THE SUSPENSIVE EFFECT OF OPENING INSOLVENCY PROCEEDINGS AND THE EXCEPTION UNDER ARTICLE 75(2) A) FIRST THESIS OF LAW NO. 85/2014: WHAT REMAINS PENDING?

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Abstract

This study analyses the suspensive effects triggered by opening insolvency proceedings under Romanian Law No. 85/2014 and the New Civil Procedure Code. It explores the distinction between mandatory procedural stays for debtor representation and the automatic, de jure suspension of actions targeting the debtor's estate to preserve the procedure's collective nature. Special attention is given to Article 75(2) a) and recent High Court jurisprudence, clarifying exceptions for remedies in pending cases. The research concludes that a rigorous delineation between these legal regimes is vital to ensure procedural equality and legal certainty within the market economy.

INTRODUCTION

In legal doctrine[1] bankruptcy has been described as an institution inherent to the market economy, intended to contribute to the creation of an environment of confidence for investors - whether foreign or domestic - for creditors, and, more generally, for commercial actors. Such confidence is grounded in the existence of a regulatory framework capable of promoting legal certainty and the observance of assumed obligations, punctuality and probity in commercial dealings, the development of efficient undertakings within a free and competitive market, the rescue and rehabilitation of those enterprises experiencing financial difficulty yet remaining viable, and the cleansing of economic life through the removal of inefficient or non-performing businesses.

To address this need, the legislature has established a body of legal norms intended to regulate the relationships arising in the context of resolving situations of financial distress in which debtors may find themselves. Within the contemporary legislative framework, Law no. 85/2014 on insolvency prevention proceedings and insolvency proceedings[2]

[1] R. Bufan, A. Deli-Diaconescu, M. Sărăcuţ, *Tratat practic de insolvență ("A Practical Insolvency Treatise")*, 1st vol., 2nd Edition, Hamangiu Publishing, Bucharest, 2022, p. 2.
[2] *Law no. 85/2014 on insolvency prevention proceedings and insolvency proceedings* (Legea nr. 85/2014 privind procedurile de prevenire a insolvenţei şi de insolvenţă), published in the Official Gazette of Romania, Part I, no. 466, 2014.

("Law 85/2014") assumes a central role in shaping the legal mechanisms designed for managing such circumstances. Pursuant to art. 2 of the statute, the law seeks to establish an integrated framework of procedures available to the participants in legal relationships affected by financial distress, whether such procedures are initiated by creditors against a debtor in a state of insolvency or are mechanisms directed towards the restructuring and continued operation of the debtor's business. In all cases, their application is conditioned upon compliance with the express legal requirements set out in the statute, which constitutes a fundamental instrument for reconciling the divergent interests of debtors and creditors in the context of financial difficulty.

The doctrinal literature[3] has underscored that the terms "*difficulty*" and "*insolvency*" are employed by the legislature to distinguish the categories of procedures available to a debtor, namely, those mechanisms accessible for the restructuring, continuation or, where appropriate, cessation of its commercial activity in such circumstances. Accordingly, in situations of "*difficulty*," the debtor may resort to the insolvency-prevention[4] framework, whereas in circumstances amounting to "*insolvency*," it may avail itself of collective insolvency proceedings[5].

1. THE SUSPENSION OF JUDICIAL PROCEEDINGS PURSUANT TO THE CIVIL PROCEDURE CODE[6] ('NCPC') AND LAW 85/2014

As articulated in the legal doctrine[7], a stay of proceedings denotes the suspension of the judicial process occurred either by circumstances attributable to the parties, who no longer demonstrate an interest in pursuing the adjudication of the matter, or by circumstances beyond their control, where the parties are placed in a physical or legal impossibility to appear before the court. The general grounds governing this procedural incident are set out in articles 411-413 of the NCPC.

