

Effects of civil juridical act

Lecturer Violeta SLAVU, PhD.

Titu Maiorescu University of Bucharest, Law Faculty
violeta_slavu@yahoo.com

Abstract:

Analysis of the effects of civil juridical act is necessary both at the time preceding the conclusion of a civil juridical act and especially thereafter when there is a conflict that generates a litigation subject to legal inquiry. Such an analysis, complex by its nature, requires a dualistic approach both from the perspective of the parties, which is paramount (civil juridical act expressing the will of the parties) and of the legislature, which provides the legal frame in the matter subject to this analysis. It is noticed that an important role is given to the rules of interpretation of contract terms. Not to be neglected, this being abundantly prove by practice, the lack of legal training that is reflected in the content of civil juridical act concluded without specialized assistance and generating disputes between co-contracting parties. In this study we also propose an overview of the rules of interpretation of contract terms together with the principles governing the effects of the civil juridical act.

Keywords: *civil juridical act, the interpretation of contractual terms, the effects of civil juridical act, binding force, irrevocability, relativity.*

1. Introduction. Definition and rules of interpretation

The effects of civil juridical act means individual rights and civil obligations to which gives rise, amends or extinguishes such an act [1].

What for civil legal act means effects, for civil juridical relationship is its content [2].

Determining the effects of civil juridical act involves establishing subjective civil rights and correlative civil obligations generated, modified or extinguished by that legal act. This legal operation is necessary because the content of civil juridical act is not always clearly expressed, in the sense that, sometimes the terms used by the parties are unclear, imprecise, do not reflect unequivocal will of the parties.

Determining the effects of civil juridical act involves several steps.

First it is necessary to prove the existence of the civil juridical act, preliminary and necessary step in determining the effects of civil juridical acts. If the existence of civil juridical act cannot be proven, the question of determining its effects is no longer needed, according to the maxim *idem est non esse et non probari*. Obviously, the rules in the matter of probation can be applied here [3].

The second step is the interpretation of the provisions of civil juridical act.

The rules of interpretation are as follows:

- General rules of interpretation (Art.1266-1269, Art.1272 of Civil Code)
- Special rules of interpretation, provided by the legislature for certain categories of civil juridical acts (ex. a will in favor of the creditor excludes compensation [4]).

According to Civil Code the following are general rules of interpretation:

- Civil juridical act shall be interpreted as the real intention of the parties and not following the literal meaning of the term, when establishing the will of the parties shall take into account the purpose of the contract, the negotiations between the parties, the practices settled between the parties and the conduct of the parties after the conclusion of the contract [5];
- Clauses of civil juridical act shall be interpreted one from others reported to the whole act (systematic interpretation [6]) [7];
- Questionable clauses shall be interpreted in the way that best suits the nature and scope of the civil juridical act [8];
- Questionable clauses shall be interpreted taking into account the nature of the contract, the circumstances in which it was concluded, the interpretation previously given by the parties, the meaning given in general to terms in the field and the practice [9];
- If a clause is susceptible of more than one meaning, it shall be interpreted in the sense that can be binding and not in the sense that it would not produce legal effects [10];
- In the case of using too general terms, interpretation shall be restricted to the thing it was contracted for [11];
- Exemplary clauses do not restrict the scope only to them, meaning that the application also intervenes in cases not expressly provisioned by that civil juridical act [12];
- If the vagueness persists, then the questionable clauses shall be interpreted in favor of the debtor [13] except stipulations in contracts of adhesion [14], in which case doubtful interpretation shall be made against the person who proposed the terms;

- Valid juridical concluded act is binding not only to what is expressly mentioned, but also to all consequences following the established practices between the parties, customs, law or equity give to the act according to its nature [15];
- Usual clauses in a contract are implied even if they were not expressly provisioned [16];

2. Principles of the effects of civil juridical act

Effects of civil juridical act are governed by the following principles:

- principle of binding force (*pacta sunt servanda*);
- principle of irrevocability of civil juridical act;
- principle of relativity (*res inter alios acta, aliis neque nocere, neque prodesse potest*).

