



ORIGINAL PAPER

Evacuation of improperly used buildings. Common or special law procedure?

Raluca Lucia Paul¹⁾

Abstract:

Eviction of a person from improperly used building can be done in two ways: amicably, if the holder of the right to use the property asks the person who uses or occupies that property without right to leave, and the person agrees to the release of the building; or in court, if the person in question does not agree with the release of the property.

In court, the applicant may choose either to promote a common law action based on the provisions of Article 192 (1) and the following of Civil Procedure Code or to use the special eviction procedure from buildings used or occupied without right, regulated by the provisions of Articles 1.034- 1.049 of the Civil Procedure Code.

In view of the speed of the special proceedings, the enforceability of the judgment and the conditions for obtaining the suspension of enforcement, the applicant should use it to the detriment of ordinary proceedings.

Keywords: *eviction; special procedure of eviction; common law procedure; improperly used buildings; right of use over real estate.*

¹⁾ Junior lecturer, Phd, postdoctoral Diploma, University of Craiova Faculty of Law research field - Civil procedural law; Romania, Phone: 0742808693, Email:ralucaluciapaul@yahoo.com.

Introductory aspects

Evacuating a person from a building that he used it can be done in two ways: amicably, if the holder of the right of use over the property asks person who use or occupy that property without the right to leave it, and the latter agrees, with the release of the property; or in court, if the person in question does not agree with the release of the property.

By the way the applicant may choose either the promotion of a common law action based on the provisions of Articles 192 (1) and further of the Code of Civil Procedure or the special procedures for the provisions of Articles 1,034-1049 of the Code of Civil Procedure (Code of Civil Procedure republished in the Official Gazette of Romania, Part I, no. 247 of April 10, 2015)

It is necessary to should be noted that the promotion of legal action becomes uninteresting if the holder of the right of use over the property has an enforceable title regarding the obligation to hand over the property against the persons who use it without right (for example, a lease concluded in form authentic, or in the form of a document under the actual signature of the tax authority). In this situation, the holder of the right of use over the building may directly use the enforcement procedure regulated by the Code of Civil Procedure in the provisions of Articles 896-902.

Therefore, by way of example, the special eviction procedure may be initiated by the holder of the right to use the building used or occupied without right in the event that the lease was concluded verbally or in the form of a private signature and not registered with the tax authorities, in case of concluding a lease contract (which according to Article 1838 of the Civil Code must be concluded in writing, under the sanction of absolute nullity), in case the building is actually occupied by a person without the permission of the owner or the person uses the building with permission or permission of the owner, without having concluded a contract between these persons for the use of the property (the situation of the tolerated) but also in the situation when a loan agreement was concluded between the parties that does not constitute an enforceable title.

The fact that the special procedure can be used only for eviction from real estate, not for the realization, on the main way, of the right of claim which has as object the payment of rent, or rent. This conclusion can easily be drawn from the provisions of Article 1.035 (2) of the Code of Civil Procedure which explicitly provide for the provisions of this title do not affect the rights of the lessor or landlord to pay rent or rent, to pay compensation or to others rights arising under the contract or the law, as the case may be. In accordance with paragraph 3, in the case referred to above, in paragraph 2, in order to fulfill the rights and obligations arising from the contract, as well as those of the applicable legal provisions, the interested party, will be able to use the provision regarding payment ordinance or the provisions regarding solving low value applications under the conditions of the common law

In this context, the right of claim regarding the payment of rent or rent can be capitalized, by introducing an accessory claim in the process in which it will be required to evacuate using special procedures.

Competence in solving

The material competence for the settlement of eviction requests belongs, according to the provisions of article 94 point (1) letter d) in conjunction with Article

Evacuation of improperly used buildings. Common or special law procedure?

1.036 of the Code of Civil Procedure, regardless of the value of the object of the request, to the court in whose district the building case, rented or leased, even if the tenant has left the property or the contract has ended.

