court decision. The enforcement phase represents the second stage of a civil trial, and the universally recognised principles for examining and resolving a dispute in court are also fully applicable to the enforcement stage. In the practice of national courts, it has been observed that the provisions of the Law on Public Finance and Budgetary-Fiscal Responsibility No. 181/2014 (as of the year 2016) contained unconstitutional regulations through which the enforcement of final court decisions was avoided, contrary to the provisions of Articles 20 and 120 of the Constitution. Although this issue was considered resolved through Constitutional Court Decision No. 32 of 17.11.2016, regrettably, the Parliament of the Republic of Moldova reinstated the same situation by adopting Bill No. 212/2017. Today, at the enforcement stage, court decisions obligating public law legal entities to pay monetary sums cannot be enforced simply because an appeal was declared, according to Article 68 para. (2¹) of the Law on Public Finance and Budgetary-Fiscal Responsibility No. 181/2014. If the principle of equality of parties in a trial implies that the legislator may provide for different treatment in specific situations for some litigants, this does not mean that the principle of equality of arms in a trial should be violated by adopting an unconstitutional norm. In other words, if a public law legal entity has the constitutional right to request from the appellate court the suspension of the enforcement of a final decision without posting a bond, then the same entity should not be allowed to unilaterally benefit from an automatic suspension of the enforcement of an appealed decision (in the case of the unquestionable removal of funds from the accounts of the national public budget's components) solely because of pressure on the public budget—especially when, under similar conditions, a private law legal entity does not benefit from such procedural advantages.

Keywords: constitution; judiciary; opposition; appeal; constitutionality control

By the decision of the Civil, Commercial, and Administrative Litigation Panel of the Chisinau Court of Appeal No. 3a-1091/2023 of 10.07.2024, the appeal filed by LLC “B” (successor in rights and obligations to LLC “G.R.”) was upheld, the judgment of the Chisinau Court (Riscani office) No. 3-1699/22 of May 3, 2023, was entirely quashed, and a new decision was issued whereby the administrative litigation action initiated by LLC “B” (successor in rights and obligations to LLC “G.R.”) was admitted, the refusal of the National Health Insurance Company No. 01-07/1816 of 01.07.2022 was annulled, and the National Health Insurance Company was ordered to issue a favorable individual administrative act to enforce the claim of LLC “G.R.” (now succeeded by LLC “B”) dated May 31,

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2022, regarding the payment of the amount of 2 497 544,21 MDL. Additionally, the National Health Insurance Company was ordered to pay the amount of 10.000 MDL (ten thousand lei) to LLC "B" as legal assistance costs.

Thus, on 15.07.2024, LLC "B" submitted a request to the National Health Insurance Company, requesting enforcement of the decision of the Chisinau Court of Appeal and payment of the amount of 2 497 544,21MDL, as well as the amount of 10,000 MDL (ten thousand lei) as legal assistance costs.

By response No. 01-02/4769 of 23.07.2024, the National Health Insurance Company refused to enforce the decision of the Civil, Commercial, and Administrative Litigation Panel of the Chisinau Court of Appeal No. 3a-1091/2023 of 10.07.2024. Consequently, on 29.07.2024, LLC "B" filed a court application seeking enforcement of the judicial decision, basing its position on the provisions of the Administrative Code.

The Civil, Commercial, and Administrative Litigation Panel of the Chisinau Court of Appeal (Center office), by ruling No. 3ex-41/24 of 28.01.2025, rejected the creditor LLC "B"'s request to initiate enforcement proceedings of the Chisinau Court of Appeal's decision of 10.07.2024, citing the provisions of Article 68 paragraph (21) of Law No. 181/2014 on Public Finances and Budgetary-Fiscal Responsibility.

Article 68 paragraph (1) of Law No. 181/2014 on Public Finances and Budgetary-Fiscal Responsibility provides that: *Enforcement documents concerning the uncontestable withdrawal of funds from the accounts of the components of the national public budget, as well as from the accounts of public authorities/institutions, must be mandatorily submitted by the creditor directly to the budget administrators and/or, as the case may be, to the respective public authorities/institutions after the court decision becomes final.* Whereas paragraph (21) of the same article stipulates that: *An appeal filed against a final court decision regarding the uncontestable withdrawal of funds from the accounts of the components of the national public budget and from the accounts of public authorities/institutions suspends the execution period of the court decision provided for in paragraph (2).*

The equality of the parties in legal proceedings constitutes a constitutional principle. According to an opinion expressed by Petre Dedulescu (Dedulescu, 1930, p. 40), the parties involved in a legal dispute brought before the court must, in principle, benefit from equal procedural opportunities, regardless of the status each holds. From the idea of equality arise the following public rights: equality before the law, equality in access to public office, equality with respect to public obligations, and equality in property protection.