The principle of binding force

The principle of binding force is that rule of the effects of civil juridical act under which civil juridical act validly concluded, is imposed upon its author or authors just like law (Art.1270 par.1 of Civil Code [17]).

The principle of binding force is justified by the necessity to ensure the stability and security of juridical relations arising from civil juridical acts on one hand and on the other by the moral imperative of keeping the word.

Civil juridical act legally concluded is binding for the courts invested with resolving disputes, in the sense that it is obliged to ensure the enforcement of civil juridical act according to the will of the parties [18].

Exceptions to this rule are cases where the effects do not occur as parties wanted at their end, meaning that the effects can be limited or stretched beyond parties' control. These are:

a) Cases of restriction of binding force

- termination of mandate contract in case of death, prohibition, insolvency and bankruptcy of trustee or principal [19] (Art.2030 par.1 point c) of Civil Code);
- termination of location contract [20]; intervenes when leased asset fully perished or became worthless of its common use (aArt.1818 par.(1) of Civil Code).
- termination of location contract as a result of the abolition lessor's right, of tenant's death [21];

- termination of mandate contract in case of death, bankruptcy or incapacity of the trustee or principal [22];
- termination of the undertaking contract concluded *intuitu personae* by death or disability of entrepreneur, non-imputable to him [23], a.s.o [24].

b) Cases of extension of binding force:

- extension (prorogation) of the effects of civil juridical act, by law effect [25];
- extension of the effects of civil juridical act with successive execution with a period of time equal to the duration of the suspension cause which made execution impossible.
- legal moratorium, assumes allowing lawful time for a certain category of debtors in extreme circumstances (economic crisis, military conflicts, etc.)

c) review of the effects of certain juridical acts due to rupture of the contractual balance following changing circumstances envisaged at the conclusion of civil juridical act (Art.1271 of Civil Code)

d) cases where the law recognizes one party the right to make unilateral changes to the civil juridical act [26] as is the case [27] governed by the provisions of Art. 53 par, (1) in OUG.no.54/2006 on the regime of concession of public assets contracts [28].

The principle of irrevocability

Irrevocability principle is that rule of law according to which bilateral civil juridical act cannot be terminated only by will of one party, and unilateral civil juridical act cannot be terminated by unilateral declaration of intent, to the contrary, by its author.

Exceptions to the irrevocability represents those cases where termination of bilateral juridical by unilateral declaration of intent of only one party, on one hand, and termination of civil juridical act by expressing contrary will of its author, on the other hand.

Exceptions to the irrevocability in the category of bilateral acts:

- revocation of donation between spouses during marriage [29];
- termination of deposit contract on depositor demand [30];
- no term tenancy contract may be terminated by either party [31];
- insurance contract may be terminated by unilateral will with a notification period of at least 20 days from the date of receipt of notification by the other party [32];

- a.s.o [33].

Exceptions to the irrevocability in the category of unilateral juridical acts:

- the testament [34];
- cancellation of relinquishment of a succession that operates only if the following conditions are met: a) the right of option of releaser should not be extinguished by the expiry of the limitation period of six months from the date of opening of succession; b) succession should not have been accepted in the meantime by another person entitled to succeed;
- offer without term may be withdrawn only if the withdrawal reaches the offeree before or concurrently with the offer (Art.1199 of Civil Code [35].)

The principle of relativity of effects of civil juridical act

The principle of relativity of effects of civil juridical act is that rule of law that takes effect only on authors or its author, and not on third parties (Art.1280 of Civil Code.).

The party is the person who concludes the civil juridical act, either personally or by representation, and in whose patrimony or person are produced the effects of civil juridical act.

Third parties are persons alien of juridical act (penitus extranei).

Those entitled (habentes causam) are those persons who, although not involved in concluding the civil juridical act, yet bears its effects due to their legal relationship with the parties of civil juridical act.

There are three categories of those entitled:

- universal successors are those who acquire a patrimony, a universality (e.g. only successor) and universal title successors who are people who acquire a portion of a patrimony (e.g. more legal successors);
- successors by particular title are people who acquire a determined individual good (e.g. a car buyer);
- chirographic creditors are those creditors whose debt is not secured through the establishment of a guarantee [36] but benefit of a general possessory lien over all assets of their debtor.