The plaintiffs request the urgent procedure of the presidency provided for in the Code of Civil Procedure in the provisions of Articles 997-1.002, also referring to the provisions of Article 94 (1) (d) of the Code, the request will be resolved first court always by the competent court to rule on the merits of the law.

We note that, under the rule of the previous Civil Procedure Act and the Commercial Code of 1887, the jurisprudence considers that the application for eviction of a company from a building belonging to a goodwill is a matter for the court of first instance, from the point of view of the commercial nature of the dispute and in accordance with the provisions of Articles 2 (1) (a) of the Code of civil procedure since 1865. Thus, in the application of this jurisprudence Court of Appeal Bucharest by Decision no. 221/2011, it would be necessary for eviction requests, when one of the parties is a professional, to be competent to resolve in the first instance the specialized sections or panels set up at the level of the court.

With regard to territorial jurisdiction, applications for eviction under common law give rise to alternative jurisdiction. Thus, under Article 113 (1), the applicant will have the option of bringing an action for eviction, either in a particular court or in Articles 107 to 112 of the Code of Civil Procedure, or in the local court, the location of the building, if a lease agreement has been concluded between the parties (Article 113 (1) (4) of the Code of Civil Procedure).

The territorial jurisdiction for the applications promoted by means of the special evacuation procedures belongs exclusively, only the court in whose district it is located in the building occupied without right, rented or leased, as the case may be.

Citation and communication of procedural documents

Special evacuation procedure derogates from certain rules of summons and communication of procedural documents.

Evacuation request by common law shall always be settled by summoning the parties in accordance with the procedures laid down in Article 153 (1) of the Code of Civil Procedure.

Instead, the eviction promoted through special procedures can be judged with or without summoning the parties, regulated in this matter being judged with summoning the parties, observing the general rules, but also the derogatory requirements imposed by the Code of Civil Procedure. Thus, according to Article 1.042 (1) of the Code of Civil Procedure, the request for eviction is judged by summoning the parties, unless the eviction of the building for non-payment of rent or lease is requested under a contract that constitutes, for their payment, enforceable title, according to the law. We note, therefore, that the legal text refers only to the enforceability of the lease for the payment of rent or rent, and not for the delivery of the property, because,

As regards the procedure for the communication of procedural documents, the provisions of Articles 1.037 (1) contain provisions derogating from the general notion of domicile provided for in the Civil Code of the provisions of Article 87 to the building he occupies without any right., the text considering the domicile in the procedural sense. Thus, the communication of any procedural documents to the tenant or occupant will take place at the building he uses or occupies without right, without taking into account

the domicile mentioned in his identity document or in fact the establishment or not of residence at the place of location property.

Another derogating provision of common law is set out in the provisions of Articles 1.037 (2) according to which if the building is closed, all notifications, summonses and other procedural documents issued in accordance with the provisions of this title shall be displayed at the door of the building. Or, the common provisions for the summons and communication of procedural documents (Article 163 (8) of the Code of Civil Procedure with reference to paragraphs 3-5 of the same article) require in this situation, if the building is closed, not proceeding to leave the act of procedure in the mailbox or, failing that, at the sight of a notice on the door of the building.

Incidental requests

In case of common law eviction actions, the defendant has the obligation to file the statement of defense, in accordance with the provisions of Articles 208 (1) of the Code of Civil Procedure, (3) of the Code of Civil Procedure, the defendant may invoke substantive defenses on the merits of the factual and legal grounds of the request, including the lack of title of the plaintiff (Article 1.043, paragraph 3 of the Code of Civil Procedure). In proving substantive defenses, the defendant may propose evidence at the first term at which he was legally summoned, may invoke procedural exceptions (Boroi, Spineanu-Matei & Teohari, 2013:651) within the time limit provided for in Article 247 (2) of the Code of Civil Procedure, given that the objection is optional in this matter.

Also, if in ordinary proceedings, the defendant has the right to make his own claims against the applicant in the counterclaim in the special procedure for evading the provisions of Article 1.043 (1) nor can he make a request for forced intervention in the form of a request for the summons of another person or under bail, his claims being upheld only separately, by initiating a separate dispute.

