



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS ROMANIA



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**British Institute of
International and
Comparative Law**

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Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

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I. General Collective Redress Mechanism

1. Scope/ Type

The Romanian Civil Procedure Code ("RCPC") provides legal mechanisms allowing multiple participation in court cases, under the term of "co-participation in the case" (articles 59-60 of RCPC) and, respectively, the "voluntary intervention in a case" (articles 61-67 of RCPC).

a. Co-Participation

According to article 59 of RCPC: "*Several persons may be together plaintiffs or defendants if the case refers to a common right or obligation, if their rights or obligations have a common cause or if between these there is a close connection*". The common cause or close connection refers to situations where the claim originates in the same set of facts or legal actions. For instance, when more persons are harmed by an identical or very similar behaviour of one and the same perpetrator. The provisions have been extensively used in the past and provided significant assistance to victims seeking relief for the damages they suffered. The courts themselves favour such cases, as it reduced the number of parallel and redundant cases and, hence, the workload of the judges. However, the co-participants preserve their individuality and only the procedural acts performed by a party which protect the interests of other parties to the case are opposable to them. This provision is intended to assist plaintiffs who have been rather passive in the court proceedings, whilst preserving their right of defence. The underlying rationale for such a provision is that the right of defence is individual and it should preserve this character even in situations of co-participation, justified mainly by reasons of procedural efficiency.

b. Voluntary Intervention

The voluntary intervention may be a main intervention, in support of the rights of its author, or ancillary, in support of the main plaintiff. Virtually any claim can be supported this way, save for very limited situations, such as certain family claims. The voluntary intervention is only admissible until the moment when the first court solved all the preliminary exceptions raised by the parties and is in position to hear the pleadings but the judge may still decide to be settled in a separate case if it may cause delays in the proceedings. In taking its decision, the judge is obliged to balance the interests of each of the parties and the need to ensure that a decision is issued within a reasonable period.

Please note that both types of interventions are less frequent in relief or injunction applications and they are rather used in cases in which substantial claims are settled – the main cases.

In practice, both the co-participation and the voluntary intervention are used extensively, including in cases where there have been a large number of plaintiffs – up to tens of thousands – but such cases are difficult to handle by the courts. In the past, the proceedings in such cases were long and complicated but in the current civil procedure, the mission of the judge is simplified by a few procedural innovations he disposes of, such as the possibility to appoint a trustee attorney for more plaintiffs or defendants in a case.

2. Procedural Framework

a. Competent Court

The co-participation and the voluntary intervention are possible in front of the courts hearing cases in the first instance and are not permitted in the appellate courts – the Courts of Appeal and the High Court of Justice.

b. Availability of Cross Border collective redress

Not applicable.

c. Opt In/ Opt Out

The only available possibility is for plaintiffs to join claims, through individual and express requests, approved by the court – the voluntary intervention, as explained above. There is no opt-out option, although certain procedural acts of a party to a case may be undertaken on behalf of the co-participants, if it is considered beneficial to the later. The judge must balance the goal of procedural efficiency and the interests of the parties. For instance, the judge may refuse a plaintiff from joining a claim if his/her intervention would cause long delays of the case and the intervention is not likely to bring more evidence and clarity to the matter heard by the judge.

Claimants may leave the proceedings until a decision is issued by the judge.

d. Main procedural rules

Admissibility and certification criteria

The legal actions must satisfy the normal requirements for any legal action: legal capacity and legitimate interest. The legitimate interest refers to the requirement that a person must show, *prima facie*, that it has a right that it aims to preserve or defend by joining a certain court case.

Single or Multi-stage process

The cases are subject to appeal and sometimes to a recourse in front of a higher court: the court of appeal or the High Court of Justice. All the cases are subject to at least an appeal and in certain conditions a second appeal – and hence, third degree – is possible. The second appeal is possible for cases which are heard in first instance by the lower courts (the local courts and the county tribunals). In addition, for procedural errors, extraordinary appeals may be brought against definitive decisions of the courts.

Case-management and deadlines

The judge has a statutory duty to have an active role and instruct the parties throughout the proceedings. The deadline to complete a case in all the degrees of jurisdictions is between 2 to 4 years but the actions brought under Law 193/2000 may take less time, as judges tend to give priority to such cases, given their impact in the society.

Expediency (particularly in injunctive cases)

Courts tend to give priority and to accelerate the hearing of cases where it is about abusive clauses, especially in the banking and financial sectors, given that these are often socially sensitive cases.