Exceptions to the principle of relativity are cases in which such civil legal act produces effects also to other persons than the parties, by the will of the parties of the civil juridical act. According to previous regulations coming into force of the new Civil Code, doctrine classifies exceptions to the principle of relativity into two categories: real and apparent, considering that the only real exception to this principle is the provision in interest of a third party [37]. Under the new regulations the provision in interest of a third party enjoys separate regulations [38], according to which third-party beneficiary right validly arises only by expressing his or her will on the acceptance, otherwise the right established by agreement between parties, in favor of third-party beneficiary, represent at most a resolutive condition.

Apparent exceptions to the principle of relativity:

- the situation of those entitled is an apparent exception to the principle of relativity as universal or universal title successors are natural successors to the parties; successors by particular title become parties to their agreement and chirographic creditors are entitled to promote actions against the debtor under the law, not by will of parties;
- vicarious promise (porte-fort convention) is the convention whereby a party called the promisor is bound to the other party called the creditor of promise to cause a third party to conclude a civil juridical act. It is an apparent exception as the conclusion of the juridical act by the third party depends solely on his own will;
- representation is technical and juridical procedure by which a person called representative, concludes a juridical act in the name and on behalf of another person, as represented, so as the effects of such juridical act occur directly in the represented person. Representation may be conventional (arising from the will of the parties), juridical (has its source in law) and judicial (has its source in the empowerment of court). It is an apparent exception from the principle of relativity because in case of conventional representation, the representative is party in the contract; in case of legal representation, powers derive from law, and in case of judicial representation, empowerment is given by the court;
- direct legal action. Designate those situations in which, by law, a person (the plaintiff) calls sue another person (the defendant) with whom he is not in contractual

relations, the latter being in contractual relations with another person with whom the applicant himself is in contractual relations. Thus: the matter of undertaking contract recognizes the right of workers employed by the contractor to sue directly the beneficiary of the construction, for payment of their due remuneration (Art.1856 of Civil Code.); in case of mandate contract is recognized the principal legal action against sub-mandatory substituted by trustee, although the principal is third in the contract between the agent and sub-mandatory (par.6 Art.2023 of Civil Code). Direct actions are apparent exceptions to the principle of relativity of effects of civil juridical act, because of the right to action arises from law.

- And others [39].

3. Conclusions:

Analysis of the effects of legal documents is complex as it involves an approach from several perspectives, as seen throughout this study. It is important and urgent for reasons already shown. Furthermore, should not be disregarded in such an analysis issues arising from the application of civil law in time, issues that will be subject to a further research.

References:

- [1] *Civil juridical act is a manifestation of will expressed with the intention to produce legal effects. For other definitons see Iosif Robi Urs, Carmen Todică Civil Law.General theory, Hamangiu PH, Bucharest, 2015, pp.198-199*
- [2] *"The content of civil juridical relationship consists of rights and obligations of the subjects participating to the relationship", Carmen Tamara Ungureanu, Civil Law.general part.Persons, 2nd Edition, Hamangiu PH, Bucharest, 2013, p.83*
- [3] *For further information see Iosif Robi Urs, Carmen Todică, op.cit., pp.113-128*
- [4] *Art.1039 par.(3) of Civil Code disposes: Legacy in favour of creditor is not deemed to be made in compensation of his his claim.*
- [5] *Art. 1266 of Civil Code.*
- [6] *Systematic interpretation involves interpretation of the juridical norm by reporting on other legal requirements of the same law and/or other normative acts.*
- [7] *Art.1267 of Civil Code.*
- [8] *Art.1268 par. (1) of Civil Code.*
- [9] *Art.1268 par. (2) of Civil Code.*
- [10] *Art.1268 par. (3) of Civil Code.*
- [11] *Art.1268 par. (4) of Civil Code.*
- [12] *Art.1268 par. (5) of Civil Code.*
- [13] *Art.1268 par. (1) of Civil Code.*
- [14] *Art.1268 par. (2) of Civil Code.*
- [15] *Art.1272 par. (1) of Civil Code.*
- [16] *Art. 1272 par. (2) of Civil Code.*
- [17] *"Validly concluded contract binds the contracting parties"*

[18] According to our legal system, internal or real wish not exterior wish, as is the case of German Law, produces juridical effects. Of course, choosing wish in determining effects of civil juridical act intervenes only when there is no agreement between internal and exterior wish.