[3] V. Terzea, *Code of Insolvency adnotated with doctrine and jurisprudence ("Codul insolvenței adnotat cu doctrină și jurisprudență")*, Universul Juridic Publishing, Bucharest, 2022, p. 11.
[4] The restructuring agreement governed by Articles 151–151³ and the preventive concordat governed by Articles 16–37¹.
[5] The general insolvency procedure, the simplified insolvency procedure, or the bankruptcy (liquidation) procedure.
[6] *Law no. 134/2010 on the Civil Procedure Code* (Legea nr. 134/2010 privind Codul de Procedură Civilă), republished in the Official Gazette of Romania, Part I, no. 247, 2015.
[7] V.M. Ciobanu, G. Boroi, T.C. Briciu, *Civil Procedure Law. Selected course. Multiple-choice tests*, C.H. Beck Publishing, Bucharest, 2011, p. 301-302.

The suspension of the proceedings constitutes a procedural incident that interrupts the normal course of the trial, even though, under ordinary circumstances, the judicial process should unfold continuously until the resolution of the case and the delivery of the judgment[8]. It consists of the temporary suspension of the proceedings, prompted either by the will of the parties or by the occurrence of a circumstance independent of their control. Such an interruption may operate only in the cases expressly and exhaustively provided by the law, irrespective of whether it concerns a voluntary stay (art. 411 NCPC), a mandatory stay by the effect of the law (art. 412 NCPC), or a discretionary stay left to the court's assessment (art. 413 NCPC). Outside these statutory scenarios, the court cannot order the suspension of the proceedings, its competence being strictly circumscribed by the procedural norms. Depending on the nature of the grounds giving rise to it, the stay may be mandatory - in the case of voluntary stays and those imposed by the effect of the law - or it may be discretionary, where the legislation accords the court the decision to assess the appropriateness of the measure, pursuant to art. 413 NCPC[9].

For the purposes of this study, particular significance attaches to the regulation set out in art. 412 (1) pt. 6 and 8 of the NCPC, which provides for the following instances of mandatory suspension that the court is required to order:

"6. upon the opening of insolvency proceedings, on the basis of a final court judgment, where the debtor must be represented until the appointment of the judicial administrator or liquidator;
8. in other cases provided for by the law."

To ensure compliance with the special service-of-process rules applicable after the opening of insolvency proceedings, a mandatory stay operates by virtue of law, since, in addition to service in accordance with the ordinary procedural rules, it is in some cases also necessary to effect service at the address of the judicial administrator or liquidator, pursuant to art. 155 (1) of the NCPC and art. 41 (5) of Law 85/2014.

Applying the principle *ubi lex non distinguit, nec nos distinguere debemus*, it follows that the opening of insolvency proceedings entails, under the conditions laid down in art. 412 (1) pt. 6 of the NCPC, a mandatory stay of the proceedings whenever the measure concerns the claimant, the defendant, or even an intervening party, save for situations in which the mandatory stay provided by the special legislation applies[10]. In such cases, the provisions of art. 75 (1) of

[8] I. Deleanu, *Civil Procedure Treatise*, 1st vol., Universul Juridic Publishing, Bucharest, 2013, p. 1052.
[9] Commentary on article 412 of the NCPC in G. Boroi, *The New Civil Procedure Code. Article-by-Article Commentary* ("*Noul Cod de procedură civilă. Comentariu pe articole*"), 1st vol., Hamangiu Publishing, 2016, p. 916
[10] *Idem.*

Law 85/2014[11], read in conjunction with art. 412 (1) pt. 8 of the NCPC, shall govern. On this basis, two further aspects may be identified, each giving rise to a distinct scenario depending on the procedural standing of the party in the civil proceedings and the person against whom the insolvency proceedings have been initiated, namely: (i) the situation in which the proceedings concern the claimant; and (ii) the situation in which they concern the defendant.

An essential reference point in this regard is the date on which the proceedings are opened, which, pursuant to art. 5 pt. 25 of Law 85/2014, may be either the moment when the syndic-judge delivers the order opening the proceedings or the date from which the decision opening cross-border proceedings begins to produce its effects, even if that decision is not final.

1.1. The suspension under the provisions for art. 412 (1) pt. 6 and 8 from the NCPC

For the mandatory stay provided under art. 412 (1) pt. 6 of the NCPC to produce its effects, the judgment opening the insolvency proceedings must be final. In this respect, although the syndic-judge is competent, pursuant to art. 45 (1) a) of Law 85/2014, to render the judgment opening the proceedings, art. 46 (1) of the same statute grants interested parties the right to lodge an appeal against that judgment if they are dissatisfied with the solution adopted[12]. Accordingly, the filing of an appeal may prevent the fulfilment of this requirement, with the result that the suspension will take effect only at a later point - namely, when the judgment becomes final.