Evidence/discovery rules

The usual procedural rule – *actori incumbit probatio* (the plaintiff must present evidence in support of its claim – applies. It means that any plaintiff must provide conclusive evidence in support of its claim in order to be successful.

Interim measures

We are not aware of such situations.

Court directed settlement option during procedure

The Civil Procedure Code provides that parties to a litigation may settle their matter, either in court (in which case the judge will issue a simplified decision, ratifying the agreement of the parties) or out-of-court. If the claim is settled in front of the judge, the court will issue what is referred to as "expedient decision" – a simplified decision ratifying the settlement and making it binding.

In case of out of court settlements: judicial control.

3. Available Remedies

a. Type of damages

Full recovery of damages incurred.

b. Allocation of damages between claimants for compensatory claims/ distribution methods

According to the damage of each plaintiff. The damage awarded to each person must correspond to the loss effectively incurred by that person, including the loss of profit..

c. Availability of punitive or extra-compensatory damages and their conditions

Not available

d. Skimming-off/ restitution of profits

In case of joint actions introduced by undertakings, the compensation would include the non-realised profit (*lucrum cessans*), in addition to the effective damage (*damnum emergens*).

e. Injunctions

Possibility to seek an injunction and compensation within one single action: Yes.

Injunctive actions may be brought separately but also together with the action for damages. Decisions issued in injunctive actions are only valid for a limited period of time and are conditioned by the introduction of a main substantial action, for the recovery of the damages produced. The decision issued in the injunctive action can only limit the damages from accruing until a final decision is issued in the claim for damages.

f. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

Injunctions are limited in their duration and scope and never decide anything on the merits of the case. Hence, they use as a basis for follow-on individual or collective claims for damages is limited.

g. Limitation periods

The standard limitation period of 3 years applies. The period of limitation is of 5 years for the recovery of damages produced by the infringement of the competition rules (cartels and abuses of dominance). In the later cases, the period of limitation may be suspended during the time the parties attempt to find an amicable settlement of the claim but no more than 2 years since the ADR procedures are initiated.

4. Costs

a. Basic rules governing costs and scope of the rules

The plaintiffs must bear their costs in relation to the claims they bring to court. In special circumstances – lack of income or funds, social cases – may have their stamp duties entirely waived or they may receive approval to defer the payment of the stamp duties or to pay the duties in several instalments. When the actions are brought by companies, they may only defer the payment or receive approval to pay the stamp duties in instalments. The approval is issued by the judge, based on evidence regarding the lack of incomes. In the framework of the judicial aid, the individuals with very low incomes may also receive financial support to cover the fees of the lawyers or the experts, including in actions for damages.

b. Loser Pays Principle (and exceptions from it)

There are no exemptions to the principle "loser pays" but the court may order a reduction of the lawyers' fees to be paid, if these are deemed excessive.

5. Lawyers' Fees

Availability (or not?) of contingency fees and their conditions

Contingency fees are, as a matter of principle, prohibited by the Lawyers Statutes. On the other hand, success fees became frequent in the previous years and often they form a large part of the overall fees, which may amount to contingency fees, thus circumventing the prohibition.

6. Funding

a. Availability of funding

There are limited funding possibilities in the framework of the judicial aid, granted through the Ministry of Justice to individuals to persons in serious financial difficulty.

b. Origins of funding (public, private, third party)

The funding comes mainly from own sources of the plaintiffs or from the public budget (through the judicial aid). There are no known situations of third-party funding but these are likely to exist.

c. Conditions and frequency of resort to third party funding

Provision of third-party funding is not specifically regulated but such funding is not customary in the Romanian legal proceedings. There is no such funding from the financial institutions, such as banks.

d. Control of funders (Courts/Legislators/Self-regulation)

In principle, the courts may have a say on this issue, by ordering a reduction of the legal costs that may be recovered by the winning party. Formally, the court has no authority to limit or condition such funding, especially since this is expected to be a confidential matter of the plaintiffs.

e. Claimant-Funder relationship

The third-party funding does not have to be disclosed in court and, hence, it would be a confidential matter, governed by the agreement between the parties. Such funding may be either a simple reimbursable loan or a financing agreement based on which the lender would assume the risk of losing the case or receiving a lower amount of damages than that sought by the plaintiff.