The fundamental principle of equality before the law presupposes *"equal legal treatment for situations which, in light of the intended purpose, are not different, and any different treatment cannot merely be the expression of the legislature's discretionary appreciation, but must be justified rationally and objectively. The principle of equality does not prohibit specific rules where differences in situations exist. Therefore, real inequality can justify distinct rules, depending on the purpose of the law in which they are contained,"* as stated by Dr. Tudorel Toader (Toader & Safta, 2015, p. 78).

This implicit principle has symbolic value, as it includes a fourfold affirmation from which four guiding sub-principles of legal proceedings arise, as established in the case law of the European Court of Human Rights (ECtHR), namely: *the language of the proceedings, equality of arms, the adversarial principle, and the obligation of the court to provide reasoning for its judgments* (Les, 2001, p. 19).

From the idea of equality stem the following public rights: equality before the law, equality in access to public office, equality regarding public duties, and equality in the protection of property (Dedulescu, 1930, p. 40).

The constitutional requirement that justice must be equal for all is a direct consequence of the constitutional provisions enshrined in the Constitution. There are numerous international instruments applicable in the field of justice that emphasize not only the importance of respecting the general principle of equality before the law and all public authorities but also the obligation of states to incorporate this formal rule, deeply rooted in the tradition of justice, into national legislation.

Legal doctrine has emphasized that the principle of equality before the courts entails that all citizens have an equal entitlement to be judged by the same courts and under the same procedural rules, without any form of discrimination. Thus, each party must enjoy the same rights—the right to the same evidence, the same defenses, and the same appeals—because any provision that places one party in a legally inferior position to the other is incompatible with the principle of equality and with the very concept of justice.

The **European Convention on Human Rights** provides in **Article 6** the right of every person to a fair hearing of their case by a court of law. A key guarantee of a fair trial is the full **equality of the parties** before the judge and the court. The parties to a dispute brought before the judiciary must, in principle, enjoy **equal procedural opportunities**, regardless of the legal status of each party. A democratic judicial system cannot grant **jurisdictional privileges** to certain individuals, as the **Constitution expressly prohibits discrimination**. However, this does not prevent the existence of **special procedural rules** or **specialized courts of jurisdiction**.

In **European jurisprudence**, the **principle of equality** (or **equality of arms**) means *"that all parties must be treated equally throughout the entire course of the proceedings before a tribunal, without one party being placed at an advantage in relation to the other(s)"* (Corlatean et al., 2017, p. 251).

The **principle of equality before the law** entails **equal legal treatment for identical situations**, and any differential treatment must not be merely the result of the legislature's discretion but must be **rationally and objectively justified**. The principle does not prohibit the existence of specific rules where there are **differences in situation**. Therefore, *"real inequality may justify distinct rules, depending on the objective of the law in which they are included"* (Toader & Safta, 2015, p. 78).

Equality or fairness granted to the parties applies not only in **judicial procedures** but also in the **enforcement phase**, and represents a principle that arises from the institutional guarantee of the proper administration of justice. This **implicit principle** holds **symbolic value**, as it incorporates a **fourfold affirmation**, from which four guiding sub-principles of civil proceedings, as enshrined in ECtHR jurisprudence, can be identified:

1. The language in which the proceedings are conducted;
2. The equality of arms;
3. The adversarial principle;
4. The obligation of the court to provide reasoning for its judgment (Les & Ghita, 2020, p. 18).

Preferential Treatment of State Institutions Compared to other Persons During the Enforcement Stage

A civil trial does not conclude with the issuance of a final court decision but may continue into the enforcement stage, which constitutes the second phase of the trial. This stage begins with the submission

of an enforcement request to the competent enforcement authority. In administrative litigation cases, enforcement proceedings are initiated and managed by the courts of appeal that have territorial jurisdiction.[1]

Thus, on November 17, 2016, the Constitutional Court noted that, under Article 254(1) of the Civil Procedure Code, *"final judgments are those rendered at first instance which have been subject to appeal, after the case was examined on appeal."* According to paragraph (2) of the same article, irrevocable judgments are:

1. Those issued at first instance, after the expiration of the appeal deadline, if the interested parties did not exercise the appropriate legal remedy;

2. Those issued by the court of appeal, after the expiration of the time limit for recourse, if the interested parties did not exercise the appropriate legal remedy;

3. Those issued by the court of recourse, after examining the recourse.

The Court noted that, according to Article 255 of the Civil Procedure Code, a final court decision is also enforceable, except for the cases of immediate enforcement upon pronouncement (Article 256). Therefore, procedural legislation grants enforceability either upon pronouncement or once the decision becomes final, without requiring that the judgment become irrevocable.