A further condition governing the operation of the mandatory suspension is that it must arise within the temporal interval between the moment the insolvency proceedings are opened, as previously described, and the moment the judicial administrator or liquidator is appointed, the suspension producing its effects only within these parameters.

[11] "*Accordingly, one of the grounds for a mandatory stay of proceedings is the opening of insolvency proceedings, without the legislature having circumscribed the party to whom such proceedings must apply. Thus, applying the principle ubi lex non distinguit, nec nos distinguere debemus, it follows that the opening of insolvency proceedings leads to a mandatory stay of the case whenever it concerns either the claimant or the defendant. The provisions of Article 412(1), point 6 of Law No. 134/2010 on the Civil Procedure Code operate as a general rule in relation to the provisions of Law No. 85/2006 and, respectively, Law No. 85/2014 on insolvency proceedings, as emerges from the combined interpretation of Article 149 of Law No. 85/2006 and Article 342 of Law No. 85/2014. From this conclusion it follows that the provision in Law No. 134/2010 concerning the Civil Procedure Code is applicable only where the special law does not contain a specific rule derogating from the common law*." Except from the High Court of Cassation and Justice, Decision no. 1083/2015, delivered on 28 April 2015, available at: www.scj.ro accessed on: 03.02.2026, at 19:45.

[12] Even where the appellate court, seized with the determination of an appeal lodged against the syndic-judge's decision rejecting the request to place the debtor into bankruptcy or confirming a reorganisation plan, allows the appeal, it must set aside the judgment and remit the case for retrial to the syndic-judge, with the mandatory direction to order the debtor's entry into bankruptcy. This solution is justified by the fact that the syndic-judge retains exclusive competence within the insolvency proceedings to pronounce such a measure; see the High Court of Cassation and Justice, Decision no. 4/2021, published in the Official Gazette no. 426/2021.

In analysing the reference point represented by the moment of the appointment of the judicial administrator or liquidator, it is necessary to highlight the distinction between the syndic-judge's powers set out in art. 45 (1) d) and e) of Law 85/2014. This differentiation is significant both for understanding the procedural stages and the allocation of competences in the initial phase of the insolvency proceedings, and for substantiating the need for appointing the bodies entrusted with administering or liquidating the debtor's patrimony. Each of these provisions delineates a distinct role of the syndic-judge, thereby justifying their separate examination and differentiation.

A fundamental element of the initial phase of the insolvency proceedings is therefore the appointment of the provisional judicial administrator or liquidator[13], a stage governed by art. 45 (1) d) of Law 85/2014. This appointment marks the moment at which the patrimony of the debtor in financial distress comes under the supervision of a specialised professional, whose role is to prevent the further deterioration of the assets and to ensure their efficient administration.

The provisional appointment of the insolvency practitioner may be ordered either upon request or *ex officio*, depending on the circumstances of the case and the applications submitted by the procedural actors involved. Where multiple petitions for the opening of the proceedings have been lodged, whether by the debtor or by a creditor, the appointment shall be made in accordance with the non-contentious procedure provided under art. 45 (1) d). Accordingly, where proposals for appointment are submitted from among the licensed insolvency practitioners, the court will give precedence to the proposals advanced by the creditors, as they are directly concerned with the protection of the debtor's estate and the maximisation of the recovery of their claims. If several proposals are submitted even by the creditors, the judge may select the insolvency practitioner who offers the strongest guarantees of conducting an efficient and prudent administration of the debtor's patrimony[14].

Nevertheless, since art. 412 (1) pt. 6 of the NCPC refers to the *appointment* of the judicial administrator or liquidator, this notion must be understood in light of art. 45 (1) e) of Law 85/2014, which defines the act of appointment as: *"the confirmation, by order, of the*

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[13] The appointment must be reasoned, and any failure to provide adequate reasoning may be subject to appellate review pursuant to art. 46 (1) of Law 85/2014; see the Summary of the Meeting of the Presidents of the Specialised (formerly Commercial) Sections of the High Court of Cassation and Justice and of the Courts of Appeal, Craiova, 27-28 April 2015, point 1.

