CONCLUSION AND EFFECTS OF THE CIVIL CONTRACT

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Abstract:
The contract in general and the civil contract as a species is one of the most important and common contemporary legal institutions. The specifics of the conclusion and effects of this type of contract are necessary aspects in the analysis and understanding of any interaction of this kind between subjects in society. It is precisely the age of the notions that make it necessary to systematically analyze these elements in relation to the new legal and social realities related to technology and European and international integration.
Keywords: *civil law, civil contract, conclusion of civil contract, effects of civil contract.*

INTRODUCTION

The contract is the instrument through which the individual will becomes a source of law. In a society based on a market economy and freedom of exchange, the contract represents the fundamental mechanism of the circulation of values and the organization of patrimonial relations. Without the contract, civil law and legal commerce would lack dynamism, and social life – legal predictability [1].

The contract, viewed in this unity, must be understood not only as an individual legal act, but also as an institution of balance between freedom to dispose and the constraints imposed by law, equity and good faith. It is, therefore, a form of regulated private autonomy which [2], in essence, takes the form of the convergent manifestation of two legal wills, with the aim of producing legal effects determined by the two wills in the social and economic context of current life.

The central role of the contract in the private legal architecture is also highlighted by the modern, systematic and coherent regulation within the provisions of Book V ("On Obligations"), Title II ("On Contracts"), art. 1166 Civil Code, which defines the contract as the agreement of will between two or more persons with the intention of establishing, modifying or extinguishing a civil legal relationship [3]

CONCLUSION OF THE CONTRACT

For a contract to be valid, it must meet four essential conditions according to art.1179 C.civ.: the capacity of the parties to contract, validly expressed consent, a determined, possible, licit and moral object and a licit and moral cause.

These conditions correspond to the classical principles of the Romanist tradition, modernized in the new Civil Code.

a) Capacity to contract

Legal capacity represents the ability of a person to acquire and exercise civil rights and obligations. According to art. 1179 in conjunction with art. 37 and 38 C.civ., natural persons acquire full capacity upon reaching the age of majority (18 years), and legal persons have it from the moment of acquiring legal personality.

Lack of capacity entails the relative nullity of the contract (usually in favor of the incapacitated person), and special prohibitions (e.g.: the minor cannot dispose of his or her goods free of charge without consent) complement the general regime [4].

b) Consent

Consent is the manifestation of will by which a party expresses its agreement to contract. For validity, it must be free, conscious and serious, that is, free from defects: error, fraud (deception), violence or injury (in certain cases provided for by law).

The defects of consent do not cancel the existence of the contract, but affect its validity, attracting relative nullity. Fraud produces nullity if it is decisive; violence if it is unjust; error if it concerns the substance of the object or the person (in intuitu personae contracts) [5].

c) Object of the contract

The object consists of the performance that each party undertakes to perform. Its conditions are: to exist, to be determined or determinable, possible, licit and in accordance with good morals (art.1225–1226 C.civ.).

Thus, one cannot contract for an impossible future good, for an inalienable good, or for a performance contrary to public order.

d) Licit cause or purpose

Although the Civil Code no longer uses the term "cause" in the traditional sense, it enshrines the concept of illicit or immoral purpose as a ground for nullity (art.1235 C.Civ.).

The legal purpose must be in accordance with the law and good morals. Therefore, the contract with the purpose of tax fraud, corruption or evasion from the application of mandatory norms is absolutely null.

Any convention or contract is formed permanently and ancestrally based on the existence of an offer and a request, The offer is the manifestation of the will of a person by which he proposes to another the conclusion of a contract, with the intention of obliging himself in case of acceptance. It must be firm, precise and complete (to contain the essential elements of the future contract).

The offer produces legal effects only from the moment of communication to the recipient, according to the theory of reception. Its withdrawal is possible only until that moment; after communication, the revocation must be made before the offer is accepted.

The offer may be with or without a term. In the first case, the offeror is bound until the expiry of the term; in the second, until the expiry of a reasonable period, established according to the circumstances.

Acceptance is the manifestation of will by which the recipient consents to the offer, without reservations and without modifications. It must be pure and simple, and the moment of the meeting of the two wills (offer – acceptance) determines the formation of the contract (art.1182 C.civ.).

Acceptance can be express (verbal, written, electronic declaration) or tacit (resulting from unequivocal behavior). In absentee contracts, the rule is that the moment of conclusion coincides with the moment when the acceptance reaches the offeror (theory of reception), and the place of the contract is the place where the offer was received.