In this context, the Court observed on November 17, 2016, that, unlike the constitutional and civil procedural texts, both Law No. 87/2011 and Law No. 181/2014 subjected the enforcement of court decisions against the state to the stage at which the judgments acquire irrevocable status.

The Constitutional Court did not accept the arguments presented by the authorities, according to which the enforcement by the State of final judgments could risk affecting the principle of legal certainty if the judgment is modified upon recourse. The Court held that the same risks apply to any individual who enforces a final judgment, yet this has not prevented the State from providing that such judgments are to be enforced without waiting for them to become irrevocable.

In this context, the Court observed that the enforcement, even immediate, of a final judgment (such as after appellate review) does not preclude the filing of a recourse. Furthermore, the right to a fair trial does not, in itself, guarantee the right to an automatic suspension of the enforcement of an unfavourable court decision.

As a result, the contested provisions of Law No. 87/2011 and Law No. 181/2014 restricted the scope of enforcement of final court decisions only to those that had become irrevocable, in contradiction with the express provisions of Article 120 of the Constitution. Therefore, they were declared unconstitutional pursuant to Constitutional Court Decision No. 32 of 17.11.2016.

Consequently, on the same day, the Constitutional Court issued an address to the Parliament of the Republic of Moldova, requesting that "in order to improve the normative framework, procedures for the enforcement of final judgments be regulated, and that the amounts associated with applications for suspension of enforcement in recourse proceedings submitted by state institutions be excluded."

Thus, it becomes clear that by its Decision of 17.11.2016, the Constitutional Court reaffirmed the principle of equality of the parties in the proceedings and called on Parliament to end such preferential treatment toward state institutions, while at the same time establishing clear and accessible procedural

[1] https://www.constcourt.md/print.php?l=ro&idc=7&id=909.

rules allowing public institutions to request the suspension of the enforceability of final judgments through the filing of suspension applications in parallel with recourse.

Additionally, the Court pointed out to Parliament the necessity of establishing a distinction between situations in which the suspension of judgment enforcement is requested by private individuals or legal entities and those in which it is requested by public law legal entities.

The Amendment to the Law on Public Finances Circumvented the Requirements of the Constitutional Court, Clearly Favoring State Institutions

Through Draft Law No. 212/2017, signed by the President of Parliament, Andrian Candu, on October 20, 2017, it was proposed to amend the Law on Public Finances and Budget-Fiscal Responsibility as well as the Civil Procedure Code, in a manner entirely different from the requirements set forth by the Constitutional Court in letter No. PCC-01/80g, specifically:

- The following version of Article 435, paragraph (1) of the Civil Code: the appeal suspends the enforcement of the decision in cases involving the relocation of boundaries, destruction of plantations and crops, demolition of constructions or any immovable property, the incontestable disbursement of funds from the budgets that comprise the national public budget and from the accounts of budgetary authorities/institutions, as well as in other cases provided by law. In other words, to the historical grounds for suspending the enforcement of a decision by submitting an appeal, a new ground was added—namely, the incontestable disbursement of funds from the components of the national public budget and from the accounts of budgetary authorities/institutions.

- The supplementation of Article 68 of the Law on Public Finances and Budget-Fiscal Responsibility with Article 21: the appeal lodged against a final court decision concerning the incontestable disbursement of funds from the budgets that comprise the national public budget and from the accounts of budgetary authorities/institutions suspends the execution deadline of the court decision provided in paragraph (2).

As a result, we observe that although the law was apparently amended, in reality, the purpose of this law cannot be achieved, since it brings about the same effects as those before the issuance of Constitutional Court Decision No. 32 of November 17, 2016. Upon examining Draft Law No. 212/2017 and the accompanying explanatory note published on the Parliament's website, we note that on one hand, the legislator adopts the Constitutional Court's argument that the right to the enforcement of a court decision is an integral part of the right of access to justice. On the other hand, however, the amendments made to the law contradict these fundamental findings. Parliament adopted the final version of the draft law despite objections raised by several members of parliament during the sessions of October 5, 2017, and December 1, 2017, in which the unconstitutional nature of Draft Law No. 212/2017 was anticipated.