[14] Summary of the Meeting of the Presidents of the Specialised (formerly Commercial) Sections of the High Court of Cassation and Justice and of the Courts of Appeal, Constanța, 7–8 September 2017, p. 8 et seq.

judicial administrator or judicial liquidator designated by the creditors' meeting or by the creditor holding more than 50% of the value of the claims." As has been emphasised in the legal doctrine[15], given the concurrent nature of the measures concerning the opening of the insolvency proceedings and the designation of the provisional judicial administrator or liquidator, treating this moment as the reference point for the termination of the mandatory stay provided by the NCPC would deprive the rule of its legal effect - an outcome that cannot be accepted. Moreover, the statutory text refers to the *appointment* of the practitioner, not merely to the act of *designating*.

On the other hand, art. 2 of the NCPC and art. 342 (1) of Law 85/2014 establish the applicability of the common-law provisions insofar as the situation is not governed by special, derogatory rules. This allows us to conclude that, in the field of the suspension of pending proceedings, a variety of possible scenarios may arise, shaped by the relationship between the special rules and the general procedural law, as well as by the procedural party to whom those rules apply. Starting from this premise, and in order to provide the most comprehensive clarification of the situations likely to arise in connection with the procedural incident under examination, I shall detail below the two hypotheses previously mentioned.

1.2. Initiation of Proceedings Against the Claimant-Debtor

Pursuant to art. 412 (1) pt. 6 of the NCPC, where the debtor must be represented, the pending proceedings shall be mandatorily suspended until the appointment of the judicial administrator or liquidator. In this context, reference must be made to the provisions of art. 85, read together with art. 45 (2) of Law 85/2014, which allow us to determine whether the debtor-claimant may represent himself before the court or whether the appointment of the insolvency practitioner must be waited for this purpose.

It must further be emphasised that actions of a different nature- namely those unconnected to the debtor-claimant's commercial activity - are not affected by the opening of insolvency proceedings. So long as such actions do not impact the debtor's patrimonial situation, the presence of the practitioner appointed in the insolvency proceedings is not required for the adjudication of the case pending before the court.

[15] Commentary on article 412 of the NCPC in G. Boroi, *The New Civil Procedure Code. Article-by-Article Commentary* ("*Noul Cod de procedura civilă. Comentariu pe articole*"), 1st vol., Hamangiu Publishing, 2016, p. 918.

1.3. Initiation of Proceedings Against the Defendant-Debtor

The analysis of the suspension of proceedings in the scenario where insolvency proceedings are opened against the debtor-defendant requires, first and foremost, the characterisation of the action brought before the court. Thus, where the action does not pursue the enforcement of a claim against the debtor's estate and the debtor's representation is necessary, the provisions of art. 412 (1) pt. 6 of the NCPC become applicable, together with the considerations detailed in Sub-chapter 2.2.

A solution that supports the considerations set out above is that delivered by the High Court of Cassation and Justice, which held in Decision no. 285/2016 that[16]: "*Neither the claim seeking to oblige the defendants to pay the amount of EUR 50,000, in its equivalent in RON at the date of payment, for the harm caused to the claimant's honour, reputation and public image, forms part of the actions regulated by art. 36 of Law no. 85/2006, having regard to the powers of the syndic-judge, as results from the combined interpretation of art. 31, 11 and 66 of Law no. 85/2006. Thus, the amount claimed does not constitute a debt of the kind whose certainty and extent may be determined within the verification procedure provided for in art. 66 of Law no. 85/2006, but rather outside the insolvency proceedings, under the rules of common law*."

Thus, it becomes evident that the suspension does not operate in the case of claims whose certainty and extent are determined outside the insolvency proceedings, under the rules of common law[17].

In another case[18], the Bucharest Court of Appeal held that the obligation to do something, consisting in placing a plot of land at the creditor's full disposal and removing the construction erected upon it, does not in any way affect the patrimonial assets of the contesting party. Consequently, the continuation of enforcement proceedings in respect of such an obligation does not contravene the provisions of Law 85/2014, and the enforcement may proceed even where insolvency proceedings have been opened against the contesting debtor.