In the event that the defendant makes such requests in the special proceedings, however, the court will reject those applications as inadmissible and the judgment will not have the authority to adjudicate on a future trial in which they will be repeated.

As regards the formulation of a request for main voluntary intervention, I consider that it is admissible, given that the law does not expressly exclude the possibility of formulating it (Leș I., 2011: 146).

The urgency of resolving the case

Unlike the trial eviction application, according to the common law procedure, in respect of which the urgent procedure for its settlement is not provided for, the special evacuation procedure has an urgent character expressly imposed by the provisions of articles 1.042 of the Code of Civil Procedure, with all the consequences deriving from this character.

Thus, the judge, based on the provisions of Article 159, sentence II of the Code of Civil Procedure may order the shortening of the term for handing over the summons or the procedural act, the debates will be summary, the optional nature of the objection, the shortening of the appeal the formulation by the defendant of incidental claims, the enforceability of the judgment rendered in the first instance, the impossibility of suspending the execution of the eviction order except as provided by the provisions of Article 1.045, when it may be ordered to suspend by the defendant, when the eviction is requested for non-payment of rent or rent only if the defendant records in cash, at the disposal of the creditor, the rent or lease to which he was obliged, the amount

Evacuation of improperly used buildings. Common or special law procedure?

established suspension, as well as the rate rent or lease that would become due during the trial.

Judgment of the eviction request

As mentioned above, the procedure for eviction from buildings occupied without right is optional, the plaintiff having the right to choose whether to request eviction under the common law procedure or under special procedures.

Condition the articles of exercise of evacuation requests by special procedures are the general ones of exercising any civil action (formulation of a claim, interest, quality and procedural capacity). In addition to the general conditions for the exercise of any civil action, the plaintiff must also fulfill a condition to fulfill the admissibility of the application, the institution of the provisions of Article 1.039 of the Code of Civil Procedure, respectively the notification of the occupant when the owner of a building wishes to evacuate. After the right to occupy the building has ceased, the owner will notify the occupant in writing, instructing him to release the building he occupies without any right, within 5 days of the notification of the notification.

In addition to these aspects, it presents certain particularities within the special procedures of the evacuation and the general conditions of the exercise of the evacuation actions (Boroi, Stancu 2015a: 856.). Thus, regarding the active procedural quality, it belongs to: the owner, the holder of a dismemberment of the property right which gives him the prerogative to request the transfer of the property from the defendant or the lessor, whether he is principal, sublease, assignee and acquirer of the property, even the lessee may use this special procedure, insofar as, wishing to defend his right of use, he files an action for eviction against a third party who occupies the property object of the sales premises without right. (Boroi, Stancu, 2015b: 856.)

As regards the passive procedural capacity, it belongs, by way of derogation from the common law, to the former lessee (the principal lessee, the lessee or a transferee of the lessee, lessee or lessee), that is to say a lease, but also persons occupying the property (any person, other than the owner or lessee, who actually occupies the property with or without the permission or permission of the owner or lessee), thus infringing the absolute and exclusive right of the property owner (Article 555 of Civil Code).

From here, a feature emerges perhaps the most important of this special procedure is that eviction can be requested even in the absence of a contractual basis for the obligation to surrender, being as a sanction for violation of a real right even for the case in which the defendant good (Zidaru, 2011:78). In order to ensure the effectiveness of the procedure, it should be considered that even in the event that the claimant claims that such a title exists, but this claim is irrelevant and unproven, the application for eviction remains admissible even against the claimant owner.

It has been held in the legal literature that, in so far as the application is not made in accordance with special procedures but in accordance with ordinary law, in the absence of any binding relationship between the parties, the application must be classified as a claim, as long as the action in the claim is directed against both the possessor and the precarious holder or any person holding the property without right (Article 563 (1) Civil Code).