We emphasize that *the incontestable disbursement of funds from the budgets that comprise the national public budget and from the accounts of budgetary authorities/institutions* cannot constitute a legal ground for the automatic suspension of the enforcement of a final court decision that is under appeal, because the reversal of enforcement can be carried out without major difficulties, especially when compared to cases involving the demolition of constructions. Indeed, when there are grounds to presume that a potential reversal of enforcement may encounter reasonable difficulties (e.g., bankruptcy or the poor financial condition of a private legal entity), the state or its institutions involved in that process may submit a separate and substantiated request to **suspend the enforcement of the final decision until an irrevocable ruling is issued in the case.** Such a suspension and the right granted to parties in this context do not conflict with the principle of equality of arms in the trial, as it represents a right accessible to all parties involved in the dispute. Moreover, this principle remains unaffected even in cases where

public legal entities file requests to suspend the enforcement of final decisions without the obligation to provide a security deposit.

The unconstitutional nature of article 68, paragraph (21) of the Law on public finances and budget-fiscal responsibility No. 181/2014 leads to the violation of the principle of equality of the parties in legal proceedings.

Applying the provisions of Article 68, paragraph (21) of Law No. 181/2014 on Public Finances and Budget-Fiscal Responsibility contradicts the requirements of Articles 16, 20, and 120 of the Constitution of the Republic of Moldova. According to Article 16 of the Constitution, respect for and protection of the individual shall be a primary duty of the state.

The provisions of Article 68, paragraph (21), which regulate the automatic suspension of the enforcement deadline, are unconstitutional because they create a differentiated treatment between the parties in a legal proceeding and violate the principle of equality guaranteed by Article 16 of the Constitution of the Republic of Moldova.

It must be emphasized that both parties in a legal process must be treated equally. Equality means that both parties must be given the opportunity to present their case under equal conditions. No party should be placed in a significantly more disadvantaged position than the other.

It should also be noted that in the Constitutional Court's Decision of November 17, 2016, concerning the exception of unconstitutionality of certain provisions regarding the enforcement of claims against the state, the Court did not accept the authorities' argument that enforcement by the state of final court decisions risks undermining the principle of legal certainty in the event the decision is later overturned on appeal. Instead, the Court held that any person who enforces a final judgment faces the same risks, yet this has not prevented the state from requiring such judgments to be enforced without waiting for them to become irrevocable.

The differential application of regulations on the enforcement of court decisions based on the status of the parties – private creditors versus public authorities – creates inequity, contrary to the spirit of article 16 of the constitution of the Republic of Moldova regarding equality before the law

According to Article 20 of the Constitution of the Republic of Moldova: *"Every person shall have the right to obtain effective satisfaction from the competent courts against acts that violate their rights, freedoms, and legitimate interests. No law may restrict access to justice.* "The wording of Article 20 directly indicates the existence of the state's active obligation to ensure the right to effective judicial redress and the principle of legal certainty. The term "effective" is key to shaping the framework of the state's obligations.

In its Decision of November 17, 2016, concerning the exception of unconstitutionality of certain provisions on the enforcement of claims against the state, the Constitutional Court noted that *"the right to the enforcement of a court decision is an integral part of the right of access to justice"* (*Decision No. 1 of January 15, 2013, on the constitutional review of certain provisions of Article 60 para. (3) and (31) of the Enforcement Code of the Republic of Moldova No. 443-XV of December 24, 2004, §60*).

In the same vein, the European Court of Human Rights (ECtHR) has consistently held that access to justice includes not only the effective legal possibility of bringing a claim before a fully empowered judicial authority and obtaining satisfaction, but also the right to seek the enforcement of the resulting court decision.

Therefore, the right to a fair trial is not limited solely to conducting judicial proceedings under fair, public, and timely conditions—it also encompasses the state's obligation to ensure the effective enforcement of final court judgments. Without this essential stage, the rights recognized by the courts would remain ineffective, thereby undermining the fundamental principles of justice and the rule of law.

In particular, the right of access to justice would be illusory if a state's legal system allowed a final and binding court decision to remain unenforced to the detriment of one of the parties (*Immobiliare Saffi v. Italy, no. 22774/93, July 28, 1999, §63; Sandor v. Romania, no. 67289/01, March 24, 2005, §23*).