In cases involving actions other than those previously mentioned, we are faced with a suspension that operates *ope legis* under art. 75 (1) of Law 85/2014, forming part of the broader category of situations referred to in art. 412 (1) pt. 8 of the NCPC, which provides as follows:

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[16] High Court of Cassation and Justice, First Civil Division, Decision no. 285/2016, available at: www.scj.ro accessed on: 23.02.2026, at 20:54.

[17] R. Bufan, A. Deli-Diaconescu, M. Sărăcuţ, *Tratat practic de insolvenţă ("A Practical Insolvency Treatise")*, 1st vol., 2nd Edition, Hamangiu Publishing, Bucharest, 2022, p. 339.

[18] Bucharest Court of Appeal, Sixth Civil Division, Decision No. 2080/2021, available at: www.rolii.ro accessed on: 23.02.2026, at 23:10.

"*From the date of the opening of the proceedings, all judicial, extrajudicial or enforcement actions aimed at recovering claims against the debtor's estate shall be suspended de jure. The realisation of such rights may be pursued only within the insolvency proceedings, by filing applications for the admission of claims (...)*"

As noted in the legal doctrine[19], the suspension of judicial or extrajudicial actions as a consequence of the opening of insolvency proceedings serves to preserve the collective, concours-based, and egalitarian nature of the procedure, by preventing the pursuit of individual enforcement or recovery actions against the debtor's estate and by eliminating uncertainty regarding the debtor's liabilities. This provision, imperative in nature and of public order, is intended to centralise all disputes concerning the debtor's patrimony within the exclusive jurisdiction of the syndic-judge.

By enacting this provision, the legislature also sought to ensure the preservation of the debtor's patrimony in the form and structure existing at the moment the proceedings are opened, preventing any diminution of the assets until such time as the measures required within the insolvency procedure are determined[20].

This suspension covers judicial actions *stricto sensu*, enforcement proceedings (whether direct or indirect) concerning the debtor's estate, arbitral proceedings, as well as extrajudicial actions such as the enforcement of budgetary claims. It operates from the date on which the judgment opening the proceedings is delivered, not from the date on which the petition for the opening of the proceedings is filed, the argument that the order was not yet final at the time the enforcement act was carried out against the debtor's estate being devoid of legal relevance[21].

However, the suspension of individual enforcement proceedings does not equate to the annulment of enforcement acts lawfully carried out prior to the opening of the proceedings; it merely entails the cessation of any further enforcement, stopping the process at the procedural stage it had reached at the moment the insolvency proceedings were initiated[22].

The legislature has nevertheless provided for certain situations expressly regulated by Law 85/2014 in which the provisions of art. 75 (1) are not applicable. I shall hereafter examine

[19] Commentary on art. 75 in D. Cărpenaru, M. Hotca, V. Nemeș, *The Insolvency Code Commentary ("Codul insolventei comentat")*, 2nd Edition, Universul Juridic Publishing, 2017, p. 239.
[20] Gh. Piperea, *Insolvency: the law, the rules, the reality ("Insolvența: legea, regulile, realitatea")*, Wolters Kluwer Publishing, Bucharest, 2008, p. 494.
[21] Commentary on art. 75 in D. Cărpenaru, M. Hotca, V. Nemeș, *The Insolvency Code Commentary ("Codul insolventei comentat")*, 2nd Edition, Universul Juridic Publishing, 2017, p. 240.
[22] I. Adam, *Suspension of judicial, extrajudicial or enforcement actions for the recovery of claims against the debtor's estate ("Suspendarea acțiunilor judiciare, extrajudiciare sau a măsurilor de executare silită pentru realizarea creanțelor asupra averii debitorului")*, in *R.R.D.A.* no. 5/2013, p. 39.

only the situations provided for in art. 75 (2) a) first thesis of Law 85/2014, for the purpose of identifying those circumstances in which the procedural incident of the stay does not produce its effects.