In contracts between present persons, formation is instantaneous, in real time. In contracts between absent persons, communication and transmission time can generate validity problems (revocation, delay, loss of communication). In these cases, the law gives precedence to the reception of the message, not to the dispatch, strengthening legal certainty [6].

This aspect is also highlighted in the case of modern means of commerce, since contracts concluded by electronic means (e-mail, online platforms) follow the same general rules, supplemented by Law no. 365/2002 on electronic commerce.

The moment of formation is that of the reception of the electronic message in the recipient's system, according to art.1186 para. (2) Civil Code. digital transformation has generated an expansion of contracts concluded electronically.

The qualified electronic signature confers the same legal effect as the holographic signature.

However, this evolution raises problems regarding: digital evidence, electronic archiving but also the cyber security of legal documents.

EFFECTS OF THE CONTRACT

The effects of the contract are regulated by art.1270–1274 C.civ. and express the binding force of the agreement. A validly concluded contract has the force of law between the parties and must be executed in good faith.

The contract is binding not because the parties wanted it, but because the law requires them to respect the freely expressed legal will. The binding force expresses the principle pacta sunt servanda. No party may unilaterally revoke the contract, except in cases permitted by law (unilateral denunciation, conventional termination, commissory pact, etc.) [7].

Art. 1170 C.civ. provides that the parties must act in good faith not only when concluding the contract, but also when executing and interpreting it. Good faith presupposes loyalty, cooperation and refraining from abuse. It constitutes a criterion for interpreting and limiting subjective rights.

The doctrine [8] speaks of the "ethics of civil obligation", through which the contract becomes more than an individual legal norm: an instrument of equity and economic solidarity.

The effects of the contract occur only between the contracting parties, not towards third parties (art. 1280 C. civ.) with very limited exceptions:

- Stipulation for another (art. 1284): a contract may create rights in favor of a third party beneficiary;
- The de facto promise of another;
- Direct action in chains of successive contracts (e.g.: subcontracting).

These exceptions are justified by considerations of equity and legal efficiency.

d) Inalienability of the contract and assignment

The parties may assign their rights and obligations, in compliance with the conditions of the law: assignment of receivables (art.1566–1595) and assignment of contract (art.1315–1323). In the assignment of contract, the full substitution of one of the parties requires the express consent of the other.

Ineffectiveness includes all situations in which the contract does not produce legal effects: nullity, resolution, termination, unenforceability, lapse, fortuitous impossibility of execution.

a) Nullity

- Absolute nullity: protects public order (e.g.: illicit object, immoral cause). It can be invoked by any interested person and by the court ex officio.
- Relative nullity: protects a particular interest (e.g.: defect of consent). It can only be invoked by the injured party.

The effect of nullity is retroactive (the contract is terminated ab initio).

b) Resolution and termination

Resolution sanctions the culpable non-performance of an obligation in a synallagmatic contract with immediate execution (e.g. sale), and termination applies to contracts with successive execution (e.g. lease).

The resolution can be:

- Judicial – by decision;
- By operation of law – by commissory pact;
- Unilateral – by declaration notified to the other part (art. 1552–1553 C. civ.).

c) Fortuitous impossibility

If the execution becomes impossible through no fault of the debtor, the obligation is extinguished, and the contract terminates by law (art. 1634 C. civ.). Example: fortuitous loss of the individual specific asset.

d) Caducity

A validly concluded contract becomes lapsed when, subsequently, an essential element disappears (e.g.: the death of the donee in an intuitu personae donation).

CONCLUSIONS

The civil contract represents the center of gravity of the law of obligations. It concentrates the fundamental principles of private law: autonomy of will, equality of the parties, binding force, good faith and liability.

The correct classification of a contract – depending on the type, conditions of validity, manner of formation and effects – is essential for the fair application of the law.

Understanding these mechanisms forms the basis of the legal logic necessary for the future practitioner of civil law.

The civil contract remains the center of gravity of the architecture of private law, as it concentrates the principles of autonomy of will, equality of parties, binding force and good faith.

The correct understanding of the mechanisms of conclusion, effects and causes of ineffectiveness of contracts is fundamental both for legal theory and for professional practice.

Technological innovations, globalization and Europeanization of law give a new dynamic to the civil contract, requiring a continuous adaptation of doctrinaires, practitioners and legislators but also an adaptation of legislation to the social, economic and legal realities that have emerged.

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