Under these circumstances, the provisions of Article 68, paragraph (21) of Law No. 181/2014 on Public Finances and Budget-Fiscal Responsibility—"An appeal lodged against a final court decision concerning the incontestable disbursement of funds from the budgets that comprise the national public budget and from the accounts of budgetary authorities/institutions suspends the deadline for enforcing the court decision provided for in paragraph (2)"—are unconstitutional and seriously violate the parties' right of free access to justice, who should have benefited from the provisions of the Administrative Code regarding the enforcement of final court decisions. Indeed, the courts cannot compel the parties to abandon the enforcement of a final court decision merely due to the vagueness or lack of clarity in the procedure for enforcing such a decision. Such ambiguity in enforcement procedure should not serve as a barrier to justice or nullify the authority of a final ruling.

According to Article 120 of the Constitution, compliance with sentences and other final rulings of the courts is mandatory.

As per Article 16 of the Civil Procedure Code:

"Final judgments, rulings, orders, and decisions of the court, as well as directives, applications, delegations, summonses, and other lawful addresses of the court, are binding on all public authorities, public associations, officials, organizations, and individuals, and must be strictly enforced throughout the territory of the Republic of Moldova. Unjustified non-enforcement of court acts, directives, applications, delegations, summonses, and other lawful addresses, as well as disrespect toward the court, shall incur liability as provided by this Code and other laws."

In its Decision of November 17, 2016, the Constitutional Court held that under Article 255 of the Civil Procedure Code, a final court decision is also enforceable, except in cases where immediate enforcement follows pronouncement (Article 256 CPC). Therefore, civil procedural law assigns enforceability to court rulings either immediately upon pronouncement or once they become final, without requiring them to become irrevocable.

Likewise, the Court rejected the authorities' argument that enforcement of final judgments by the state might undermine the principle of legal certainty if the decision is later overturned on appeal. The Court noted that all persons who enforce final decisions are exposed to the same risks, yet this has not prevented the state from allowing such enforcement without waiting for irrevocability.

Moreover, in the same ruling, the Court noted that the enforcement—even immediate—of a final decision (e.g., after appellate review) does not preclude the filing of an appeal, and that the right to a fair trial does not, in itself, guarantee an automatic right to suspend enforcement of an unfavorable court decision (OAO Neftyanaya Kompaniya Yukos v. Russian Federation, ECtHR judgment of 20 September 2011, 549).

Consequently, it becomes evident that the application of Article 68, paragraph (21) of Law No. 181/2014 on Public Finances and Budget-Fiscal Responsibility restricts the creditor's/claimant's right to the enforcement of a final court decision. In its current form, Article 68(21) contradicts the spirit of Articles

16, 20, and 120 of the Constitution of the Republic of Moldova, as does the wording of Article 354(1) of the Civil Procedure Code of the Republic of Moldova.

These "mechanisms" granted to public legal entities duplicate their possibility to separately request the suspension of enforcement of a judgment and, in fact, amount to unconstitutional provisions. Although these norms were formally adopted by the legislature through the approval of Draft Law No. 212/2017, they are in conflict with Articles 16, 20, and 120 of the Constitution and should be sanctioned accordingly by the Constitutional Court once it is duly seized under the prescribed procedure.

In conclusion, we note that participants in a civil proceeding (including during its enforcement phase) enjoy equal rights, without allowing favoritism toward public legal entities to the detriment of private individuals or private legal entities. In this regard, through Constitutional Court Decision No. 32 of 17.11.2016, it was found that the phrases "after it becomes irrevocable" and "issued on the basis of an irrevocable decision" in Article 68 of Law No. 181/2014 on Public Finances and Budget-Fiscal Responsibility were contrary to the spirit of Articles 16, 20, and 120 of the Constitution of the Republic of Moldova and were therefore declared unconstitutional.

Although the Constitutional Court requested Parliament to establish a distinction between cases in which the suspension of the enforcement of a court decision is requested by private individuals and entities and those in which it is requested by public legal entities, Parliament merely inserted paragraph (21) into Article 68 of the same law. This provision automatically suspends the enforcement of a final court decision upon the submission of an appeal, where the decision entails the incontestable disbursement of funds from the budgets that comprise the national public budget.

This provision disregards the fact that, in appellate proceedings, public legal entities already have the option to request suspension of final court decisions through separate, substantiated motions, without infringing Articles 16, 20, and 120 of the Constitution.

As a result, Parliament disregarded the rationale of Constitutional Court Decision No. 32/2016, and by adopting Draft Law No. 212/2017, it merely crafted a new provision with the same unconstitutional tendencies—one that favors public legal entities in civil and administrative litigation, to the detriment of private parties, thereby violating the principle of equality of arms in legal proceedings and the principle of free access to justice.

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