2. THE EXCEPTIONS PROVIDED UNDER ART. 75 (2) A)

First and foremost, it is necessary to clarify the temporal benchmark envisaged by Article 75 (2) a) first thesis of Law 85/2014. As also observed in the legal doctrine[23], the suspensive effect does not operate where the remedy is pursued in proceedings commenced prior to the opening of the insolvency procedure, irrespective of whether the filing of the remedy occurs before or after the initiation of the insolvency proceedings.

Continuing from these considerations, it should be underlined that the term *actions*, as employed by the statutory provision, encompasses the full range of judicial steps that fall within the definition set out in art. 29 of NCPC. It denotes the entirety of procedural mechanisms through which the protection of asserted civil subjective rights is secured and through which the effective exercise of the right of defence is ensured.

From another perspective, the analysed statutory provision establishes that remedies lodged by the debtor against actions brought prior to the opening of the insolvency proceedings are exempt from the suspensive effect. The doctrine has noted[24] that this legislative solution is profoundly inequitable, as it transforms the dispute into an imbalanced procedural endeavour, placing the creditor in a purely defensive position and infringing the principle of procedural equality. The procedural burden imposed on a creditor in such circumstances becomes excessive, all the more so as the proceedings continue regardless, and judicial review of the challenged judgment is, inevitably, exercised.

In this context, by Decision no. 22/2024[25], the High Court of Cassation and Justice resolved the existing controversy, holding that the special law does not derogate from the provisions of the NCPC. Consequently, the judicial review court, seized with appellate remedies lodged by both the debtor and the creditor, where insolvency proceedings have been

[23] *Idem,* p. 41.
[24] *Ibidem*, p. 42.
[25] High Court of Cassation and Justice, Decision no. 22/2024 [A] concerning the appeal in the interest of the law on the interpretation and uniform application of art. 75 (1), in conjunction with art. 75 (2) a), first sentence, of Law 85/2014, regarding the non-derogatory character of the provisions of the Insolvency Code from the common-law rules of the Civil Procedure Code governing the competence of the judicial review court to adjudicate all remedies; published in the Official Gazette of Romania, no. 62, 2025.

opened against the debtor, is required to adjudicate all the remedies brought before it. Thus, the unity of the subject-matter submitted to adjudication prevails over any division of the remedy, the two being indissolubly linked, since the dispute concerns a single legal issue which does not allow the court to confine its analysis solely to the arguments advanced by the party in financial distress. A contrary solution would deprive the creditor of the right to have its own grounds of appeal examined, even though the challenged judgment concerns the same legal relationship.

Another decision of the High Court of Cassation and Justice, relevant for the present analysis, concerned the interpretation of art. 262 (4) of Law 85/2014 and the regime of the remedies lodged by the debtor - an insurance/reinsurance company subject to bankruptcy proceedings - against judicial decisions by which actions brought by one or more creditors prior to the opening of those proceedings had been resolved.

Since the statutory provision under interpretation concerns a debtor with a special status and a regulatory framework distinct from that laid down in art. 75 of Law 85/2014, it must be emphasised that it does not expressly set out the situations that constitute exceptions to the procedural incident of the stay.

Nevertheless, the Constitutional Court of Romania, in the reasoning of Decisions no. 36/2018[26] and no. 690/2018[27], held that art. 262 (4) of Law 85/2014 must be interpreted in correlation with the provisions of art. 242 of the same statute, according to which the provisions of Chapter I - with the exception of those contained in Section 6 - apply *mutatis mutandis* to the bankruptcy proceedings of insurance and reinsurance companies, subject to the derogations provided by law. In light of these considerations, art. 262 (4) cannot be interpreted in isolation, but must be construed by reference to the entire legislative framework governing insolvency proceedings.