On the contrary, under the rule of the previous Civil Code according to the Civil Decision no. 169 / 18.01.2011, pronounced by the Suceava Court of Appeal (available on www.scj.ro) where it was noted that is violated by the defendants as a result of the

untitled occupation of the building. (...) The plaintiff did not pursue the capitalization of an exclusive and absolute property right in an action in claim, but only a personal right of relative character, in the eviction actions, following the compulsion of the debtor to the execution of the obligation to do.

In other words, the applicant did not request that the defendants be granted ownership of the building, but only their evacuation and the surrender of the good in its materiality. It is thus found that the lower courts erred in holding that the eviction action is the specific procedural means exclusively of the leasing relationship between the parties, holding that the non-opposition of a title by the defendants can only be considered in an action.

Thus the provisions of art. 480 of the Civil Code is the legal basis for the eviction action, as a procedural means of capitalizing on the possession and use of the goods, which makes such an action fully admissible and well-founded. To argue that the applicant can claim the title only in a title action by comparison of titles, the lower courts erred in holding that the eviction action is the specific procedural means exclusively of the leasing relationship between the parties, holding that the non-opposition of a title by the defendants can only be considered in a claim action.

The owner will usually prefer the special eviction procedure against the occupant, and not the claim, for reasons of speed and due amount of the judicial stamp duty due, which according to the provisions of Article 6 (3) of Emergency Ordinance no. 80/2013 published in the Official Monitor of Romania, Part I, no. 392 of 29.06.2013 regarding the judicial stamp duties is 100 lei. Thus, the evacuation procedure provided for in the New Code of Civil Procedure promises to be a flexible and cost-effective instrument.

Another special condition for the admissibility of eviction proceedings from buildings used or occupied without right consists, as mentioned above in the prior eviction notice of the lessee, respectively of the occupant of the building. We specify that the notification made on this basis does not have a prior procedure, within the meaning of the provisions of art. 193 of the Code of Civil Procedure, but is necessary for the delay of the lessee or occupier, as provided by the provisions of Articles 1,525 of the Civil Code (Tâbârca, 2013: 828.), which will be liable, from the date on which it is overdue, for any loss caused by a fortuitous event, unless the fortuitous event releases the debtor from the performance of the obligation itself. However, the notification procedure and the deadlines allowed for the occupants of the building for their release and delivery are governed differently by the Code of Civil Procedure, as the notified person is the tenant or the person actually occupying the building.

Thus, according to the provision of Article 1.038 (1), where the lessee's right to use a property has expired as a result of the termination of the lease by the expiry of the term, by the lessor's action, by non-payment of rent or rent, and for any other reason, and the lessor wishes to enter . In possession of the building, he will notify the location, in writing, through the bailiff, instructing them to release and hand over the building freely, within 30 days of the communication of the notification data. And paragraph (2) of the same article, if the lease is for an indefinite period, the denunciation required by law to terminate the contract will also be considered a notice of eviction.

It is also stated that the law does not impose the requirement of notification, if the lessee has waived the notification provided for in Article 1.037 of the Code of Civil Procedure, by written act. This recognizes the right of the landlord to resort to the

Evacuation of improperly used buildings. Common or special law procedure?

special eviction procedure, if the lease ceases for any reason, and the tenant is immediately considered extinct.

If the owner of the building is actually evicted, after the right to occupy the building has ceased, the owner will use the provisions of article 1.039 from the Code of Civil Procedure by notifying the occupant in writing and instructing him to release the building he occupies without any right, within 5 days of the communication of the notifications.

The lessor or the owner of the building will be able to start the trial special procedure eviction in two cases: the lessee or the notified occupant refused to evict the building upon the expiration of the term provided in the notification; the tenant has previously waived in writing his right to be notified and has lost the right to use the property. In these cases, the court will pronounce or execute the sentence, ordering the immediate eviction of the tenant or occupant of the building, for lack of title.

Appeal against the eviction order

Requests for eviction, regardless of the route chosen by the applicant, either common law or special procedure, shall be subject only to ordinary appeals, in relation to the provisions of Articles 483 (2) of the Code of Civil Procedure and Article 1.042 (5) of the same Code, not being subject to the extraordinary remedy of appeal.