7. Enforcement of collective actions/settlements

a. Framework for Enforcement

Enforcement of any court decision is done through the bailiffs, who are private practitioners entrusted with the public authority to enforce the court decisions. Injunctive orders are enforceable immediately after their issuance, even if subject to appeal, whilst decisions in actions for damages are enforceable only after the appeal phase.

b. Efficient Enforcement of compensatory/injunctive order

The plaintiffs may seek from the court to order interim measures consisting of freezing certain assets/bank account of the defendants to secure payment of damages, if this will be awarded by the court at the end of the court case.

c. Cross border enforcement

Decisions issued in the European Union are fully enforceable in Romania whilst decisions issued outside the EU may be enforced via an exequatur (reconnaissance) procedure.

8. Number and types of cases brought/pending

No official statistics

9. Impact of the Recommendation/Problems and Critiques

a. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

The lack of a full-fledged collective redress mechanism in Romania is an obstacle to effective and efficient actions brought by consumers or victims of wrongdoings, from the victims of the pyramidal games to those of the infringements of the competition law.

b. Incompatibilities with the Recommendation's principles

Although the Romanian Civil Procedure Code is of recent date, it does not include enough mechanisms and concepts aimed at facilitating multi-parties claims.

c. Problems relating to access of justice/fairness of proceedings including

- Restrictions on access to justice negatively affecting collective redress

The fact that the victims must pay upfront the stamp duties and all the legal costs may in practice act like a break on the actions they introduce in order to receive compensation. The judicial aid lack sufficient resources in order to ensure that this gap is covered by the State. Injunctive reliefs have an easier burden, as NAPC and the RCPAs do not have to pay any stamp duties and the amount of such duties for private plaintiffs is low.

- Time and burden of collective actions on courts and parties compared to non-collective litigation

The duration of the litigation tends to be rather long (from 2 to 4 years, including the appeals), which may be a problem especially in the situation where preliminary injunctive relief is not issued by the courts. The main reason for the duration is that courts are overloaded with cases.

- Risks of and examples for abusive litigation

Abusive litigation is less of concern than litigation started to harass a certain company, which sometimes happens.

- Effective right to obtain compensation

Courts have the necessary expertise for granting full compensation and judges may be assisted by experts. The high number of cases that a panel of judges must hear every day reduces their ability to adopt relief measures in a timely and accurate manner.

II. Sectoral Collective Redress Mechanisms

Consumer Law

The representative consumers associations ("RCPA") can bring legal actions – injunctive relief - in order to defend the legitimate interests and rights of the consumers (art.37, letter h of Government Ordinance no.21/1992 ("GO 21/1992") regarding the consumers protection). In an injunctive relief action, the judge will not touch upon the substantial merits of the claim, but it would only assess if *prima facie* there is a possibility that damage occurred and may continue to accrue.

The closest legal action to a collective redress mechanism is the provision from Law 193/2000 regarding the abusive clause in the agreements concluded between professionals and consumers ("Law 193/2000"), which empowers the National Authority for the Protection of Consumers ("NAPC"), a public institution, to ask in court that the clauses deemed to be abusive are struck out from all the agreements in which they are incorporated. No damages are awarded in such cases. Similar actions may be brought by the RCPAs, as these are defined by GO 21/1992 (see above). These provisions are the mere implementation in Romania of the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. The decision obtained further to request of NAPC may be used in further claims for damages by the persons who may invoke that they were affected by the annulled clause.

1. Procedural Framework

a. Competent Courts

The courts competent to hear the actions brought on behalf of the consumers based on GO 21/1992 and on Law 193/2000 are the tribunals, as first instance courts.

b. Standing

The RCPAs and NAPC are the main entities authorized to bring injunctive reliefs on behalf of consumers. However, this may not be qualified as a representative action, as long as the mentioned entities act in their own right, as provided by law. Consumers are not part of these proceedings, although in principle they are able to join via the voluntary intervention, as mentioned above.

According to GO 21/1992, a RCPA must have a minimum of 3000 members in at least 10 counties and an activity on behalf of the consumers of at least 3 years. The claims introduced by the RCPAs are exempted from the payment of stamp duties. The Public Ministry (the office of the public prosecutor) can also join such actions, in support of the RCPAs. The Public Ministry does not become a distinct part of the litigation, but it will only support the claim, acting in a similar way with the *parens patrie* in the United States of America.

c. Availability of Cross Border collective redress

Cross border relief is possible, where the locus standi is in a different jurisdiction. Enforceable decisions issued outside Romania may be enforced directly, if issued in another EU Member State, or through the *exequatur* procedure, if they are issued in a jurisdiction outside EU.

d. Opt In/ Opt Out

The only available possibility is for plaintiffs to join claims, through individual and express requests, approved by the court – the voluntary intervention, as explained above. There is no opt-out option provided by law, although certain procedural acts of a party to a case may be undertaken on behalf of the co-participants, if it is considered beneficial to the latter. The concerned party may ratify the beneficial procedural acts or may decide to leave the case and bring legal action on its own or together with other aggrieved parties.