[19] For further details see Manuela Tăbăraș, *Special contracts. Synthesis, models of contracts, tests*, C.H.Beck PH, Bucharest, 2013, p.199.

[20] For further details see Manuela Tăbăraș, *op.cit.* pp.144-145.

[21] Art. 1834 par.(1) of Civil Code disposes : Lease contract cease within 30 days from the registration of tenant's death.

[22] Pentru dezvoltări a se vedea Manuela Tăbăraș, *op.cit.*, p.199.

[23] Art.1871 par.(1) of Civil Code

[24] Gabriel Boroj, Carla Alexandra Anghelescu, *Civil right law. General part*, Hamangiu PH, Bucharest, 2011, p.195-196

[25] Gabriel Boroj, Carla Alexandra Anghelescu, *op.cit.* p.196.

[26] Gabriel Boroj, Carla Alexandra Anghelescu, *op.cit.* pp.200-201.

[27] Art.53 par.(1) in O.U.G.nr/2006 settles: "conceders may unilaterally modify the regulating part of the concession contract, with previous notification of patentee, from exceptional reasons related to national or local, as the case may be".

[28] Published in Romanian O M, Part I no.569 from 30 June 2006, approved with modifications by Law no.22/2007 published in Romanian OM, Part I no.35 from 18 January 2007.

[29] Art. 1031 of Civil Code.

[30] Art.1277 of Civil Code.

[31] Art.1816 par. (1) of Civil Code .

[32] Art.2209 of Civil Code.

[33] For further examples see Gabriel Boroj, Carla Alexandra Anghelescu, *op.cit.*, pp.202-205.

[34] Art.1034 of Civil Code disposes: Testament is the unilateral juridical, personal and irrevocable act by which a person called testator, disposes, in one of the forms demanded by law, for the time after his death.

[35] For further development see Iosif Robi Urs, Petruța-Elena Ispas, *Civil Law. Theory of obligations*, Hamangiu PH, Bucharest, 2015, pp.52-58

[36] For development see Iosif Robi Urs, Petruța-Elena Ispas, *op.cit.* pp.451 and the following.

[37] Also called the contract on benefit of a third party is the convention by which a party called provider binds to the other party called demander to perform a service in favor of a third-party called third-party beneficiary.

[38] Art.1284-1288 of Civil Code.

[39] For other exceptions see Gabriel Boroj, Carla Alexandra Anghelescu, *op.cit.*, pp.215-216.

Selective bibliography:

- Gabriel Boroj, Carla Alexandra Anghelescu, *Civil Law course. General part*, Hamangiu PH, Bucharest, 2011;
- Iosif Robi Urs, Carmen Todică *Civil Law. General theory*, Hamangiu PH, Bucharest, 2015;
- Iosif Robi Urs, Petruța-Elena Ispas, *Civil Law .Theory of obligations*, Hamangiu PH, Bucharest, 2015;
- Carmen Tamara Ungureanu, *Civil Law .General part. Persons*, 2nd Edition, Hamangiu PH, Bucharest, 2013;
- Manuela Tăbăraș, *Special contracts. Synthesis, models of contracts, tests*, C.H.Beck, Bucharest, 2013;
- Law no.287/2009 on Civil Code, republished in Romanian OM, Part I no. 505 from 15 July 2011;
- OUG.nr.54/2006 on regime of concession of public property assets contracts, published in Romanian OM, Part I no.569 from 30 June 2006;
- Law no.22/2007 for approval of Urgent Ordinance of Government no. 54/2006, published in Romanian OM, Part I no.35 from 18 January 2007.