According to Article 1.042 paragraph (5) the eviction decision can be appealed only by appeal within 5 days of pronouncement, if it was given with the summoning of the parties, or from the communication, when it was given without summoning them. I note that the time-limit for appeal derogates, both in terms of duration and time from which it begins to run, from the general rules laid down in Article 468 (1) of the Code of Civil Procedure, the derogation being instituted by virtue of the urgency of the special procedures. The eviction order issued on the basis of the eviction request made under common law shall be subject to appeal within the general 30-day time limit for communication.

Enforceability of the judgment given at first instance

While the judgment of eviction given in the first instance, based on common law, is not enforceable, it cannot be enforced in so far as it is not final, in the special procedure, Article 1.042 (5), first sentence, expressly enforceable of the decision (sentence) pronounced on the request for eviction judged according to special procedures. Thus, even if an appeal was lodged in the case, the applicant may initiate enforcement, but if the application had a complex object (eviction and claims based on the provisions of Article 1.042 (4) of the Code of Civil Procedure) was enforceable, no and the one related to the payment of the amounts established by the device (Boroi, 2013c: 650).

Conclusions

Title XI of Book VI, Special Procedures, establishes a simplified and optional procedure for the settlement of disputes concerning the eviction of immovable or occupied buildings without right, which we consider very useful in concluding our brief exposition. I consider that the procedure of eviction from the buildings used or occupied without right of right is a well-deserved sanction of abuse and an undeniable promotion of the exercise of the right enjoyed by the owner or lessor. The speed of the proceedings, the enforceability of the judgment at first instance and the draconian conditions of

obtaining the suspension of enforcement of as many grounds for access to this procedure and of hoping, inevitably, for a practical application in accordance with the letter and spirit of the law.

The procedure established by the Civil procedure code is particularly useful, because it solves or solves a real social problem, frequently raised in practice: the delay of eviction requests to live without title and without equivalent in another's building. The owner will usually prefer the special eviction procedure against the occupant, and not the eviction claim based on common law for reasons of speed and the amount of the stamp duty due, thus being able to obtain a favorable court decision and on the basis of which he can re-enter in possession of the property that belongs to him.

References:

- Boroi, G., Spineanu-Matei, O., Theohari D. N., Constanda, A., Răducan, G., Negrilă, C., Marcel Gaviş D., Dănăilă, V., Păncescu, F.G., Eftimie, M., (2013). *The New Code of Civil Procedure Comment on articles*, Bucharest. Vol. I art. 1-526, Vol. II, art. 527-1133 Hamangiu Publishing House,
- Leş, I., (2011), *The new procedure for evacuating used or unoccupied buildings without right*, Bucharest, Acta Universitatis Lucian Blaga, no. 1/2011,
- Tăbărcă, M., (2013) *Civil procedural law*, Buchaest, Volume II, Universul Juridic Publishing House, Bucharest,
- Zidaru, G. L., *Special civil procedures: eviction from buildings used or occupied without right, in the Conferences of the New Civil Procedure Code* <http://www.inmlex.ro/NCPC/doc/Brosura%20NCPC.pdf>.
- Suceava Court of Appeal, Dec no. 169 / 18.01.2011, available on www.scj.ro,
- Bucharest Court of Appeal, Civil Section IV, Decision no. 221/2011, irrevocable published on <https://lege5.ro/Gratuit/gi4tomrzgy/decizia-nr-221-2011-actiunea-in-evacuare-a-doua-societati-comerciale-natura-civila-sau-comerciala-a-litigiului-dedus-judecatii>.

Article Info

Received: May 05 2022

Accepted: May 12 2022

How to cite this article:

Paul, R. L. (2022). Evacuation of improperly used buildings. Common or special law procedure? <i>Revista de Ştiinţe Politice. Revue des Sciences Politiques</i> , no. 74, 139 – 146.
--