By Decision no. 19/2022[28], the High Court of Cassation and Justice resolved the existing controversies and, by allowing the application for the delivery of a ruling in the interest of the

[26] Constitutional Court of Romania, Decision no. 36/2018 [R] concerning the exception of unconstitutionality of art. 262 (4) of Law 85/2014 on insolvency prevention and insolvency proceedings, published in the Official Gazette of Romania, no. 431, 2018.
[27] Constitutional Court of Romania, Decision No. 690/2018 [R] concerning the exception of unconstitutionality of the provisions of art. 412 (1) pt. 6 and art. 413 (1) pt. 3 and paragraph (2) of Law no. 134/2010 on the Civil Procedure Code, as well as art. 75 (1) and art. 262 (4) of Law 85/2014 on insolvency prevention and insolvency proceedings, published in the Official Gazette of Romania, no. 210, 2019.
[28] High Court of Cassation and Justice, Decision no. 19/2022 [A] concerning the appeal in the interest of the law on the interpretation and uniform application of art. 262 (4), in relation to the provisions of art. 75 of Law 85/2014 on insolvency prevention and insolvency proceedings, published in the Official Gazette of Romania, no. 1061, 2022.

law, held that the remedies brought by the debtor - an insurance or reinsurance company in respect of which bankruptcy proceedings have been opened - against judicial decisions resolving the actions brought by one or more creditors for the recovery of claims against its estate, such actions having been filed before the opening of the proceedings, are not subject to the mandatory stay. Through this ruling, the supreme court clarified the legal nature of the remedies exercised by insurance and reinsurance companies in bankruptcy, emphasising that the procedural protection afforded to the debtor under art. 262 (4) of Law 85/2014 cannot have the effect of paralysing the debtor's access to judicial review of judgments delivered prior to the commencement of the proceedings, in accordance with art. 75 (2) of the same statute.

Accordingly, until any potential legislative amendment is introduced, a number of solutions have been delineated regarding the application of the provisions of Law No. 85/2014 in its current form[29]:

1. Where there is only one remedy, lodged by the debtor, that remedy is not stayed and shall be heard in accordance with the ruling delivered by the High Court of Cassation and Justice in Decision no. 19/2022;
2. Where there is only one remedy, lodged by the creditor, the provisions of art. 75 (1) of Law 85/2014 shall apply;
3. Where remedies have been lodged by both parties, each must be adjudicated, as there is a close and inherent connection between them.

CONCLUSIONS

The foregoing analysis highlights that the application of the stay cannot be treated uniformly, particularly in scenarios involving attempts to realise one or more claims against the debtor's estate through the initiation of various judicial actions. This is because the two grounds for suspension have distinct legal natures and produce different procedural effects. For this reason, the correct characterisation of each situation requires a careful examination of the applicable legal basis and of the legislative purpose pursued by the lawmaker. In this context, distinguishing between the two types of suspension becomes essential in order to avoid conceptual confusion and to ensure the coherent application of procedural rules.

[29] Summary of the Meeting of the Presidents of the Specialised (formerly Commercial) Sections of the High Court of Cassation and Justice and of the Courts of Appeal, dedicated to the discussion of issues of non-uniform practice in disputes involving professionals and in insolvency matters, Bucharest, 24-25 October 2022.

The two grounds for suspension belong to distinct legal regimes, serve different purposes, and operate under conditions specific to each area of regulation. This makes a clear delineation imperative, so as to prevent confusion and to ensure the consistent and coherent application of procedural norms.

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derogatory character of the provisions of the Insolvency Code from the common-law rules of the Civil Procedure Code governing the competence of the judicial review court to adjudicate all remedies; published in the Official Gazette of Romania, no. 62, 2025;

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7. High Court of Cassation and Justice, Decision no. 19/2022 [A] concerning the appeal in the interest of the law on the interpretation and uniform application of art. 262 (4), in relation to the provisions of art. 75 of Law 85/2014 on insolvency prevention and insolvency proceedings, published in the Official Gazette of Romania, no. 1061, 2022.
8. High Court of Cassation and Justice, Decision no. 4/2021, published in the Official Gazette no. 426/2021;

IV. Legislation

1. *Law no. 85/2014 on insolvency prevention proceedings and insolvency proceedings* (Legea nr. 85/2014 privind procedurile de prevenire a insolvenţei şi de insolvenţă), published in the Official Gazette of Romania, Part I, no. 466, 2014;
2. *Law no. 134/2010 on the Civil Procedure Code* (Legea nr. 134/2010 privind Codul de Procedură Civilă), republished in the Official Gazette of Romania, Part I, no. 247, 2015.