2. Main procedural rules

a. Admissibility and certification criteria

The RCPAs must prove that they meet the criteria to be representative, as set out by GO 21/1992.

b. Single or Multi-stage process

The cases are subject to appeal and sometimes to a recourse in front of a higher court: the court of appeal or the High Court of Justice.

c. Case-management and deadlines

The judge must have an active role and instruct the parties. The deadline to complete a case in all the degrees of jurisdictions is between 2 to 4 years but the actions brought under Law 193/2000 may take less time.

d. Expediency (particularly in injunctive cases)

There are not known examples of injunctions but courts tend to give preference and to accelerate the hearing of cases where it is about abusive clauses, especially in the banking and financial sectors.

e. Evidence/discovery rules

The usual procedural rules – *actori incumbit probatio* (the plaintiff must present evidence in support of its claim – apply.

f. Interim measures

They are possible under the law but we are not aware of such situations.

g. Court directed settlement option during procedure

If the plaintiffs are also companies, the court may ask the parties to find an amicable settlement of their dispute and give a term for reaching a settlement.

h. In case of out of court settlements

If settlements are presented to the judge, this will issue what is referred to as "expedient decision" – a simplified decision, ratifying the settlement and making it binding and enforceable.

3. Available Remedies

a. Type of damages

NAPC and the RCPAs can only ask injunctions and are not empowered to seek also damages on behalf of consumers.

b. Allocation of damages between claimants for compensatory claims/ distribution methods

According to the damage of each plaintiff, as proved by each of them.

c. Availability of punitive or extra-compensatory damages and their conditions

Prohibited

d. Skimming-off/ restitution of profits

In case of joint actions introduced by undertakings, the compensation would include the non-realised profit (*lucrum cessans*), in addition to the effective damage (*damnum emergens*).

e. Injunctions

NAPC and the RPCAs can only ask injunctions from the court, on behalf of the consumers.

f. Possibility to seek an injunction and compensation within one single action

Yes.

g. Limitation periods

The standard limitation period of 3 years applies.

4. Costs

a. Basic rules governing costs and scope of the rules

The RCPAs and NAPC are exempted from paying stamp duties for the legal actions introduced based on GO 21/1992 and Law 193/2000.

b. Loser Pays Principle (and exceptions from it)

There are no exemptions but the court may order a reduction of the lawyer's fees recoverable from the losing party, if these are deemed to be too excessive.

5. Lawyers' Fees

Availability (or not?) of contingency fees and their conditions

Contingency fees are, as a matter of principle, prohibited by the Lawyers Statutes. However, success fee are used regularly and they may amount to contingency fees, circumventing the prohibition.

6. Funding

a. Availability of funding

Funding may be available from the judicial aid – the ministry of justice.

b. Origins of funding (public, private, third party)

The funding may come from all these sources but third party funding is difficult to provide and it is not common.

c. Conditions and frequency of resort to third party funding

This is not regulated and we are not aware to what extend third-party funding is used.

d. Control of funders (Courts/Legislators/Self-regulation)

The courts may order a reduction of the lawyer's fees recovered by the party winning the case

e. Claimant-Funder relationship

This is normally a private agreement, not disclosed to the court or the public.

7. Enforcement of collective actions/settlements

a. Framework for Enforcement

Enforcement of any court decision is done through the bailiffs, who are private practitioners entrusted with the public authority to enforce the court decisions.

b. Cross border enforcement

Enforcement for decisions issued in another EU member state is relatively easy. Decisions issued in jurisdictions outside EU may be enforced through a exequatur procedure.

8. Number and types of cases brought/pending

There is a significant number of cases brought under Law 193/2000, regarding abusive clauses in credit agreements concluded with banks (43 cases in the period 2014-2016), all of them introduced by NAPC, but there is no specific information as to the number of cases brought under GO 21/992. At least one RCPA brought a similar legal action, also in the financial sector. CPAs started to lodge voluntary interventions in the legal actions brought by NAPC.

III. Information on Collective Redress

1. National Registry

It does not exist yet.

2. Channels for dissemination of information on collective claims

The advent of such situations is usually noticed in the media, as it normally involves large entities, as plaintiffs, such as the banks. NAPC also advertises its activities in this area, through its website and in the media. The court proceedings themselves are available to the public on the website of the Romanian courts: portal.just.ro.

IV. Case summaries

No cases available

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